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of the

HOUSE OF REPRESENTATIVES

of the

General Assembly

of the

Commonwealth of Kentucky

1998 Regular Session

Volume II

Held in the State Capitol in the City of Frankfort,
at Frankfort, in the Year of Our Lord 1998,
and in the Two Hundred and Sixth
Year of the Commonwealth

Begun on Tuesday, the Sixth Day of January, 1998, and Adjourned
Sine Die on Wednesday, April 15, 1998

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FOREWORD

The Kentucky Constitution requires each house of the General Assembly to keep a journal as a public accounting of daily legislative activity. It is the official record of action by the General Assembly.

The *Kentucky Revised Statutes* require the Legislative Research Commission to compare, edit, correct, and publish the journals of each chamber. This is the *House Journal* for the Regular Session of 1998.

The texts of simple and concurrent resolutions appear on first reading or adoption. Appendices contain a list of elected representatives, tables of actions on bills and resolutions, roll call votes, the budget memorandum, and a subject index.

Ms. Linda Attkisson and Ms. Gene Wallace prepared the *House Journal* for the 1998 Regular Session. The edited copy and appendices in this volume reflect the cooperative efforts of the LRC Staff.

DON CETRULO
Director

The Capitol
Frankfort, Kentucky
1999

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THURSDAY, FEBRUARY 5, 1998

TWENTY-FIRST LEGISLATIVE DAY

The House was called to order by Speaker Richards.

Prayer by Representative Yonts.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Bowling, Collins, Cox, Crenshaw, Deskins, Jordan, Pope, Stein, and Turner.

Representative Ballard moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative Ballard moved that the reading of the Journal of February 4, 1998, be dispensed with and the same approved. Agreed.

Representative Ballard moved that the Rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Ballard moved that all properly filed co-sponsor requests be approved. Agreed.

Senate Message

Announcing passage of **SB 165, SB 176, SB 178, SB 182, SB 198, HB 6,** and **HB 28**. (Time: 2:10 p.m.)

Report On Enrolled Bills

The Committee on Enrollment reported that **HB 176** has been examined and found correctly enrolled. Said Bill was read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -2:14 p.m.) **HB 176** delivered to the Senate and signed by the President. Delivered to the Governor on February, 1998 at 2:38 p.m.

Introduction of Bills

HB 509, by Representatives Kerr and Murgatroyd: AN ACT relating to disregarding the orders of officers.

HB 510, by Representatives Hoffman, McKee, Jordan, and Jenkins: AN ACT relating to dangerous wildlife.

HB 511, by Representative Yonts: AN ACT relating to the board of directors for a community college.

HB 512, by Representatives Ford, Heleringer, Brandstetter, Stewart, Cox, Ratliff, Murgatroyd, Maricle, Crimm, D. D. Butler, Walton, Cave, Treesh, Colter, Rader, Hogancamp, Reinhardt, Stine, Anderson, Bratcher, Crall, Polston, Baugh, Napier, DeWeese, Turner, Gee, Vincent, and Allen: AN ACT relating to the Medicaid program and utilization review.

HB 513, by Representative Maricle: AN ACT relating to school curriculums.

HB 514, by Representatives Thomas and Bruce: AN ACT relating to consumer loan companies.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills:

Agriculture and Small Business: **HB 505, SB 187**

Banking and Insurance: **HB 507, SB 105**

Counties and Special Districts: **HB 501**

Education: **HB 499, HB 500, HB 502**

Health and Welfare: **HB 506**

Natural Resources and Environment: **HB 498**

State Government; **HB 503, HB 508, SB 149, SB 150, SB 152, SB 153, SB 173, SB 174, SB 175**

Transportation: **HB 497, HB 504, SB 141, SB 167**

Report of Committees

The Committee on Banking and Insurance reported **HB 267**, with Committee Substitute attached thereto, **HB 374, HB 390, HB 402, HB 409**, and **HB 429** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 267, AN ACT relating to motor vehicle insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.13-063 is amended to read as follows:

(1) Any schedule of rates or rating plan for automobile liability and physical damage insurance filed with the commissioner shall provide for an appropriate reduction in premium charges for a period of ***five (5)***[~~three (3)~~] years for those insureds fifty-five (55) years of age and older who successfully complete a motor vehicle accident prevention course meeting standards set by the Transportation Cabinet. There shall, however, be no reduction in premiums for a self-instructed course or for a course which does not provide for classroom or field driving instruction for a minimum number of hours, to be determined by the Transportation Cabinet.

(2) All insurance companies writing automobile liability and physical damage insurance in Kentucky shall allow an appropriate reduction in premium charges to all eligible persons subject to this section.

(3) Upon successfully completing the approved course, each participant shall be issued by the course's sponsoring agency a certificate which shall be the basis of qualification for the discount on insurance.

(4) Each participant shall take an approved course each ***five (5)***[~~three (3)~~] years to continue to be eligible for the discount on insurance.

(5) The Transportation Cabinet is hereby empowered to promulgate regulations setting standards for the motor vehicle accident prevention course described in subsection (1) of this section.

(6) No discount shall be available under this section to those completing the prescribed motor vehicle accident prevention course under a court order as a result of a motor vehicle conviction.

The Committee Substitute to **HB 267** is as follows:

AN ACT relating to motor vehicle insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.13-063 is amended to read as follows:

(1) Any schedule of rates or rating plan for automobile liability and physical damage insurance filed with the commissioner shall provide for an appropriate reduction in premium charges for a period of ***at least*** three (3) years ***and up to five (5) years*** for those insureds fifty-five (55) years of age and older who successfully complete a motor vehicle accident prevention course meeting standards set by the Transportation Cabinet. There shall, however, be no reduction in premiums for a self-instructed course or for a course which does not provide for classroom or field driving instruction for a minimum number of hours, to be determined by the Transportation Cabinet.

(2) All insurance companies writing automobile liability and physical damage insurance in Kentucky shall allow an appropriate reduction in premium charges to all eligible persons subject to this section.

(3) Upon successfully completing the approved course, each participant shall be issued by the course's sponsoring agency a certificate which shall be the basis of qualification for the discount on insurance.

(4) Each participant shall take an approved course each ***five (5)***[~~three (3)~~] years to continue to be eligible for the discount on insurance.

(5) The Transportation Cabinet is hereby empowered to promulgate regulations setting standards for the motor vehicle accident prevention course described in subsection (1) of this section.

(6) No discount shall be available under this section to those completing the prescribed motor vehicle accident prevention course under a court order as a result of a motor vehicle conviction.

HB 374, AN ACT relating to securities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

Every person that transacts business in this state in connection with the offer, sale, or purchase of any security, directly or indirectly, shall include the amount of and list as separate items all fees, sales charges, and expenses charged to investors and clients on each account statement that is delivered to investors and clients in this state.

HB 390, AN ACT relating to insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.9-140 is amended to read as follows:

(1) Notwithstanding the provisions of KRS 304.9-120, a nonresident of this state may be licensed as a life insurance agent upon compliance with the provisions of KRS 304.9-105, except as to the residence requirement.

(2) Notwithstanding the provisions of KRS 304.9-120, a nonresident of this state may be licensed as a general lines insurance agent upon compliance with the provisions of KRS 304.9-105 except as to the residence requirement[~~ provided that such agent shall not solicit business, advertise, or take applications for insurance within this state. Nothing herein is intended in any way to limit or prohibit such a nonresident licensed agent from entering this state to service an existing insurance policy.~~]

(3) Nonresidents of this state other than those referred to in subsection (1) of this section, may be licensed as insurance agents in this state without taking an examination if:

(a) A written examination is required of applicants for an insurance agent's license in such other state.

(b) The appropriate official of such other state certifies that the applicant holds a currently valid license as an insurance agent in such other state and either passed such written examination or was the holder of an insurance agent's license prior to the time such written examination was required.

(c) In such other state, a resident of this state is privileged to procure an insurance agent's license upon the foregoing conditions and without discrimination as to fees or otherwise in favor of the residents of such other state.

(4) Notwithstanding the provisions of KRS 304.9-120, a nonresident of this state who is a full-time employee of an insurer or an affiliate of an insurer, and not compensated on a commission basis, may be licensed as a general lines insurance agent upon compliance with the provisions of KRS 304.9-105, except as to the residence requirement, and may act as an agent in Kentucky under said license, provided that such insurer maintains a place of business in this state.

Section 2. KRS 304.9-120 is amended to read as follows:

(1) Each applicant for license as agent, who is an independent contractor agent compensated on a commission basis, and each applicant for license as a solicitor, must be a bona fide resident of this state at the date of application for the license, and must continue to be a resident of this state while so licensed.

(2) In determining the good faith of an applicant's claim to such residence, the commissioner may give due consideration to the following:

(a) The amount of time actually spent by the applicant within this state during the claimed residence period;

(b) The circumstances of such residence, that is, whether in a single or multiple family-type dwelling, or leased apartment, or permanent residential type; or in hotel, resort, motel, mobile home or other temporary or transient type of dwelling or accommodation;

(c) The circumstances of the applicant, his past history and activities, and the probability that he will continue as a resident of this state indefinitely into the future if the license were to be issued;

(d) All other pertinent factors.

(3) The requirements of subsection (1) of this section shall not apply as to:

(a) One employed to manage the insurance agency of a deceased licensed resident agent;

(b) An applicant or agent residing in any part of a city located partly within this state, if the other state in which the city is located in part has established a like exception to any residency requirement;

(c) Life or health insurance agents;

(d) Agents who are employees of the insurer or an affiliate of the insurer.

(4) The commissioner shall license as life insurance agent any person, firm***,*** or corporation who is otherwise qualified therefor under this code, but who is not a resident of this state if by the laws of the state or province of the residence of such person, firm***,*** or corporation, residents of this state may be licensed in such state or province as nonresident life ***and general lines*** insurance agents and the commissioner may negotiate and enter into reciprocal arrangements with the insurance supervisory official of any other state or province under which the residence requirements of this subsection (4) will be waived in favor of residents of such other state or province if like privileges in such other state or province are granted to residents of this state.

(5) If, under the laws of any other state or province, greater restrictions regarding residents and personal qualifications are imposed upon the licensing of residents of this state as agents than those imposed upon the licensing of nonresidents of this state under the laws of this state, then the commissioner may, when he considers such action necessary for the protection of domestic insurers or resident agents, impose such greater restrictions upon the licensing of residents of such state or province.

Section 3. The following KRS sections are repealed:

304.3-250 Resident agent -- Countersignature law.
304.3-260 Exceptions to resident agent countersignature law.

HB 402, AN ACT relating to insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.20-040 is amended to read as follows:

(1) As used in this section:

(a) "Policy" means an automobile liability insurance policy, delivered or issued for delivery in this state, insuring a single individual or husband and wife resident of the same household, as named insured, and under which the insured vehicles therein designated are of the following types only:

1. A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers, nor rented to others;

2. Any other four-wheel motor vehicle with a load capacity of fifteen hundred (1,500) pounds or less which is not used in the occupation, profession, or business of the insured; provided, however, that this section shall not apply:

a. To any policy issued under an automobile assigned risk plan;

b. To any policy insuring more than four (4) automobiles; or

c. To any policy covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards;

(b) "Automobile liability insurance policy" includes only coverage for bodily injury and property damage liability, basic reparations benefits, and the provisions therein, if any, relating to medical payments, uninsured motorists coverage, and automobile physical damage coverage;

(c) "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term; provided, however, that any policy with a policy period or term of less than three (3) months shall for the purpose of this section be considered as if written for a policy period or term of three (3) months. Provided, further, that any policy written for a term longer than one (1) year or any policy with no fixed expiration date, shall for the purpose of this section, be considered as if written for successive policy periods or terms of one (1) year, and such policy may be terminated at the expiration of any annual period upon giving seventy-five (75) days' notice of cancellation prior to such anniversary date, and such cancellation shall not be subject to any other provisions of this section; and

(d) "Nonpayment of premium" means failure of the named insured to discharge when due any of his obligations in connection with the payment of premiums on a policy, or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit.

(2) (a) A notice of cancellation of a policy shall be effective only if it is based on one (1) or more of the following reasons:

1. Nonpayment of premium; or

2. The driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the one hundred eighty (180) days immediately preceding its effective date;

(b) This subsection shall not apply to any policy or coverage which has been in effect less than sixty (60) days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy;

(c) Modification of automobile physical damage coverage by the inclusion of a deductible not exceeding one hundred dollars ($100) shall not be deemed a cancellation of the coverage or of the policy; and

(d) This subsection shall not apply to nonrenewal.

(3) No notice of cancellation of a policy to which subsection (2) of this section applies shall be effective unless mailed or delivered by the insurer to the named insured at least twenty (20) days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium at least fourteen (14) days' notice of cancellation accompanied by the reason therefor shall be given. This subsection shall not apply to renewals.

(4) No insurer shall refuse to renew a policy of automobile insurance solely because of the age of the insured.

(5) ***No insurer shall refuse to renew or cancel a policy of automobile insurance solely because:***

(a) Of the credit history, or lack of credit history, of the insured;

(b) The insured has previously obtained automobile coverage from a carrier providing nonstandard coverage; or

(c) The insured has sustained one (1) or more "Act of God" claims or occurrences.

(6) No insurer shall fail to renew a policy unless it shall mail or deliver to the named insured, at the address shown in the policy, at least seventy-five (75) days' advance notice of its intention not to renew.

(7)[~~(6)~~] Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

(8)[~~(7)~~] If the insurer has manifested its willingness to renew by mailing or delivering a renewal notice, bill, certificate, or policy to the first-named insured at his last known address at least thirty (30) days before the end of the current policy period with the amount of the renewal premium charge and its due date clearly set forth therein, then the policy shall expire and terminate without further notice to the insured on the due date, unless the renewal premium is received by the insurer or its authorized agent on or before that date. When any policy terminates pursuant to this subsection because the renewal premium was not received on or before the due date, the insurer shall, within fifteen (15) days, deliver or mail to the first-named insured at his last known address a notice that the policy was not renewed and the date on which the coverage under it ceased to exist.

(9)[~~(8)~~] (a) Proof of mailing of renewal premium to the insurer or its agent, when authorized, on or before the due date, shall constitute a presumption of receipt pursuant to subsection ***(8)***[~~(7)~~] of this section.

(b) Proof of mailing of notice of cancellation or of intention not to renew or of reasons for cancellation or nonrenewal to the named insured at the address shown in the policy, shall be sufficient proof of notice.

(10)[~~(9)~~] No insurer shall impose or request an additional premium higher than its standard premium for automobile insurance, cancel or refuse to issue a policy, or refuse to renew a policy solely because the insured or the applicant is an individual with a disability, so long as the disability does not substantially impair the person's mechanically assisted driving ability.

(11)[~~(10)~~] When an automobile liability insurance policy is canceled other than for nonpayment of premium, or in the event of failure to renew a policy of automobile liability insurance[~~ to which subsection (5) of this section applies~~], the insurer shall notify the named insured of his possible eligibility for automobile liability insurance coverage through the Kentucky automobile assigned risk plan. Such notice shall accompany or be included in the notice of cancellation or the notice of intent not to renew. Such notice shall also inform the insured that he may, within four (4) days, request the commissioner in writing to determine whether there is sufficient reason to cancel or not to renew the policy. Within fourteen (14) days of receiving such a written request, the commissioner shall send his findings to the insurer and to the insured. When he sends his findings, the commissioner shall notify both parties of their right to request a hearing under KRS 304.2-310(2)(b). The party requesting the hearing shall give the commissioner written confirmation of attendance at the hearing not more than four (4) days before, nor less than twenty-four (24) hours before, the scheduled hearing. If the requesting party fails to give the required written confirmation, the commissioner shall cancel the hearing.

(12)[~~(11)~~] The reason for nonrenewal or cancellation shall accompany or be included in the notice of nonrenewal or cancellation.

(13)[~~(12)~~] Except where the maximum limits of coverage have been purchased, every notice of first renewal shall include a provision or be accompanied by a notice stating in substance that added uninsured motorists, underinsured motorists, and personal injury protection coverages may be purchased by the insured.

(14)[~~(13)~~] There shall be no liability on the part of and no cause of action of any nature shall arise against the commissioner or against any insurer, its authorized representative, its agents, its employees, or any firm, person, or corporation furnishing to the insurer information as to reasons for cancellation or nonrenewal, for any statement made by any of them in any written notice of cancellation or nonrenewal, or in any other communication, oral or written, specifying the reasons for cancellation or nonrenewal, or the providing of information pertaining thereto, or for statements made or evidence submitted at any hearings conducted in connection therewith.

Section 2. KRS 304.20-340 is amended to read as follows:

The declination or termination of a policy of insurance subject to KRS 304.20-300 to 304.20-350 by an insurer or agent is prohibited if the declination or termination is:

(1) Based solely upon the race, religion, nationality, ethnic group, age, sex, or marital status of the applicant or named insured;

(2) Based solely upon the lawful occupation or profession of the applicant or named insured, except that this provision shall not apply to an insurer which limits its market to one (1) lawful occupation or profession or to several related lawful occupations or professions or to an insurer that does not provide the kind of insurance sought by the applicant;

(3) Based solely upon the age or location of the residence or property of the applicant or named insured, unless such decision is for a business purpose which is not a mere pretext for unfair discrimination;

(4) Based solely upon the fact that another insurer previously declined to insure the applicant or terminated an existing

policy in which the applicant was the named insured;[~~or~~]

(5) Based solely upon the fact that the applicant or named insured previously obtained insurance through a residual market mechanism***;***

(6) Based solely upon the credit history, or lack of credit history, of the insured;

(7) Based solely upon the fact that the insured has previously obtained property or casualty insurance from a carrier providing nonstandard coverage; or

(8) Based solely upon the fact that the insured has sustained one (1) or more "Act of God"-related claims or occurrences.

SECTION 3. A NEW SECTION OF SUBTITLE 20 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

No insurer shall refuse to issue automobile or property and casualty insurance to an applicant solely because of the credit history, or lack of credit history, of the applicant.

HB 409, AN ACT relating to escheats.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 393.010 is amended to read as follows:

(1) As used in this chapter, unless the context requires otherwise:

  (a) "Banking organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, or a private banker engaged in business in this state;

  (b) "Business association" means any corporation, joint stock company, business trust, partnership, or any association for business purposes of two (2) or more individuals;

  (c) "Financial organization" means any savings and loan association, building and loan association, credit union, cooperative bank, or investment company, engaged in business in this state;

  (d) "Life insurance corporation" means any corporation or association transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities;

  (e) "Claim" means to demand payment or surrender of property from the person whose duty it is to pay the claimant, or surrender to him the property involved;

  (f) "Treasurer" means the State Treasurer;

  (g) "Department" means the Department of the Treasury;

  (h) "Person" means any individual, state or national bank, partnership, joint stock company, business, trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent.

(2) This chapter does not apply to ***money, funds, or any other property held by or owing to any nonprofit, Internal Revenue Code Section 501(c)(3), tax-exempt hospital, or to*** bonds of counties, cities, school districts, or other tax-levying subdivisions of this state or to any money, funds, or other intangible property at any time held or owing for any minerals or other raw materials capable of being used for fuel in the course of manufacturing, processing, production, or mining. The provisions of this subsection shall be effective retroactively to all such moneys, funds, or other intangible property held or owing by any person on June 1, 1960, or thereafter.

HB 429, AN ACT relating to insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 287.030 is amended to read as follows:

(1) As used in this section, "person" includes a natural person, partnership, corporation, association, business trust, voting trust, or similar organization.

(2) No persons, except corporations, shall engage in the business of private banking in this state.

(3) No bank incorporated under the laws of another state or national bank having its principal place of business outside this state shall transact any banking business in this state except to lend money, unless specifically authorized by law or administrative regulation, or except as permitted following a merger transaction within the meaning of Section 44 of the Federal Deposit Insurance Act pursuant to 12 U.S.C. sec. 1811 et seq., approved after June 1, 1997.

(4) ***Kentucky chartered banks, or their subsidiaries, are specifically authorized to engage in the sale of non-credit-related***[~~No person who after July 13, 1984, owns or acquires more than one-half (1/2) of the capital stock of a bank shall act as insurance agent or broker with respect to any insurance except credit life insurance, credit health insurance,~~

~~insurance of the interest of a real property mortgagee in mortgaged property, other than title]~~ insurance.

(5) No bank incorporated under the laws of the Commonwealth of Kentucky shall make any loan or discount on the security of the shares of its own capital stock, or the shares of stock of a bank holding company which controls the bank to the extent that such loan or discount secured by such shares exceeds the amounts permitted by Section 23(A) of the Federal Reserve Act (12 U.S.C. sec. 371c) as that section reads on July 15, 1986, nor be the purchaser or holder of any such shares, except that a bank may take property of any kind to satisfy or protect a loan previously made in good faith and in the ordinary course of business; and stock so purchased or acquired, shall, within six (6) months from the time of its purchase or acquisition, be sold or disposed of at public or private sale. This subsection shall not affect or modify in any way KRS 386.025, but said section shall remain in full force and effect.

SECTION 2. A NEW SECTION OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Financial institution" means a bank or bank holding company as defined in the Bank Holding Company Act of 1956, as amended, 12 U.S.C. sec. 1841, a savings bank, savings and loan association, trust company, or any depository institution as defined by the Federal Deposit Insurance Act in 12 U.S.C. sec. 1813(c)(1), any affiliate or subsidiary of any of the above, and any other individual, corporation, partnership, or association authorized to take deposits and make loans in the Commonwealth;

(b) "Insurance agency activities" means any activity relating to insurance other than credit life insurance, credit health insurance, forced placed or voluntary credit property, credit involuntary unemployment insurance, or insurance of the interest of a real property mortgagee in mortgaged property, other than title insurance, for which a license as agent, solicitor, broker, or consultant is required under this chapter; and

(c) "Insurance information" means any information provided by a consumer in order to obtain insurance.

(2) A financial institution authorized by law to engage in insurance agency activities in this state shall, in addition to any other applicable requirements, comply with the following requirements:

(a) The financial institution or officer, agent, representative, or employee thereof shall qualify for licensure under all applicable provisions of this chapter and abide by all applicable provisions of this chapter and applicable administrative regulations;

(b) A financial institution shall provide a written statement, signed or initialed by the consumer, to evidence compliance with KRS 304.12-150;

(c) If the consumer voluntarily discloses or authorizes, in a written statement that is signed or initialed by the consumer, the disclosure of insurance information about the consumer to any person, the statement shall be an acknowledgment that the disclosure is not to the detriment of the consumer; and

(d) A financial institution licensed by the department to engage in insurance agency activities shall:

1. Not violate the anti-tying provisions of the Bank Holding Company Act, 12 U.S.C. sec. 1971 et seq. in effect as of December 31, 1997; and

2. Notify the department in writing within ten (10) days of any final judgment or any final administrative action, by a federal agency authorized to enforce the anti-tying provision, that finds that the financial institution or any of its employees committed a violation of the Bank Holding Company Act. Any such final and unappealable judgment or final and unappealable administrative action shall be deemed a violation of this chapter;

(e) Prior to the sale of any policy of insurance to a consumer, a financial institution shall provide to the consumer a written statement, signed or initialed by the consumer, that:

1. The insurance offered by the financial institution is not a deposit;

2. The insurance offered by the financial institution is not insured by the Federal Deposit Insurance Corporation or other government agency that insures deposits;

3. The insurance offered by the financial institution is not guaranteed by the financial institution;

4. The insurance is optional or, if required, may be purchased from any insurance agent or insurer selected by the consumer if that agent or insurer provides the same or equivalent coverage; and

5. By not purchasing the insurance if it is optional, or by purchasing the insurance from another insurance agent or insurer if the insurance is required, will not in any way affect current or future credit decisions; and

(f) The commissioner shall promulgate administrative regulations in accordance with KRS Chapter 13A that specify the disclosure forms required by subsections (b), (c), and (e) of this section.

(3) An officer or employee of a financial institution shall not directly or indirectly delay or impede the completion of a loan transaction or any other transaction with a financial institution for the purpose of influencing a consumer's

selection or purchase of any insurance.

(4) An employee of a financial institution may receive compensation for the referral of a consumer, who seeks information about or wishes to purchase any insurance product, to a licensed person or for the provision of the telephone number of a licensed person who sells or provides information on the product only if:

(a) The employee receives the referral fee regardless of whether insurance coverage is sold;

(b) The referral compensation is a fixed amount;

(c) The referral compensation is a portion of a financial institution's program offering referral fees for other noninsurance products or services marketed by the financial institution; and

(d) The referral compensation is paid by the financial institution.

(5) All financial institutions not insured by the Federal Deposit Insurance Corporation or other government agency that insures deposits are not required to comply with subsection (2)(e) of this section.

The Committee on Cities reported **HB 286**, with Committee Substitute attached thereto, **HB 420**, and **421** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 286, AN ACT relating to policemen's and firefighter's pension funds in cities of the first class.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 95.290 is amended to read as follows:

(1) The city legislative body in cities of the first class may enact ordinances providing for a system of pensions for retired and disabled members of the police and fire divisions of the department of public safety and their dependents, may appropriate funds for the purpose of paying such pensions, may allot and pay to the policemen's pension fund or the firefighters' pension fund or either or both of them, all fines and forfeitures imposed upon members of the respective divisions, and may provide for, assess, and collect contributions from the members for the benefit of the fund.

(2) There shall be a governing body of the policemen's pension fund, and a governing body of the firefighters' pension fund. The governing bodies of the respective funds shall hold title to all assets in their respective funds, and shall have exclusive authority relating to investment of the assets of the funds, including contracting with investment advisors or managers to perform investment services as deemed necessary and prudent by the board. A majority of the governing body of each fund shall be comprised of ***persons receiving pension benefits from***[~~members of~~] the respective pension systems, and no more than one (1) member of the city legislative body may be a member of the governing body of either the policemen's or the firefighters' pension fund. ***To be effective, an action of the governing body of a fund shall require only a simple majority of the votes cast at a properly convened meeting of the governing body where a quorum is present, with a quorum being a majority of the members of a governing body.***

(3) Any policemen's pension fund or any firefighters' pension fund established under the provisions of this section shall be held or distributed for***, and only for,*** any of the following purposes of the respective fund as applicable:

(a) Paying pensions***, and any bonus payments under applicable ordinances***;

(b) ***Making*** payments to the city for transfer to the County Employees Retirement System for alternate participation pursuant to KRS 78.530(3)(a) and 78.531(2); ***or***

(c) ***Transferring***[~~Transfer of~~] pension assets through investment contract or other financial instrument for the purpose of amortizing unfunded service ***liabilities***[~~liability; and~~]

~~(d) Payment from the city to the County Employees Retirement System for future pension contributions required pursuant to KRS 61.565.~~

~~Pursuant to the terms of this section, if policemen of the city of the first class elect entry into the County Employees Retirement System and thereby create excess funds over those required to provide for the purposes set forth in paragraphs (a), (b), and (c) of this subsection, these excess funds shall be distributed to the city for use by the city for any other purpose it may elect, including, but not limited to, the establishment of a reserve for payment under paragraph (d) of this subsection. The governing board of the fund may annually expend for the necessary expenses connected with the fund, including but not limited to expenses for medical, actuarial, accounting, and legal services, the amount such governing board deems proper.~~

~~(e) Payment from the city to the County Employees Retirement System for future pension contributions required pursuant to KRS 61.565. Pursuant to the terms of this section, if firefighters of the city of the first class elect entry into the County Employees Retirement System and thereby create excess funds over those required to provide for the purposes set forth in paragraphs (a), (b), and (c) of this subsection, these excess funds shall be distributed according to the terms of an agreement negotiated between the city and the union organization representing the firefighters. The city may use its share of the distributed excess funds for any purpose it may elect, including, but not limited to, the establishment of a reserve for payment under paragraph (e) of this~~

~~subsection~~].

(4) (a) The governing body of each pension fund shall insure that all of the assets in the fund are distributed for the purposes in subsection (3) of this section, and only for these purposes. If the assets in either fund exceed those needed for the actuarial liability for payment of current pension benefits and any anticipated liabilities under subsection (3)(b) and (c) of this section, the governing board and the legislative body of the city establishing the pension system shall insure by pension bonus ordinance that these excess funds be distributed in an equitable manner to all eligible pension recipients on an annual basis.

(b) The governing board of ***either***[~~the~~] fund may annually expend for the necessary expenses connected with the fund, including but not limited to expenses for medical, actuarial, accounting, and legal ***or other professional*** services, the amount such governing board deems proper.

(5)[~~(4)~~] Any ordinance establishing a pension fund under this section shall make equitable provision for the rights of persons having an interest in assets transferred to the fund from any fund heretofore established by statute.

(6) To assure equal protection for the beneficiaries of either fund, any action taken by the city executive or legislative body in cities of the first class that affects a policemen's pension fund or a firefighters' pension fund established under this section shall, to the maximum extent permitted by law, treat each fund in a uniform manner and shall not cause any change to be made to the structure or operation of either fund, whether through legislation, litigation, compromise, settlement, or otherwise, unless any proposed change is offered to the other fund before it takes effect. Nothing in this subsection shall be construed to require any change to be made to the structure or operation of either fund as it exists on the effective date of this Act.

(7)[~~(5)~~] The legislative body in a city of the first class shall issue the appropriate order, pursuant to KRS 78.530(1), directing participation for policemen in the County Employees Retirement System. All new employees who would have been granted membership in the local policemen's pension system shall be members of the County Employees Retirement System. All active members of the local policemen's pension system at the time of transition to the County Employees Retirement System may choose membership in the County Employees Retirement System or may retain membership in the local system. The city shall elect the alternate participation plan, pursuant to KRS 78.530(3), for policemen who transfer to the County Employees Retirement System. Notwithstanding the provisions of KRS 78.530(3)(b), the city may, at its option, extend the payment period for the cost of alternate participation to a maximum of twenty (20) years with the interest at the rate actuarially assumed by the board. The city shall have the right to use assets in the local pension fund, other than assets necessary to pay benefits to the remaining active members of the local policemen's pension system and to retirees and their survivors as determined by actuarial evaluation, to assist in the payment of the annual installment cost of alternate participation. All policemen who become members of the County Employees Retirement System pursuant to this section shall be granted hazardous duty coverage, and the city may, at its option, purchase accumulated sick leave for each policeman upon retirement pursuant to KRS 78.616.

(8)[~~(6)~~] The legislative body in a city of the first class may issue the appropriate order, pursuant to KRS 78.530(1), directing participation for firefighters in the County Employees Retirement System. In the event that the legislative body in a city of the first class issues such an order, then all new employees who would have been granted membership in the local firefighters' pension system shall be members of the County Employees Retirement System. All active members of the local firefighters' pension system at the time of transition to the County Employees Retirement System may choose membership in the County Employees Retirement System or may retain membership in the local system. The city shall elect the alternate participation plan, pursuant to KRS 78.530(3), for firefighters who transfer to the County Employees Retirement System. Notwithstanding the provisions of KRS 78.530(3)(b), the city may, at its option, extend the payment period for the cost of alternate participation to a maximum of twenty (20) years with the interest at the rate actuarially assumed by the board. The city shall have the right to use assets in the local firefighters' pension fund, other than assets necessary to pay benefits to the remaining active members of the local firefighters' pension system and to retirees and their survivors as determined by actuarial evaluation, to assist in the payment of the annual installment cost of alternate participation. After certification by the County Employees Retirement System of eligibility for hazardous duty coverage, each firefighter who becomes a member of the County Employees Retirement System pursuant to this section shall be granted hazardous duty coverage.

(9)[~~(7)~~] Notwithstanding the provisions of KRS 61.565, which relate to the contributions required of participating employers, any city of the first class participating in the County Employees Retirement System hazardous duty pension plan which has in effect a collective bargaining agreement with a group of employees who participate in said plan, shall have the right to enter into agreement with its employees or with their respective collective bargaining representatives. This agreement may include, but is not limited to, specifications of what portion of the required employer contribution shall be borne by the participating employer and what portion shall be borne by the participating employee. This provision in no way modifies the employer's obligation to remit the contributions required by the County Employees Retirement System pursuant to KRS 61.565, whether such contributions are borne by the city or by its participating employees.

(10)[~~(8)~~] With regard to the employer participation or employer contributions pursuant to KRS 61.565 as it relates to future pension contribution requirements or as it relates to payback period or interest charge for service liability cost under alternate participation, if any statute or any resolution of the appropriate state board of trustees having authority over employer participation or employer contribution grants any terms or conditions to any city of the second through the sixth class, or to any county, or to any urban-county government, which are more favorable in terms of participation than terms or conditions granted to any city of the first class, then said provisions for employer participation or contribution shall be available to the city of the first class, at its option and effective upon adoption by the city of the first class and notification to the County Employees Retirement System.

The Committee Substitute to **HB 286** is as follows:

AN ACT relating to policemen's and firefighter's pension funds in cities of the first class.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 95.290 is amended to read as follows:

(1) The city legislative body in cities of the first class may enact ordinances providing for a system of pensions for retired and disabled members of the police and fire divisions of the department of public safety and their dependents, may appropriate funds for the purpose of paying such pensions, may allot and pay to the policemen's pension fund or the firefighters' pension fund or either or both of them, all fines and forfeitures imposed upon members of the respective divisions, and may provide for, assess, and collect contributions from the members for the benefit of the fund.

(2) There shall be a governing body of the policemen's pension fund, and a governing body of the firefighters' pension fund. The governing bodies of the respective funds shall hold title to all assets in their respective funds, and shall have exclusive authority relating to investment of the assets of the funds, including contracting with investment advisors or managers to perform investment services as deemed necessary and prudent by the board. A majority of the governing body of each fund shall be comprised of ***persons receiving pension benefits from***[~~members of~~] the respective pension systems, and no more than one (1) member of the city legislative body may be a member of the governing body of either the policemen's or the firefighters' pension fund. ***To be effective, an action of the governing body of a fund shall require only a simple majority of the votes cast at a properly convened meeting of the governing body where a quorum is present, with a quorum being a majority of the members of a governing body.***

(3) Any policemen's pension fund or any firefighters' pension fund established under the provisions of this section shall be held or distributed for***, and only for,*** any of the following purposes of the respective fund as applicable:

(a) Paying pensions***, and any bonus payments under applicable ordinances***;

(b) ***Making*** payments to the city for transfer to the County Employees Retirement System for alternate participation pursuant to KRS 78.530(3)(a) and 78.531(2); ***or***

(c) ***Transferring***[~~Transfer of~~] pension assets through investment contract or other financial instrument for the purpose of amortizing unfunded service ***liabilities***[~~liability; and~~

~~(d) Payment from the city to the County Employees Retirement System for future pension contributions required pursuant to KRS 61.565.~~

~~Pursuant to the terms of this section, if policemen of the city of the first class elect entry into the County Employees Retirement System and thereby create excess funds over those required to provide for the purposes set forth in paragraphs (a), (b), and (c) of this subsection, these excess funds shall be distributed to the city for use by the city for any other purpose it may elect, including, but not limited to, the establishment of a reserve for payment under paragraph (d) of this subsection. The governing board of the fund may annually expend for the necessary expenses connected with the fund, including but not limited to expenses for medical, actuarial, accounting, and legal services, the amount such governing board deems proper.~~

~~(e) Payment from the city to the County Employees Retirement System for future pension contributions required pursuant to KRS 61.565. Pursuant to the terms of this section, if firefighters of the city of the first class elect entry into the County Employees Retirement System and thereby create excess funds over those required to provide for the purposes set forth in paragraphs (a), (b), and (c) of this subsection, these excess funds shall be distributed according to the terms of an agreement negotiated between the city and the union organization representing the firefighters. The city may use its share of the distributed excess funds for any purpose it may elect, including, but not limited to, the establishment of a reserve for payment under paragraph (e) of this subsection~~].

(4) (a) The governing body of each pension fund shall insure that all of the assets in the fund are distributed for the purposes in subsection (3) of this section, and only for these purposes. If in any calendar year the assets in either fund exceed those needed for the actuarial liability for payment of pension benefits and any anticipated liabilities under subsection (3)(b) and (c) of this section, the legislative body of the city establishing the pension system shall insure by pension bonus ordinance that a portion of these excess funds be distributed in an equitable manner to all

eligible pension recipients. Nothing in this subsection shall be construed to require any change to be made to any pension ordinance as it exists on the effective date of this Act.

(b) The governing board of ***either***[~~the~~] fund may annually expend for the necessary expenses connected with the fund, including but not limited to expenses for medical, actuarial, accounting, and legal ***or other professional*** services, the amount such governing board deems proper.

(5)[~~(4)~~] Any ordinance establishing a pension fund under this section shall make equitable provision for the rights of persons having an interest in assets transferred to the fund from any fund heretofore established by statute.

(6) To assure equal protection for the beneficiaries of either fund, any action taken by the city executive or legislative body in cities of the first class that affects a policemen's pension fund or a firefighters' pension fund established under this section shall, to the maximum extent permitted by law, treat each fund in a uniform manner and shall not cause any change to be made to the structure or operation of either fund, whether through legislation, litigation, compromise, settlement, or otherwise, unless any proposed change is offered to the other fund before it takes effect. Nothing in this subsection shall be construed to require any change to be made to any pension ordinance as it exists on the effective date of this Act.

(7)[~~(5)~~] The legislative body in a city of the first class shall issue the appropriate order, pursuant to KRS 78.530(1), directing participation for policemen in the County Employees Retirement System. All new employees who would have been granted membership in the local policemen's pension system shall be members of the County Employees Retirement System. All active members of the local policemen's pension system at the time of transition to the County Employees Retirement System may choose membership in the County Employees Retirement System or may retain membership in the local system. The city shall elect the alternate participation plan, pursuant to KRS 78.530(3), for policemen who transfer to the County Employees Retirement System. Notwithstanding the provisions of KRS 78.530(3)(b), the city may, at its option, extend the payment period for the cost of alternate participation to a maximum of twenty (20) years with the interest at the rate actuarially assumed by the board. The city shall have the right to use assets in the local pension fund, other than assets necessary to pay benefits to the remaining active members of the local policemen's pension system and to retirees and their survivors as determined by actuarial evaluation, to assist in the payment of the annual installment cost of alternate participation. All policemen who become members of the County Employees Retirement System pursuant to this section shall be granted hazardous duty coverage, and the city may, at its option, purchase accumulated sick leave for each policeman upon retirement pursuant to KRS 78.616.

(8)[~~(6)~~] The legislative body in a city of the first class may issue the appropriate order, pursuant to KRS 78.530(1), directing participation for firefighters in the County Employees Retirement System. In the event that the legislative body in a city of the first class issues such an order, then all new employees who would have been granted membership in the local firefighters' pension system shall be members of the County Employees Retirement System. All active members of the local firefighters' pension system at the time of transition to the County Employees Retirement System may choose membership in the County Employees Retirement System or may retain membership in the local system. The city shall elect the alternate participation plan, pursuant to KRS 78.530(3), for firefighters who transfer to the County Employees Retirement System. Notwithstanding the provisions of KRS 78.530(3)(b), the city may, at its option, extend the payment period for the cost of alternate participation to a maximum of twenty (20) years with the interest at the rate actuarially assumed by the board. The city shall have the right to use assets in the local firefighters' pension fund, other than assets necessary to pay benefits to the remaining active members of the local firefighters' pension system and to retirees and their survivors as determined by actuarial evaluation, to assist in the payment of the annual installment cost of alternate participation. After certification by the County Employees Retirement System of eligibility for hazardous duty coverage, each firefighter who becomes a member of the County Employees Retirement System pursuant to this section shall be granted hazardous duty coverage.

(9)[~~(7)~~] Notwithstanding the provisions of KRS 61.565, which relate to the contributions required of participating employers, any city of the first class participating in the County Employees Retirement System hazardous duty pension plan which has in effect a collective bargaining agreement with a group of employees who participate in said plan, shall have the right to enter into agreement with its employees or with their respective collective bargaining representatives. This agreement may include, but is not limited to, specifications of what portion of the required employer contribution shall be borne by the participating employer and what portion shall be borne by the participating employee. This provision in no way modifies the employer's obligation to remit the contributions required by the County Employees Retirement System pursuant to KRS 61.565, whether such contributions are borne by the city or by its participating employees.

(10)[~~(8)~~] With regard to the employer participation or employer contributions pursuant to KRS 61.565 as it relates to future pension contribution requirements or as it relates to payback period or interest charge for service liability cost under alternate participation, if any statute or any resolution of the appropriate state board of trustees having authority over employer participation or employer contribution grants any terms or conditions to any city of the second through the sixth class, or to any county, or to any urban-county government, which are more favorable in terms of participation than terms or conditions granted to any city of the first class, then said provisions for employer participation or contribution shall be available to the city of the first class, at its option and effective upon adoption by the city of the first class and notification to the County Employees Retirement System.

HB 420, AN ACT relating to utilities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 96 IS CREATED TO READ AS FOLLOWS:

Any city that owns and operates a utility that provides water service may extend lines, furnish water, or sell water to residents within or outside the utility's county of origin, if the residents do not already receive water service and they are not included in a formal, demonstrable plan, on the part of the water utility whose facilities are nearest to the unserved area, to extend water service to the unserved area within six (6) months after the date of inquiry. "Date of inquiry" means the date on which the water utility whose facilities are nearest to the unserved area receives, by registered mail, a written inquiry from another utility concerning an extension of service.

Section 2. KRS 74.020 is amended to read as follows:

(1) A water district shall be administered by a board of commissioners which shall control and manage the affairs of the district. The term of each commissioner is four (4) years, except as provided in this section:

(a) If a district lies wholly within a single county, or operates as a single-county district, as provided in paragraph (c) of this subsection, the board of commissioners shall be composed of either three (3) or five (5) members as the county judge/executive shall determine. Members of the board shall be residents of the district, or of any incorporated or unincorporated area served by the district in the county in which the district was originally established, who shall be appointed by the county judge/executive with the approval of the fiscal court. If two (2) or more water districts within a single county merge as described in KRS 74.361, the county judge/executive may appoint up to two (2) additional commissioners with the approval of the fiscal court. Initial appointments shall be for terms of two (2), three (3), and four (4) years, as designated by the court.

(b) Except as provided in paragraph (c) of this subsection, if a district formed in a single county extends its area to include territory in an adjacent county, as provided by KRS 74.115, the board of commissioners shall be appointed by the county judges/executive with the approval of the fiscal courts of the concerned counties as follows: in two (2) county districts, three (3) members from the original district and two (2) members from the extended portion of the district; for extensions into three (3) or more counties, the respective county judges/executive, with the approval of the fiscal courts, shall appoint, in addition to the existing membership of the commission, two (2) members from the original one-county district and two (2) members from the newly extended portion of the district. Orders establishing the extension shall provide for the staggering of initial terms in an equitable manner.

(c) If a single-county district administered as provided in paragraph (a) hereof shall acquire an existing water or gas distribution system serving an area which extends beyond the boundaries of the district into another county, or if a district formed in a single county extends its area to include territory in an adjacent county as provided by KRS 74.115, it may operate the distribution system so acquired, or extended, if***:***

1. The area served outside the county shall be deemed to be a minor portion of the total area served by the district***;***~~[,]~~ and

2. ~~[if]~~The fiscal court of the county containing the minor portion of the total area shall have agreed to the acquisition or to the extension of the distribution system***, except that the fiscal court shall not prohibit the extension of a water distribution system to residents who are not already being served by an existing utility or district and that are not included in a formal, demonstrable plan, on the part of the water utility whose facilities are nearest to the unserved area, to receive water service within six (6) months of the date of inquiry. "Date of inquiry" means the date on which the water utility whose facilities are nearest to the unserved area receives, by registered mail, a written inquiry from another utility concerning an extension of service***.

If less than twenty-five percent (25%) of the total assets of the distribution system are located within the county outside of the boundaries of the district, it shall be conclusively presumed that the district comes within the terms of this subsection.

(2) A commissioner may be removed from office as provided by KRS 65.007.

(3) A commissioner who participates in any official action by the water district board of commissioners which results in a direct financial benefit to him may be removed from office as provided by KRS 65.007.

(4) Vacancies shall be filled by the same appointing authority which is empowered to make the original appointment. Vacancies resulting from cause other than expiration of the term shall be filled for the unexpired term only. Notwithstanding the provisions of KRS 67.710, a vacancy resulting from the expiration of a term shall be filled by the

Public Service Commission if, within ninety (90) days following the expiration of the term, the vacancy has not been filled by the appropriate county judge/executive with approval of the fiscal court.

(5) The commission shall elect a chairman, secretary, and treasurer. Each commissioner shall execute a bond, approved by the county judge/executive, conditioned on the faithful performance of the duties of his position.

(6) Each commissioner shall receive an annual salary of not more than thirty-six hundred dollars ($3600), which shall be paid out of the water district fund. In the case of single-county districts, which shall be deemed to include districts described in paragraph (c) of subsection (1) of this section, the salary shall be fixed by the county judges/executive with the approval of the fiscal court; in multicounty districts, it shall be fixed by the agreement between the county judges/executive with the approval of their fiscal courts. In fixing and approving the salary of the commissioners, the county judge/executive and the fiscal court shall take into consideration the financial condition of the district and its ability to meet its obligations as they mature.

Section 3. KRS 96.150 is amended to read as follows:

(1) Any city that owns or operates a water supply or sanitary sewer system may extend the system into, and furnish and sell water and provide sanitary sewers to any person within, any territory contiguous to the city, and may install within that territory necessary apparatus; provided, however, that the[~~ extension of a~~] water supply or sanitary sewer system shall not ***be extended to***[~~enter into~~] any territory ***where persons are already being*** served by an existing water supply or sanitary sewer district ***or where there is a formal, demonstrable plan to extend water or sewer services in six (6) months from the date of inquiry, as defined in Section 1 of this Act,*** unless such district requests the extension of water or sewer services from a city. For these purposes the city or sanitation authority established by an interlocal agreement may condemn or otherwise acquire franchises, rights, and rights-of-way, as private corporations may do. ***Nothing in this section shall prohibit a city-owned utility from extending the system into a county adjoining the city utility's county of origin and furnishing and selling water to persons in that county who do not already receive water service.***

(2) When extending the system to any person, water district, or water association, the city may consider the installation of fire hydrants on the extended lines. The city may extend water lines which are incapable of servicing fire hydrants only if the city determines that servicing hydrants is not feasible. The determination shall include consideration of the incremental costs of adequately sized pipe and associated pumps and towers, and the benefits of real estate development, water sales, the availability of fire protection insurance, and the reduction in fire insurance premiums which may result from the installation of hydrants at specified intervals. When extending lines to a water district or water association, the determination may be made in consultation with the district or association, taking into consideration their fiscal capacity, ***but nothing in this section shall prohibit a city-owned utility that provides water service from extending lines, furnishing water, and selling water to residents that are not already served by an existing utility within or outside of the city utility's county of origin***.

Section 4. KRS 96.045 is amended to read as follows:

(1) No municipality, in which there is located an existing electric, water, or gas public utility plant or facility shall construct or cause to be constructed any similar utility plant or any similar public utility facility duplicating such existing plant or facility***, except that the municipality may construct or cause to be constructed additional plants or facilities for the provision of water service if the existing water utility neither provides water service to some residents nor includes in a formal, demonstrable plan the provision of water service to residents who do not already receive water from an existing utility. No municipality, in which there is located an existing electric, water, or gas public utility plant or facility shall***[~~or to~~] obtain or acquire any similar public utility plant or facility other than by the purchase of the existing plant or facility or by the acquisition of such existing plant or facility by the exercise of the power of eminent domain.

(2) "Municipality" means any county, city, town, village and municipal corporation of any and every class in the Commonwealth of Kentucky, and any board, commission or agency thereof.

(3) All laws and parts of laws in conflict herewith to the extent of such conflict are repealed.

Section 5. KRS 96.538 is amended to read as follows:

(1) Any utility providing electric service in any area annexed, subsequent to June 16, 1960, by any municipality shall have the dominant right to continue to provide electric service in said area to consumers then being served and to new consumers located nearer to its facilities than to the facilities of any other utility as all those facilities were located immediately prior to annexation.

(2) Any utility providing water, sewer or gas service in any area annexed, subsequent to July 15, 1980, by any municipality shall have the dominant right to continue to provide water, sewer or gas service in ***the***[~~said~~] area to consumers then being served and to new consumers located nearer to its facilities than to the facilities of any other utility as all those facilities were located immediately prior to annexation***, except that no dominant right shall continue to exist for a water utility with respect to persons that are not already being served or that are not included in a demonstrable plan to receive water service within a six (6) month period from the date of inquiry. "Date of inquiry" means the date on which the water utility receives, by registered mail, a written inquiry from another utility concerning an extension of service***.

SECTION 6. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED TO READ AS FOLLOWS:

Any utility that provides water service may extend lines, furnish water, or sell water to residents within or outside the utility's county of origin, if the residents do not already receive water service and they are not included in a formal, demonstrable plan, on the part of the water utility whose facilities are nearest to the unserved area, to extend water service to the unserved area within six (6) months after the date of inquiry. "Date of inquiry" means the date on which the water utility whose facilities are nearest to the unserved area receives, by registered mail, a written inquiry from another utility concerning an extension of service.

HB 421, AN ACT relating to waterworks in counties with cities of the first class.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 96.230 is amended to read as follows:

(1) Whenever any city of the first class owns, through its commissioners of the sinking fund, all the shares of capital stock in any corporation engaged in supplying water to the city and its inhabitants, the city shall control, manage and operate the plant of the corporation, its franchise, and all its other property, in the manner provided in KRS 96.240 to 96.310. The provisions of KRS 96.230 to 96.310 shall not affect the status of the stock as part of the assets of the sinking fund.

(2) Notwithstanding KRS 278.010(3), any water utility that is organized as a private entity but whose stock is owned by a city of the first class shall be regulated by the Public Service Commission in accordance with the provisions of KRS Chapter 278.

Section 2. KRS 96.265 is amended to read as follows:

By December 31, 2000, the board of waterworks ***shall have completed all necessary extensions of the waterwork corporation's facilities to be capable of offering water service to all residences and businesses in counties adjoining the county of origin if the persons to be served do not already receive water service from another supplier. The board of waterworks*** may extend the waterwork corporation's facilities to provide water service to persons ***in adjoining***[~~within and outside the city of the first class, including extensions into~~] counties[~~ adjoining its county of origin~~]. In extending service to persons not presently served within the city and county of the waterwork corporation's origin it ***shall***[~~may, but is not required to,~~] make water line extensions recovering the cost thereof, KRS 96.539 notwithstanding, by assessment as provided in this section.

(1) The board of waterworks ***shall***,[~~ acting on its own motion, may~~] hold a public hearing to consider the extension of the waterwork corporation's facilities to provide water service to persons not currently served ***by the waterwork corporation's service in response to either of the following:***

(a) A motion approved by the board; or

(b) A petition that describes the area to be served and that is signed by the majority of owners in an area not currently served by the waterwork corporation's service.[~~ Alternatively, in response to a petition signed by the majority of owners in an area not currently served by the waterwork corporation's service, which petition shall describe the area proposed to be served, the board of waterworks shall hold a public hearing to consider the benefits of extending its service to that area.~~]

(2) Notice of the hearing shall be published in accordance with KRS Chapter 424. The board of waterworks shall designate a member of the board or an officer of the waterworks corporation to preside over the hearing. Following the public hearing, the board of waterworks shall***:***

(a) Determine ***the size of the area where service is to be extended; and***

(b) Pass an ordinance providing for the extension of service[~~whether it is feasible and beneficial to extend its service. If the board of waterworks determines that it is feasible and beneficial to extend its service, it shall refer the matter to the legislative body governing the area to which service shall be extended. If the legislative body determines that service should be extended, it shall pass an ordinance providing for the extension of service~~].

(3)[~~(2)~~] The costs of such extension shall be apportioned by the ordinance against the property to which the waterwork corporation's service will be made available by reason of such extension according to an equitable basis, considering the size, configuration, and suitability as building sites of the lots or tracts to be served ***but in no case shall a new customer be charged more than five thousand dollars ($5,000) for extension of service to one (1) lot or tract, excluding the cost of a tap-in fee whose cost shall not exceed five hundred ($500) dollars***. Any of the following methods, or a combination thereof, may be used:

(a) The costs of such extension may be apportioned according to the number of square feet in any lot or tract abutting the publicly-dedicated right-of-way in which the water line extension is located. The rate of apportionment shall be the same for each square foot in any lot or tract abutting a publicly-dedicated right-of-way in which a water line extension is located, except the portions of any such lot or tract which lie a distance greater than a number of feet, as stated in the ordinance, from the water line extension, or which lie within a number of feet, as stated in the ordinance, from an existing water line located in a publicly-dedicated right-of-way which also abuts such lot or tract, shall not be subject to assessment nor included in the calculations of the square footage of such lot or tract. The rate of apportionment shall be determined by dividing the costs of the extension by the assessable area of all lots or tracts abutting the publicly-dedicated right-of-way in which a water line extension is located.

(b) The costs of such extension may be assessed against the lots or tracts according to the number of feet in the lot or tract fronting on the publicly-dedicated right-of-way in which a water line extension is located. The rate of apportionment shall be the same for each such foot of frontage, and shall be determined by dividing the assessable costs of the water line extension by the total front footage of all lots or tracts fronting on the part of the publicly-dedicated right-of-way in which a water line extension is located.

(c) The costs of such extension may be assessed against the lots or tracts abutting publicly-dedicated rights-of-way in which water line extensions are located according to the value of any such lot or tract, without regard to any improvements on such lots or tracts, as determined as of the date of the most recent assessment by the property valuation administrator of the county in which such lots or tracts are located. The rate of apportionment shall be the same for each dollar of assessed value of lots or tracts abutting the parts of the publicly-dedicated right-of-way in which the water line extension is located, except portions of such lots or tracts that are a distance greater than a number of feet, as stated in the ordinance, from the water line extension or that are within a number of feet, as stated in the ordinance, from an existing water line of the corporation located in a publicly-dedicated right-of-way which also abuts such lot or tract shall not be assessed. The value of any lot or tract, portions of which are excluded from assessment, shall be determined by multiplying the value of the entire property by a ratio, the numerator of which is the number of square feet of the lot or tract to be assessed and the denominator of which is the number of square feet in the entire lot or tract. The rate of apportionment shall be determined by dividing the assessable costs of the water line extension by the total assessed value of all assessable lots or tracts abutting the parts of the publicly-dedicated rights-of-way in which water line extensions are located.

(d) The costs of such extension may be assessed against the lots or tracts that may be served by the extension at a rate that is the same for each such lot or tract, where each such lot or tract is suitable for or limited to a single building site.

(e) If any lots or tracts abut on more than one (1) dedicated right-of-way in which a water line extension is made, such lots or tracts shall be assessed as if they abutted on only one (1) such right-of-way.

(f) In the event of a subdivision of a lot or tract assessed under this section, which subdivision requires a new water line extension, nothing herein shall prohibit the assessment of the newly subdivided lots or tracts, except those that abut a dedicated right-of-way with an existing water line.

(4)[~~(3)~~] The waterwork corporation shall*:*

(a) Determine the percentage share of the total costs of the extension to be assessed against each lot or tract***, but in no case shall a new customer be charged more than five thousand dollars ($5,000) for extension of service to one (1) lot or tract, excluding the cost of a tap-in fee whose cost shall not exceed five hundred ($500) dollars;***

(b) ***Notify each owner of the share to be assessed against the lot or tract; and***

(c) ***Maintain for public inspection detailed estimates of construction costs, including right-of-way acquisition, and of property assessments for a period of at least one (1) year after construction of the extension is completed***[~~and shall notify each owner of such share to be assessed against his lot or tract~~].

(5) Any owner may, within thirty (30) days after receiving notice of the method of apportionment or the percentage share of the total costs to be assessed against his property, appeal the percentage share to be assessed against his property by filing a written appeal with the waterwork corporation setting forth the bases for the challenge. The president of the waterwork corporation shall appoint one (1) or more officers of the corporation to review such appeal, which review may include holding a hearing on the appeal. Any determination by the officer or officers that affects only the assessment of the aggrieved property owner shall not require further legislative action. If, however, as a result of the appeal, the hearing officer or officers recommend that the method of apportionment be changed, the matter shall be referred back to the legislative body that passed the ordinance provided for in subsection (1) of this section for consideration of an amendment thereto.

(6) ***Any owner of property to be assessed for a water line extension may, at any time after receipt of the initial notice provided under subsection (4) of this section, but no later than thirty (30) days after final assessment notices are sent, apply to defer the assessment against the property, or against one (1) or more lots or tracts, as follows:***

(a) ***The owner may decline water service made available to one (1) or more lots or tracts assessed for the extension. If the owner declines service, the owner waives claim to water service for the property, and the assessment is deferred. The declination of service shall be in writing to the board of waterworks. If a subsequent owner desires water service, that owner shall pay the face of the assessment together with accrued interest for the number of years commencing from the date of the initial assessment until the date that the property was purchased, except that the number shall not exceed twenty (20) years; and***

(b) The owner may apply to defer payment of extension and installation costs by submitting an appeal to the board of hardship appeals under the terms provided in subsection (3) and subsection (4) of Section 4 of this Act. If the board of hardship appeals grants a deferral, the unpaid portion of the assessment including accrued interest shall become a deferred lien against the property. Any unpaid portion of the assessment, together with accrued interest compounded for a period not to exceed twenty (20) years, shall be payable in full upon the subsequent sale or transfer of the property.

(7)[~~(4)~~] The cost of property service connections from the water line extension to the property line as required shall be assessed against the individual lots or tracts to which such property service connections are furnished. The costs to be assessed for the property service connection shall be fixed by regulation of the board of waterworks based on its experience of costs for such work***, but in no case shall a new customer be charged more than five thousand dollars ($5,000) for extension of service to one (1) lot or tract, excluding the cost of a tap-in fee whose cost shall not exceed five hundred ($500) dollars***. No lot or tract owner shall be required to connect to the water line extension by reason of this section, but such failure to connect to the water line extension shall not exempt such lot or tract owner from its proportionate share of the costs***, except*** as provided in ***paragraph (a) of*** subsection ***(6)***[~~(2)~~] of this section.

(8)[~~(5)~~] All lots or tracts abutting the publicly-dedicated right-of-way in which the water line extension is located shall be assessed as provided in the ordinance, except property dedicated to use for public roadways and property owned by cities of the first class and any joint agencies of cities of the first class and the counties in which such cities are located, if the extension is located in the city of the first class.

(9)[~~(6)~~] (a) The actual construction work to provide the water line extension and property service connections shall be done by, or under the control of, the board of waterworks.

(b) The total cost of the water line extension, which is assessed against property served under subsection ***(3)***[~~(2)~~] of this section, shall include not only the actual construction costs and the costs of any easements required for the water line extension, but also costs of surveys, designs; plans, specifications, notices, inspection, project legal and administrative services, and administration. However, costs included in the assessment which are other than actual construction costs and costs of easements shall not exceed fifteen percent (15%) of the actual construction costs and the costs of any easements of the project.

(10)[~~(7)~~] A lien superior to all liens except the liens for state, county, city, school, and road taxes and liens prior in time for other public improvements shall exist against the respective lots or tracts of land for the cost of the water line extension for apportionment as hereinafter provided and the interest due thereon, commencing with the date of issuance of the apportionment warrant.

(11)[~~(8)~~] Upon completion of the water line extension, the board of waterworks shall issue all apportionment warrants against the properties assessed and shall immediately list the record owners thereof in alphabetical order upon a register kept for that purpose. Each apportionment warrant shall be payable to the waterworks corporation, or its assignee, in equal monthly installments, not exceeding two hundred forty (240) months, of principal and interest***, except that a property owner may pay the face of the assessment in full within thirty (30) day after notice is served and not be required to pay interest. In the event that a property owner does not pay assessment within thirty (30) days after notice is served, the interest rate applied to the assessment shall not be in excess of five percent (5%) per annum. Payment of the assessment***[~~and~~] shall be the obligation of the owners of ***the property named in the apportionment warrant,*** and a lien upon the applicable lots or tracts ***shall exist*** until ***the assessment is*** paid in full.[~~ The apportionment warrants may bear interest at an annual fixed rate as then determined by the board of waterworks pursuant to KRS 58.430.~~] When the warrant has been paid in full, the holder thereof shall notify the board of waterworks, and it shall mark upon the register the fact of payment and release the lien. If any installment of principal or of ***accumulated*** interest on the warrant is not paid when due, the holder thereof may foreclose the lien securing the payment of the warrant in the same manner as mortgage liens are foreclosed.

(12)[~~(9)~~] The lien shall exist from the date of the apportionment warrant. The board of waterworks shall cause such warrant or a notice thereof to be recorded in the office of the clerk of the county in which the affected property is located.

(13)[~~(10)~~] After any water line extensions have been constructed in conformity with this section, the board of waterworks shall notify each affected property owner of the cost apportioned to his property at his address as shown at the time the notice is sent on the records of the property valuation administrator for the county in which the affected property is located. Failure of any property owner to receive this notice shall not affect the validity of the lien.

(14)[~~(11)~~] If, by private agreement with the owners of lots or tracts, the waterworks corporation extends its water lines to those lots or tracts, and the private agreement provides for a lien on the lots or tracts to secure payment to the waterworks corporation of the cost of the extension, and a notice of such lien is recorded, that lien shall be superior to all liens except the liens for state, county, city, school, and road taxes and liens prior in time for other public improvements.

(15) Nothing in this section shall prohibit the board of waterworks from entering into other agreements or contracts with developers or builders for the extension of water service to new residential subdivisions or commercial development within the county.

(16) The board of waterworks may recoup the costs incurred to extend water service to existing but previously unserved residents or businesses in the county if the costs are in excess of the total of the assessments against the property to be served by the extension. The board of waterworks may recoup the costs through one or both of the following methods, except that the board shall not recoup the costs by means of any charge or assessment against current customers:

(a) Contributions by municipal or county governments; or

(b) Reduced payments into the city sinking fund.

SECTION 3. A NEW SECTION OF KRS 96.230 TO 96.310 IS CREATED TO READ AS FOLLOWS:

Any person or utility capable of offering water service, located within or outside of a county containing a city of the first class, may extend its water lines and facilities to offer water service in a county that contains a city of the first class, to residences and businesses that do not already receive water service from another supplier. Nothing in this section shall prohibit a person or a utility located within or outside of a county containing a city of the first class from acquiring a franchise from a city or county to provide water service to residences and businesses in a county that contains a city of the first class.

SECTION 4. A NEW SECTION OF KRS 96.230 TO 96.310 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby created a board of hardship appeals to hear and decide the disposition of appeals under subsection (6)(b) of Section 2 of this Act. The board shall consist of seven (7) members appointed for four (4) year terms as follows: two (2) shall be appointed by the county judge/executive, two (2) by the mayor of the city of the first class, and one (1) by each of the three (3) county commissioners. No official shall appoint more than one (1) member of the same political party. Initial members of the board shall be appointed no later than January 1, 2000. Members of the board shall receive no compensation but shall be reimbursed by the fiscal court of the county for actual and necessary expenses. Vacancies shall be filled in the same manner as the original appointment to fill the remainder of the unexpired term.

(2) The board members shall elect one (1) member to serve as chair. Four (4) members shall constitute a quorum for the conduct of business.

(3) The board shall review any appeal of a property owner subject to an assessment for extension of water lines to serve previously unserved residences or businesses within the county, if the owner asserts that the assessment cannot be paid because the owner is either disabled or suffers economic hardship.

(4) After the board has reviewed relevant information and has conducted any hearing deemed necessary, the board may grant or deny a deferral of all or part of the assessment against the property. As part of its review, the board may require an applicant for deferral to provide complete financial records and may conduct its own investigation as to the extent of the owner's disability or economic hardship. Information concerning an individual applicant shall be confidential.

(5) Decisions of the board shall be binding upon the applicant and upon the board of waterworks. The board shall notify the applicant and the board of waterworks of its decision.

(6) On or before April 1 of each year, the board shall report to the county fiscal court the number of applications it received, the number decided, the number of assessments deferred, and the number of applications denied.

SECTION 5. A NEW SECTION OF KRS 278.012 TO 278.450 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other provisions of the Kentucky Revised Statutes, any water utility that is organized under KRS 96.230 for the purposes of furnishing water services to the general public, is deemed to be and shall be a public utility and shall be subject to the jurisdiction of the commission in the same manner and to the same extent as any other utility as defined in KRS 278.010, except:

(1) As provided in KRS 278.023; or

(2) When a wholesale supplier selling water to a water utility organized under KRS 96.230 increases its rates, the water utility shall have the authority to increase its rate commensurate with the wholesale supplier without prior approval by the commission. Within twenty (20) days after any such increase in rates, the association shall file its revised tariffs with the commission, together with a copy of the notice from its wholesale supplier showing the increase in the rate charged to the utility, and a statement of the volume of purchased water used to calculate the increase in rates. The commission shall approve the filing or establish revised rates by order no later than thirty (30) days after these documents are filed with it. Prior to or at the time of the first billing of the new rates, the district shall give notice to its customers of the increase.

Calendar

HB 92, HB 193, HB 378, HB 246, HB 106, HB 341, HB 345, HB 397, HB 399, HB 405, HB 218, SB 22, SB 37, SB 120, HB 236, and **HB 432** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Recess

Representative Stumbo moved to suspend the rules to allow the House to recess for a Committee on Rules meeting in the Speaker's Office. Agreed. At the appointed hour, the Speaker resumed the Chair and called the House to order.

Representative Stumbo moved that the rules be suspended for a Committee on Rules Report. Agreed.

Report of Committees (Continued)

The Committee on Rules reported that **HB 395, HB 141, HB 172, HB 299, HB 336, SB 1, HB 106, HB 341, HB 345, HB 397,** and **HB 432** have been posted for passage in the Orders of the Day for February 6, 1998.

The Committee on Rules reported that the following Bills have been recommitted:

State Government; **HB 246**

Appropriations and Revenue: **SB 120**

The following members filed requests to have their names added as co-sponsors of Bills under rules previously suspended: **HB 13**, Representatives Crall, Cave, P. Clark, Stewart, Polston, Brandstetter; **HB 106**, Representative Baugh; **HB 193**, Representative J. Adams; **HB 268**, Representative Bratcher.

Floor Amendments

Floor Amendment No. 1 to the Committee Substitute to **HB 299**, by Representative Marzian:

On page 3, by deleting lines 13 through 15 in their entirety;

And also on page 3, Line 16, By renumbering "***(10)***" as "***(9)***".

An on page 6, line 5, by deleting "***fifteen dollars ($15)***" and inserting in lieu thereof "***twenty dollars ($20)***".

And also on page 6, line 7, By deleting "***five dollars ($5)***" and inserting in lieu thereof "***ten dollars ($10)***".

Floor Amendment No. 2 to **HB 106**, by Representative Marzian:

On Page 2, after line 22, by inserting the following:

"***(8) If a motorcycle operator or passenger is involved in an accident while not wearing protective headgear and does not have sufficient health or other type of insurance to cover all medical costs resulting from the accident, including rehabilitation costs, he or she shall be enrolled in the Kentucky Medicaid Program under KRS Chapter 205 if they incur costs that are not covered by any other type of insurance.***".

Floor Amendment No. 1 to the Committee Substitute No. 2 to **HB 315**, by Representative Crall:

On page 100, after line 14, by inserting:

"Section 58. KRS 216B.250 is amended to read as follows:

(1) For purposes of this section, "paying patient" means persons receiving health care services who pay directly for services rendered, patients with private health insurance or health maintenance organization coverage, persons receiving Medicaid or Medicaid benefits under Title XVIII and Title XIX of the Social Security Act and persons receiving veteran's health care benefits. "Paying patient" does not include medically indigent persons with no source of payment whatsoever.

(2) ***(a)*** When a copy of an itemized statement is requested by any paying patient, each health facility shall furnish to the patient within thirty (30) days of the patient's discharge or within fifteen (15) days of the patient's request, whichever is later, one (1) copy free of charge of the itemized statement of services rendered and charges incurred by the patient.

(b) An itemized statement of services rendered and charges incurred by the patient shall be included with the invoice sent by a health facility to the patient.

(c) The itemized statement shall be stamped "Kentucky Revised Statutes prohibit the use of this statement for insurance payment purposes where benefits have been assigned."

(3) Each health facility shall post in a publicly visible place in their admission, outpatient areas and, where applicable, emergency areas that an itemized statement is available to any paying patient upon request.

(4) The itemized statement rendered shall be the record maintained by the health facility that details the charges made for

services rendered to patients and shall indicate whether an assignment of benefits has been obtained.

(5) Each health facility shall designate and make available appropriate staff to provide, upon patient request, an explanation of charges listed in the itemized statement.

(6) If a health facility knows of a discrepancy in the total charges as reported in an itemized statement and that which is reported to a third party payor, or at any time that a health facility becomes aware of such a discrepancy, the health facility shall provide the patient and third party payor with notification, an explanation and, if applicable, any reconciliation of the discrepancy in total charges.

Section 59. The following KRS section is repealed effective August 1, 1998:

142.303 Tax on gross revenues of providers for hospital services -- Exception."; and

On page 100, line 15, by deleting "58" and inserting "60"; and

On page 100, line 19, by deleting "59" and inserting "61"; and

On page 101, line 8, by deleting "60" and inserting "62"; and

On page 101, line 11, by deleting "61" and inserting "63".

Floor Amendment No. 5 to the Committee Substitute to **HB 226**, by Representative Long:

On page 2, line 19 after "shall" by inserting "***deposit with the commissioner one (1) of the following:***

(a) An irrevocable letter of credit in the following amounts:

1. If an applicant has only one (1) business location, the amount shall be fifty thousand dollars ($50,000);

2. If an applicant has two (2) to five (5) business locations, the amount shall be one hundred thousand dollars ($100,000);

3. If an applicant has six (6) to ten (10) business locations, the amount shall be one hundred fifty thousand dollars ($150,000); and

4. If an applicant has more than ten (10) business locations, the amount shall be two hundred thousand dollars ($200,000);

(b) Evidence that the applicant has established an account payable to the commissioner in a federally insured financial institution in this state and deposit money of the United States in an amount equal to the amount of the required letter of credit; or

(c) A savings certificate of a federally insured financial institution in this state for an amount payable that is equal to the amount of the required letter of credit and that is not available for withdrawal except by direct order of the commissioner. Interest earned on the certificate accrues to the applicant" and by placing "[" before the word "have" and by striking through "have a net worth of at least one hundred thousand dollars";

On page 2, line 20 by striking through "($100,000)," and by deleting "***for each location,***" and by striking through "computed according to generally accepted"; and

On page 2, line 21 by placing "]" after "principles" and by striking through "accounting principles".

Floor Amendment No. 1 to **SB 1**, by Representative Riggs:

On Page 8, after line 3, by adding the following new sections'

"Section 11. KRS 100.211 is amended to read as follows:

(1) A proposal for a zoning map amendment may originate with the planning commission of the unit, with any fiscal court or legislative body which is a member of the unit, or with an owner of the property in question. Regardless of the origin of the proposed amendment, it shall be referred to the planning commission before adoption. The planning commission shall then hold at least one (1) public hearing after notice as required by this chapter and make findings of fact and a recommendation of approval or disapproval of the proposed map amendment to the various legislative bodies or fiscal courts involved. The findings of fact and recommendation shall include a summary of the evidence and testimony presented by the proponents and opponents of the proposed amendment. A tie vote shall be subject to further consideration by the planning commission for a period not to exceed thirty (30) days, at the end of which if the tie has not been broken, the application shall be forwarded to the fiscal court or legislative body without a recommendation [~~of approval or disapproval~~]. It shall take a majority of the entire legislative body or fiscal court to ***approve the planning commission's recommendation, and it shall take a majority of the entire legislative body or fiscal court*** [~~override the recommendation of the planning commission and it shall take a majority of the entire legislative body or fiscal court~~]to adopt a zoning map amendment [~~whenever the planning commission forwards the application to the fiscal court or~~

~~legislative body without a recommendation of approval or disapproval due to a tie vote. Unless a majority of the entire legislative body or fiscal court votes to override the planning commission's recommendation, such recommendation shall become final and effective and if a recommendation of approval was made by the planning commission, the ordinance of the fiscal court or legislative body adopting the zoning map amendment shall be deemed to have passed by operation of law]~~.

(2) A proposal to amend the text of any zoning regulation which must be voted upon by the legislative body or fiscal court may originate with the planning commission of the unit or with any fiscal court or legislative body which is a member of the unit. Regardless of the origin of the proposed amendment, it shall be referred to the planning commission before adoption. The planning commission shall hold at least one (1) public hearing after notice as required by KRS Chapter 424 and make a recommendation as to the text of the amendment and whether the amendment shall be approved or disapproved and shall state the reasons for its recommendation. In the case of a proposed amendment originating with a legislative body or fiscal court, the planning commission shall make its recommendation within sixty (60) days of the date of its receipt of the proposed amendment. It shall take an affirmative vote of a majority of the fiscal court or legislative body to adopt the proposed amendment.

(3) Procedures prescribed in KRS 100.207 applicable to the publication of notice also shall apply to any proposed amendment to a zoning regulation text or map; provided that:

(a) Any published notice shall include the street address of the property in question, or if one is not available or practicable due to the number of addresses involved, a geographic description sufficient to locate and identify the property, and the names of two (2) streets on either side of the property which intersect the street on which the property is located; and

(b) When the property in question is located at the intersection of two (2) streets, the notice shall designate the intersection by name of both streets rather than name the two (2) streets on either side of the property.

(4) When a property owner proposes to amend the zoning map of any planning unit other than a planning unit containing a city of the first class, the provisions of KRS 100.212 shall apply in addition to the requirements and procedures prescribed in subsection (3) of this section.

(5) When a property owner proposes to amend the zoning map of any planning unit comprising any portion of a county containing a city of the first class, the provisions of KRS 100.214 shall apply in addition to the requirements and procedures prescribed in subsection (3) of this section.

(6) In addition to the public notice requirements prescribed in subsection (3) of this section, when the planning commission, fiscal court, or legislative body of any planning unit originates a proposal to amend the zoning map of that unit, notice of the public hearing before the planning commission, fiscal court, or legislative body shall be given at least thirty (30) days in advance of the hearing by first class mail to an owner of every parcel of property the classification of which is proposed to be changed. Records by the property valuation administrator may be relied upon to determine the identity and address of said owner.

(7) The fiscal court or legislative body shall take final action upon a proposed zoning map amendment within ninety (90) days of the date upon which the planning commission takes its final action upon such proposal.

Section 12. The following KRS section is repealed:

100.2111 Alternative regulation for zoning map amendment."

Floor Amendment No. 2 Title to **SB 1**, by Representative Riggs:

By amending the title to read as follows: "AN ACT relating to planning and zoning.".

Orders of the Day

HB 340, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved the adoption of the Committee Substitute to **HB 340**. Agreed.

Representative Stumbo moved that **HB 340**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 86, Nays 0 (See February 5, 1998 roll call on **HB 340** - Appendix.) **HB 340**, by way of Committee Substitute, was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 340**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 343 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 343** be passed.

On the roll call the vote was: Yeas 88, Nays 0 (See February 5 , 1998 roll call on **HB 343** - Appendix.) **HB 343** was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 343** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 354 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 354** be passed.

On the roll call the vote was: Yeas 81, Nays 3 (See February 5 , 1998 roll call on **HB 354** - Appendix.) **HB 354** was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 354** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 356 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 356** be passed.

On the roll call the vote was: Yeas 89, Nays 0 (See February 5 , 1998 roll call on **HB 356** - Appendix.) **HB 356** was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 356** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 357, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 357** be passed.

On the roll call the vote was: Yeas 89, Nays 1 (See February 5 , 1998 roll call on **HB 357** - Appendix.) **HB 357** was passed. Representative Stumbo moved the adoption of Committee Amendment No. 1 Title to **HB 357**. Agreed; and the title was agreed to. Representative Stumbo moved that the vote by which **HB 357**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 358 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 358** be passed.

On the roll call the vote was: Yeas 88, Nays 0 (See February 5 , 1998 roll call on **HB 358** - Appendix.) **HB 358** was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 358** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 362 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 362** be passed.

On the roll call the vote was: Yeas 87, Nays 0 (See February 5 , 1998 roll call on **HB 362** - Appendix.) **HB 362** was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 362** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 364 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 364** be passed.

On the roll call the vote was: Yeas 89, Nays 0 (See February 5 , 1998 roll call on **HB 364** - Appendix.) **HB 364** was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 364** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 365 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 365** be passed.

On the roll call the vote was: Yeas 67, Nays 20 (See February 5 , 1998 roll call on **HB 365** - Appendix.) **HB 365** was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 365** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 383, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Geveden moved the adoption of the Committee Substitute to **HB 383**. Agreed.

Representative Geveden moved that **HB 383**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 86, Nays 0 (See February 5, 1998 roll call on **HB 383** - Appendix.) **HB 383**, by way of Committee Substitute, was passed and the title agreed to. Representative Geveden moved that the vote by which **HB 383**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HCR 9 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Barrows moved that **HCR 9** be adopted.

On the roll call the vote was: Yeas 89, Nays 0 (See February 5, 1998 roll call on **HCR 9** - Appendix.) **HCR 9** was adopted. Representative Barrows moved that the vote by which **HCR 9** was adopted be reconsidered and said motion be placed on the table. Agreed.

Report On Enrolled Bills (Continued)

The Committee on Enrollment reported that **HB 6** and **HB 28** have been examined and found correctly enrolled. Said Bills were read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time - 2:55 p.m.)

Orders of the Day (Continued)

HCR 10 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Barrows moved that **HCR 10** be adopted.

On the roll call the vote was: Yeas 88, Nays 0 (See February 5, 1998 roll call on **HCR 10** - Appendix.) **HCR 10** was adopted. Representative Barrows moved that the vote by which **HCR 10** was adopted be reconsidered and said motion be placed on the table. Agreed.

HCR 32 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Barrows moved that **HCR 32** be adopted.

On the roll call the vote was: Yeas 89, Nays 0 (See February 5, 1998 roll call on **HCR 32** - Appendix.) **HCR 32** was adopted. Representative Barrows moved that the vote by which **HCR 32** was adopted be reconsidered and said motion be placed on the table. Agreed.

HCR 45 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Barrows moved that **HCR 45** be adopted.

On the roll call the vote was: Yeas 87, Nays 0 (See February 5, 1998 roll call on **HCR 45** - Appendix.) **HCR 45** was adopted. Representative Barrows moved that the vote by which **HCR 45** was adopted be reconsidered and said motion be placed on the table. Agreed.

HCR 46 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Barrows moved that **HCR 46** be adopted.

On the roll call the vote was: Yeas 86, Nays 2 (See February 5, 1998 roll call on **HCR 46** - Appendix.) **HCR 46** was adopted. Representative Barrows moved that the vote by which **HCR 46** was adopted be reconsidered and said motion be placed on the table. Agreed.

HB 67, with Senate Floor Amendment attached thereto, taken from the Orders of the Day. Representative Stumbo moved that it be placed upon its passage. Agreed.

The Senate Floor Amendment No. 2 to **HB 67** is as follows:

On page 3, by deleting lines 21 through 27 in their entirety; and
On page 4, by deleting lines 1 through 27 in their entirety; and
On page 5, by deleting lines 1 through 27 in their entirety; and
On page 6, by deleting lines 1 through 16 in their entirety.

Representative McKee moved that the House concur in Senate Floor Amendment No. 2 to **HB 67**. Agreed.

Representative McKee moved that **HB 67**, as amended by the Senate, be passed.

On the roll call the vote was: Yeas 91, Nays 0 (See February 5, 1998 roll call on **HB 67** - Appendix.) **HB 67**, as amended by the Senate, was passed and the title agreed to. Representative McKee moved that the vote by which **HB 67**, as amended by the Senate, was passed be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions, Report of Committees and Posting of Bills and Resolutions for Consideration. Agreed.

HB 515, by Representatives Thomas and Bruce: AN ACT relating to the mortgage loan business.

HB 516, by Representatives Thomas and Bruce: AN ACT relating to banking.

HB 517, by Representative Brown: AN ACT relating to electric cooperative utilities.

HB 518, by Representative Lee: AN ACT relating to children in placement.

HB 519, by Representatives Rasche, Murgatroyd, and Coleman: AN ACT relating to students.

HB 520, by Representative Rasche: AN ACT relating to students.

HB 521, by Representative Crimm: AN ACT relating to tourism development.

HB 522, by Representative Gooch: AN ACT relating to superintendent screening committees.

HB 523, by Representative Gooch: AN ACT proposing an amendment to Sections 30 and 31 of the Constitution of Kentucky relating to elections of the General Assembly.

HB 524, by Representatives Wayne, Barrows, Stumbo, and L. Clark: AN ACT relating to the air transportation.

HB 525, by Representatives Ford, Hogancamp, Baugh, Polston, Cave, Murgatroyd, Walton, Colter, Reinhardt, Heleringer, Brandstetter, Maricle, Crimm, Cox, Crall, Marcotte, Stewart, Miniard, Rader, Vincent, Allen, Turner, D. D. Butler, and Gee: AN ACT relating to crimes and punishments.

HB 526, by Representatives Wayne and Bratcher: AN ACT relating to the relocation of cities in counties with cities of the first class.

HB 527, by Representatives Gray, Nunn, and Yonts: AN ACT relating to the Kentucky Employers' Mutual Insurance Authority Board Members.

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Economic Development: **HB 344, HB 342**

Counties and Special Districts: **HB 75, HB 467, HB 370, HB 458, HB 400, HB 310**

Report of Committees (Continued)

The Committee on Judiciary reported **HB 252** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 252, AN ACT relating to domestic relations.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 403.250 is amended to read as follows:

(1) Except as otherwise provided in subsection (6) of KRS 403.180, the provisions of any decree respecting maintenance may be modified only upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable. The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(2) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance***, or the cohabitation of the party receiving maintenance with another person on a resident, continuing, conjugal basis***.

The Committee on Agriculture and Small Business reported **HB 101, HB 258, HB 317,** with Committee Substitute attached thereto, **HB 346, HB 407, SB 17,** and **SCR 3** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 101, AN ACT relating to sales and use taxation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 139.480 is amended to read as follows:

Any other provision of this chapter to the contrary notwithstanding, the terms "sale at retail," "retail sale," "use," "storage," and "consumption," as used in this chapter, shall not include the sale, use, storage, or other consumption of:

(1) Locomotives or rolling stock, including materials for the construction, repair, or modification thereof, or fuel or supplies for the direct operation of locomotives and trains, used or to be used in interstate commerce;

(2) Coal for the manufacture of electricity;

(3) All energy or energy-producing fuels used in the course of manufacturing, processing, mining, or refining to the extent that the cost of the energy or energy-producing fuels used exceeds three percent (3%) of the cost of production. Cost of production shall be computed on the basis of plant facilities, which shall mean all permanent structures affixed to real property at one (1) location;

(4) Livestock of a kind the products of which ordinarily constitute food for human consumption, provided the sales are made for breeding or dairy purposes and by or to a person regularly engaged in the business of farming;

(5) Poultry for use in breeding or egg production;

(6) Farm work stock for use in farming operations;

(7) Seeds, the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business, and commercial fertilizer to be applied on land, the products from which are to be used for food for human consumption or are to be sold in the regular course of business; provided such sales are made to farmers who are regularly engaged in the occupation of tilling and cultivating the soil for the production of crops as a business, or who are regularly engaged in the occupation of raising and feeding livestock or poultry or producing milk for sale; and provided further that tangible personal property so sold is to be used only by those persons designated above who are so purchasing;

(8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be used in the production of crops as a business, or in the raising and feeding of livestock or poultry, the products of which ordinarily constitute food for human consumption;

(9) Feed, including pre-mixes and feed additives, for livestock or poultry of a kind the products of which ordinarily constitute food for human consumption;

(10) Machinery for new and expanded industry;

(11) Farm machinery. As used in this section, the term "farm machinery" means machinery used exclusively and directly in the occupation of tilling the soil for the production of crops as a business, or in the occupation of raising and feeding livestock or poultry or of producing milk for sale. The term "farm machinery," as used in this section, includes machinery, attachments, and replacements therefor, repair parts, and replacement parts which are used or manufactured for use on, or in the operation of, farm machinery and which are necessary to the operation of the machinery, and are customarily so used; but this exemption shall not include automobiles, trucks, trailers, and truck-trailer combinations;

(12) Property which has been certified as a pollution control facility as defined in KRS 224.01-300, and all materials, supplies, and repair and replacement parts purchased for use in the operation or maintenance of the facilities used specifically in the steel-making process. The exemption provided in this subsection for materials, supplies, and repair and replacement parts purchased for use in the operation of pollution control facilities shall be effective for sales made through June 30, 1994;

(13) Tombstones and other memorial grave markers;

(14) On-farm facilities used exclusively for grain or soybean storing, drying, processing, or handling. The exemption applies to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;

(15) On-farm facilities used exclusively for raising chickens or livestock. The exemption shall apply to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply, but not be limited to, vent board equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities.

(16) Gasoline, special fuels, and liquefied petroleum gas used to operate or propel stationary engines or tractors for agricultural purposes. As used in this subsection:

(a) "Gasoline" is defined as in KRS 138.210(4);

(b) "Special fuels" is defined as in KRS 138.560(3);

(c) "Liquefied petroleum gas" is defined as in KRS 234.100(1); and

(d) "Agricultural purposes" is defined as in KRS 138.343(4);

(17) Textbooks, including related workbooks and other course materials, purchased for use in a course of study conducted by an institution which qualifies as a nonprofit educational institution under KRS 139.495. The term "course materials" means only those items specifically required of all students for a particular course but shall not include notebooks, paper, pencils, calculators, tape recorders, or similar student aids;

(18) Any property which has been certified as an alcohol production facility as defined in KRS 247.910;

(19) Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property or passengers for hire. Nominal intrastate use shall not subject the property to the taxes imposed by this chapter;

(20) Any property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;

(21) Any property to be incorporated into the construction, rebuilding, modification, or expansion of a blast furnace or any of its components or appurtenant equipment or structures. The exemption provided in this subsection shall be effective for sales made through June 30, 1994;

(22) Beginning on October 1, 1986, food or food products purchased for human consumption with food coupons issued by the United States Department of Agriculture pursuant to the Food Stamp Act of 1977, as amended, and required to be exempted by the Food Security Act of 1985 in order for the Commonwealth to continue participation in the federal food stamp program;

(23) Machinery or equipment purchased or leased by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes;

(24) Ratite birds and eggs to be used in an agricultural pursuit for the breeding and production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-products, and the following items used in this agricultural pursuit:

(a) Feed and feed additives;

(b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;

(c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to incubation systems, egg processing equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;

(25) Embryos and semen that are used in the reproduction of livestock, if the products of these embryos and semen ordinarily constitute food for human consumption, and if the sale is made to a person engaged in the business of farming. The exemption provided in this subsection shall be effective for sales made through July 31, 2000; and

(26) Llamas and alpacas to be used as beasts of burden or in an agricultural pursuit for the breeding and production of hides, breeding stock, fiber and wool products, meat, and llama and alpaca by-products, and the following items used in this pursuit:

(a) Feed and feed additives;

(b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;

(c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to waterer and feeding systems, ventilation systems, and alarm systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities.

[~~The exemption provided in this subsection shall be effective for sales made through July 31, 2000.~~]

HB 258, AN ACT relating to the Kentucky Egg Marketing Law.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 260.540 is amended to read as follows:

As used in KRS 260.540 to 260.650 unless the context otherwise requires:

(1) ***"Ambient Temperature" means the atmospheric temperature surrounding or encircling shell eggs;***

(2) "Board" means the Egg Marketing Board;

(3) "Candle" means to determine the interior quality of a shell egg based on the use of a candling light as defined in the USDA Handbook 75(7 CFR Part 56);

(4) "Case" means a container of thirty (30) dozen shell eggs as used in commercial practice in the United States. The term "half-case" shall mean a container of fifteen (15) dozen eggs. Case also means any other quantity packaging which is considered a wholesale pack;

(5) "Check" means an egg that has a broken shell or a crack in the shell, but whose membranes are intact and whose contents are not leaking;

(6)[~~(2)~~] "Commissioner" means the Commissioner of Agriculture;

(7) "Consumer" means all persons purchasing eggs for consumption and not resale;

(8)[~~(3)~~] "Department" means the Department of Agriculture;

(9)[~~(4)~~] "Dealer" means a person, organization, or cooperative engaged in the business of buying eggs from producers ***or other persons***, either on his own account or as an agent, and selling or transferring eggs by the case ***or other quantity*** to a wholesaler, processor, retailer***, specialty egg processor,*** or other ***persons***[~~ person~~] ***or consumers***;

(10) "Dirty egg" means an egg that has a shell that is unbroken and has adhering dirt or foreign material, or prominent stains covering more than one-fourth (1/4) of the shell surface;

(11) "Egg product" means processed and convenience forms of eggs for home and commercial use, including hard-cooked, or specialty egg products and pasteurized liquid, pasteurized frozen, or pasteurized dried egg products;

(12) "FDA" means the Federal Food and Drug Administration;

(13)[~~(5)~~] "Handler" means a dealer, ***packer,*** processor, wholesaler***,*** or retailer;

(14) "Inedible" means an egg that is unfit for human food in whole or in part, addled or moldy, containing black rot, white rot, blood ring, adherent yolks, or bloody whites, incubated beyond the blood ring stage, or consisting to any extent of filthy decomposed substance. This also includes any eggs unfit for human consumption due to causes other than those listed in this subsection.

(15) "Leaker" means an egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exposed or are exuding or free to exude through the shell;

(16) "Loss" means an egg that is unfit for human food because it is smashed or broken so that its contents are leaking; or overheated, frozen, or contaminated; or an incubator reject; or contains a bloody white, large meat spots, a large quantity of blood, or other foreign material;

(17) "Lot" means any given quantity of two (2) or more eggs of a named grade, billed on an invoice or inspected by the department;

(18) "Packer" means any person who grades, sizes, candles, and packs eggs for purposes of sale;

(19)[~~(6)~~] "Person" means any individual, firm, partnership, corporation, company,[~~ or~~] association***, or any other type of business entity that traffics in, handles, or sells eggs***, and shall include any trustee, receiver***,*** or similar representative;

(20) "Producer" means any person who exercises control over the production of eggs and disposes of eggs from the output of his or her personally owned flock;

(21) "Retailer" means any person selling or offering eggs for sale to consumers in this state;

(22) "Sell" means to offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade;

(23) "Shell eggs" means the product of the domesticated hen and any other egg from the avian species offered for

human consumption in its shell form;

(24)[~~(7)~~] "***Specialty egg*** processor" means a person who operates a plant for the purpose of breaking eggs for freezing or drying ***or commercial food manufacturing, and includes a person distributing his or her products from out-of-state. A specialty egg processor may also be know as a breaker or breaking plant***;

(25) "Specialty egg products" means egg specialties processed for the food service industry including: wet-pack and dry-pack prepeeled hard-cooked eggs, either whole, wedged, sliced, chopped, or pickled; long rolls of hard-cooked eggs; frozen omelets; egg patties; quiche; quiche mix; frozen French toast; frozen scrambled egg mix in boilable pouches; frozen fried eggs; frozen precooked scrambled eggs; freeze-dried scrambled eggs; ultra-pasteurized liquid eggs; free-flowing frozen egg pellets; and specially coated shelf-stable hard-cooked eggs; or any other products using eggs;

[~~(8) "Retailer" means any person selling or offering for sale eggs to consumers in this state;~~]

(26)[~~(9)~~] "Wholesaler" means a ***handler who is engaged in the business of buying eggs from producers or other persons on the handler's own account and selling or transferring eggs to other dealers, wholesalers, processors, or***[~~person who assembles eggs in case lots and disposes of them in quantities to~~] retailers, or through other distribution channels;

(27)[~~(10)~~] "Candled and Graded" means candled and graded under state and federal standards and regulations;

(28)[~~(11)~~] "Ungraded and Candled" means the general run of edible eggs as they come from the producer, not sized or graded, but candled***; and***

(29) "USDA" means the United States Department of Agriculture.

Section 2. KRS 260.550 is amended to read as follows:

No person shall buy, sell, trade, traffic, or process eggs in Kentucky without a license issued pursuant to the egg marketing law, with the following exceptions:

(1)[~~Those who sell only eggs produced by their own flocks;~~

~~(2)~~] Hatcheries purchasing eggs to be used exclusively for hatching purposes;

(2)[~~(3)~~] Hotels, restaurants, and other eating places where all eggs purchased are served in the establishment;

(3)[~~(4)~~] Bakeries, confectioneries, and ice cream manufacturers who use eggs in a manufactured product;[~~ and~~]

(4)[~~(5)~~] Consumers buying eggs for their own consumption***; or***

(5) Producers who sell only directly to consumers and do not exceed a sales limit of sixty (60) dozen eggs per calendar week.

Section 3. KRS 260.600 is amended to read as follows:

(1) ***Any person requiring a license may obtain an application by calling the Kentucky Department of Agriculture, Division of Regulation and Inspection. A license may be renewed when accompanied by a renewal application and the required fees. With regard to shell egg dealers, wholesalers, and packers, and specialty egg processors, dealers, and wholesalers, all of the previous year's assessment fees shall be current before licenses shall be renewed. Any person selling eggs without the required license will be subject to having the eggs removed from sale until a license has been acquired.***

(2) A license is required of each handler of eggs ***selling***[~~located~~] in the Commonwealth subject to the exceptions specified in KRS 260.550. The annual license fees are as follows, varying for dealers, wholesalers***,*** and ***packers***[~~processors~~], according to the average weekly volume of the month in which the licensee handled the most eggs during the preceding year:

(a)	Retailers	$ 5.00
(b)	***Shell egg*** dealers***,***[~~ and~~] wholesalers***, producers, and packers within Kentucky or out-of-state:***	
	1-25 cases ***or 1-750 dozen***	***$10.00***[~~$ 5.00~~]
	26-50 cases ***or 751-1500 dozen***	***$20.00***[~~$ 10.00~~]
	Over 50 cases or over 1500 dozen[~~51-100 cases~~	~~$ 15.00~~
	~~More than 100 cases~~]	***$40.00***[~~$ 20.00~~]
(c)	***Specialty egg*** processors***, dealers, and wholesalers within Kentucky or out-of-state:***	
	[~~Less than 250 cases~~	~~$ 20.00~~
	~~250-500 cases $ 30.00~~	
	~~501-1000 cases~~	~~$ 40.00~~
	~~More than 1000 cases~~]	$ 50.00

(3)[~~(2)~~] Any egg handler engaged in more than one (1) type of activity for which a license is provided ***shall***[~~must~~] pay that license fee which is the highest of the licenses prescribed for each type of activity in which he is engaged.

(4)[~~(3)~~] All eggs bought or sold ***within the Commonwealth of Kentucky shall***[~~by or to any egg handler must~~] bear a ***two***[~~one~~] cent ***($0.02) assessment***[~~($0.01) inspection~~] fee for each fifteen (15) dozen ***shell egg*** lot or portion thereof[~~, subject to the exemptions specified in KRS 260.550 and 260.610~~]. ***Pasteurized liquid and pasteurized frozen egg products shall be assessed a fee of one-half (1/2) cent ($0.005) per ten (10) pound lot. Dried, dehydrated, hard-cooked, or specialty egg products shall be assessed a fee of one cent ($0.01) per ten (10) pound lot. All reports and fees are due monthly and shall be received by the department prior to the fifteenth of the month following the month of activity, unless there is an agreement with the department to report and pay these fees on a quarterly, semi-annual, or annual basis. In this event, the reports and fees shall be received prior to the fifteenth of the month following the period of activity.***

(5)[~~(4)~~] All licenses shall expire on April 1 of each year. Handlers having more than one (1) place of business ***shall***[~~must~~] hold a license for each ***location***[~~place~~]. ***Licenses shall not be transferred***[~~Each application shall bear the names of the persons responsible for candling and grading eggs~~].

(6) Those that are exempt from licensing under Section 2 of this Act are not exempt from inspection, with the exception of consumers. The shell eggs or egg products used by these persons are not exempt from the required assessment fee.

Section 4. KRS 260.610 is amended to read as follows:

(1) All eggs bought or sold by or to retailers, consumers, and institutional users by licensees shall be identified according to grade and size, using USDA standards and weight classes for consumer grades[~~, with the following exception:~~

~~Those retailers who sell not more than five (5) cases of eggs per week that are purchased directly from the Kentucky producers of such eggs, may sell them to consumers as unclassified~~].

(2) Eggs to be offered for sale for human consumption shall be handled[~~ in such manner as~~] to maintain and preserve the quality and grade in which they are to be offered for sale***, including but not limited to, storage, transportation, temperature, and sanitation***.

(3) No person shall sell, offer or expose for sale, or have in his possession for sale, for human consumption, eggs that are inedible, including eggs that are unfit for human food in whole or in part, addled or moldy, containing black rot, white rot, or blood ring, adherent yolks, or bloody whites, incubated beyond the blood ring stage, or consisting to any extent of filthy decomposed substance.

Section 5. KRS 260.620 is amended to read as follows:

Eggs offered for sale as graded eggs shall conform to the standards prescribed in administrative regulations adopted by the department. ***These***[~~Such~~] standards shall conform to the federal standards ***promulgated by USDA and FDA*** for grading eggs for sale.

Section 6. KRS 260.630 is amended to read as follows:

(1) All wholesale egg packs consisting of cases or portions of cases ***shall***[~~must~~] bear a ***legible*** label designating contents***;***[~~,~~] quality***;***[~~,~~] ***quantity;*** date of packing[~~,~~] ***or an expiration date of no more than thirty (30) days from the date of packing;***[~~candler's name or number,~~] dealer's name***,***[~~ and~~] address, ***and plant number; and*** size and grade of eggs. ***The letters on the label shall not be less than one-fourth (1/4) inch in height.***

(2) Graded eggs ***shall be*** offered for sale in cartons or other ***consumer*** packs ***and*** shall be plainly ***and legibly*** marked as to grade***;***[~~,~~] quality***;***[~~, and~~] size; ***quantity; dealer's name, address, and plant number; and date of packing or an expiration date of no more than thirty (30) days from the date of packing. The marking***[~~ with~~] letters ***shall*** not ***be*** less than one-fourth (1/4) inch in height.

(3) Eggs offered for sale that are not in a carton shall be in a container that:

(a) Contains all information required by this section; and

(b) Displays the information in legible letters at least one-fourth (1/4) inch high on a sign attached to the container.

(4) If eggs are packed in retail "breakaway" cartons that can be divided by the consumer or retailer into smaller units for the purpose of selling lesser amounts of eggs, each half or portion of the container shall contain full information as required by subsection (2) of this section.

(5) Egg cartons cannot be reused.

(6) If a producer who sells directly to consumers only is using stock cartons, the cartons shall be labeled "ungraded" followed by "produced by:" (producer's name and address) and "sold directly to the consumer." This information may be handprinted on the carton if it is legible and appears on the top panel of the egg carton.

Section 7. KRS 260.640 is amended to read as follows:

(1) The Commissioner may employ inspectors for the purpose of enforcing the provisions of the egg marketing law. ***These***Such inspectors may examine any eggs offered or exposed for sale for human consumption at ***the***[~~such~~] times and places and in ***a***[~~such~~] manner as the Commissioner may direct.

(2) The department shall have free access, at all reasonable hours when the business is open to the general public, to any establishment, premises, or building where eggs are processed, stored, or offered for sale, and to any vehicle used to transport or hold eggs, for the purpose of inspecting the establishment, premises, building, or vehicle or the eggs to determine compliance with the provisions of the Kentucky egg marketing law.

(3) The department shall have free access at all reasonable hours when the business is open to the general public, to any restaurant kitchen, hotel kitchen, or kitchen of any other public eating place, including schools, hospitals, nursing homes, or other similar institutions, to determine compliance with the provisions of the Kentucky egg marketing law. If the inspector determines that inspected eggs fail to comply with the Kentucky egg marketing law or standards as established by USDA, the inspector shall take the necessary action and issue an advisory on proper procedures.

(4) All licensees shall keep a record of all eggs handled during the license year, and ***any***[~~such~~] other records[~~ as~~] the department shall[~~ by regulation~~] require. These records shall be available for examination by authorized agents of the department.

(5) An inspector may, for the purpose of enforcing the Kentucky egg marketing law, break any form of sealing on any case or retail container. If a broken seal necessitates the repacking of the cases or containers, the original packer shall absorb all expenses involved.

(6) A carton of eggs with any existing conditions as designated in paragraphs (a) to (d) of this subsection shall be removed from a retail display on a daily basis.

(a) Cracked eggs;

(b) Leaking eggs;

(c) Frozen eggs; or

(d) A combination of any of the above.

(7) The retailer may not rework or repack eggs into full cartons. This process may only be done by the original packer. A retailer may, however, sell an incomplete dozen provided that the quantity labeling on the carton is changed to reflect the number of eggs in the carton.

Section 8. KRS 260.990 is amended to read as follows:

(1) Any person who knowingly violates any of the provisions of KRS 260.040 to 260.120 shall, for the first offense, be fined not less than ten dollars ($10), nor more than twenty-five dollars ($25), for the second offense, he shall be fined not less than twenty-five dollars ($25), nor more than fifty dollars ($50), and for the third and each subsequent offense, he shall be fined not less than fifty dollars ($50), nor more than two hundred dollars ($200). Whenever a violation is with respect to a lot or shipment consisting of fifty (50) or more closed packages, there may be imposed in addition to the above penalties twenty-five cents ($0.25) for the first offense, fifty cents ($0.50) for the second offense and one dollar ($1) for each subsequent offense for each package in excess of fifty (50) with respect to which the violation is committed.

(2) Any person who violates any of the provisions of KRS 260.130 to 260.160 shall, for the first offense, be fined not more than twenty-five dollars ($25); for the second offense, he shall be fined not more than fifty dollars ($50), and for the third and each succeeding offense he shall be fined not more than one hundred dollars ($100).

(3) Any person who violates any of the provisions of the egg marketing law shall be fined an amount not exceeding one hundred dollars ($100) for each offense. In a violation involving sales without a required license, each day of business operation shall constitute a separate offense.

(4) The department shall assess a penalty of not less than twenty-five dollars ($25) nor more than one hundred dollars ($100) for each violation of improper labeling, including omission of any of the required information as prescribed in Section 6 of this Act. These penalty funds shall be credited to the department for use in carrying out the provisions of the egg marketing law.

HB 317, AN ACT relating to property tax.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 132.450 is amended to read as follows:

(1) Each property valuation administrator shall assess at its fair cash value all property which it is his duty to assess except as provided in paragraph (c) of subsection (2) of this section. In the case of securities which are regularly bought and sold through stock exchanges, the price at which such property closed on the last regular business day preceding the assessment day shall be prima facie evidence of the fair cash value of such property. The property of one (1) person shall not be assessed willfully or intentionally at a lower or higher relative value than the same class of property of another,

and any grossly discriminatory valuation shall be construed as an intentional discrimination. The property valuation administrator shall make every effort, through visits with the taxpayer, personal inspection of the property, from records, from his own knowledge, from information in property schedules, and from such other evidence as he may be able to obtain, to locate, identify, and assess property.

(2) (a) In determining the total area of land devoted to agricultural or horticultural use, there shall be included the area of all land under farm buildings, greenhouses and like structures, lakes, ponds, streams, irrigation ditches and similar facilities, and garden plots devoted to growth of products for on-farm personal consumption but there shall be excluded, land used in connection with dwelling houses including, but not limited to, lawns, drives, flower gardens, swimming pools or other areas devoted to family recreation. Where contiguous land in agricultural or horticultural use in one (1) ownership is located in more than one (1) county or taxing district, compliance with the minimum requirements shall be determined on the basis of the total area of such land and not the area of land which is located in the particular county or taxing district.

(b) Land devoted to agricultural or horticultural use, where the owner or owners have petitioned for, and been granted, a zoning classification other than for agricultural or horticultural purposes qualifies for the agricultural or horticultural assessment until such time as the land changes from agricultural or horticultural use to the use granted by the zoning classification.

(c) When the use of a part of a tract of land which is assessed as agricultural or horticultural land is changed either by conveyance or other action of the owner, the right of the remaining land to be retained in the agricultural or horticultural assessment shall not be impaired provided it meets the minimum requirements***, except the minimum ten (10) contiguous acre requirement shall not be applicable if any portion of the agricultural or horticultural land has been acquired for a public purpose***.

(d) When in the opinion of the property valuation administrator any land has a value in excess of that for agricultural or horticultural use the property valuation administrator shall enter into the tax records the value of the property according to its fair cash value. When the property valuation administrator determines that the land meets the requirements for valuation as agricultural or horticultural land, the valuation for tax purposes shall be its agricultural or horticultural value.

(3) When land which has been valued and taxed as agricultural land for five (5) or more consecutive years under the same ownership, fails to qualify for the classification through no other action on the part of the owner or owners other than ceasing to farm the land, the land shall retain its agricultural classification for assessment and taxation purposes. Classification as agricultural land shall expire upon change of use by the owner or owners or upon conveyance of the property to a person other than a surviving spouse.

(4) If the property valuation administrator assesses any property, except stocks and bonds at the market value listed in recognized publications, at a greater value than that listed by the taxpayer or assesses unlisted property, the property valuation administrator shall serve notice on the taxpayer of such action. The notice shall be given by first-class mail or as provided in the Kentucky Rules of Civil Procedure.

(5) Any taxpayer may designate on the property schedule any property which he does not consider to be subject to taxation, and it shall be the duty of the property valuation administrator to obtain and follow advice from the cabinet relative to the taxability of such property.

The Committee Substitute to **HB 317** is as follows:

AN ACT relating to property tax.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 132.450 is amended to read as follows:

(1) Each property valuation administrator shall assess at its fair cash value all property which it is his duty to assess except as provided in paragraph (c) of subsection (2) of this section. In the case of securities which are regularly bought and sold through stock exchanges, the price at which such property closed on the last regular business day preceding the assessment day shall be prima facie evidence of the fair cash value of such property. The property of one (1) person shall not be assessed willfully or intentionally at a lower or higher relative value than the same class of property of another, and any grossly discriminatory valuation shall be construed as an intentional discrimination. The property valuation administrator shall make every effort, through visits with the taxpayer, personal inspection of the property, from records, from his own knowledge, from information in property schedules, and from such other evidence as he may be able to obtain, to locate, identify, and assess property.

(2) (a) In determining the total area of land devoted to agricultural or horticultural use, there shall be included the area of all land under farm buildings, greenhouses and like structures, lakes, ponds, streams, irrigation ditches and similar facilities, and garden plots devoted to growth of products for on-farm personal consumption but there shall be excluded, land used in connection with dwelling houses including, but not limited to, lawns, drives,

flower gardens, swimming pools or other areas devoted to family recreation. Where contiguous land in agricultural or horticultural use in one (1) ownership is located in more than one (1) county or taxing district, compliance with the minimum requirements shall be determined on the basis of the total area of such land and not the area of land which is located in the particular county or taxing district.

(b) Land devoted to agricultural or horticultural use, where the owner or owners have petitioned for, and been granted, a zoning classification other than for agricultural or horticultural purposes qualifies for the agricultural or horticultural assessment until such time as the land changes from agricultural or horticultural use to the use granted by the zoning classification.

(c) When the use of a part of a tract of land which is assessed as agricultural or horticultural land is changed either by conveyance or other action of the owner, the right of the remaining land to be retained in the agricultural or horticultural assessment shall not be impaired provided it meets the minimum requirements***, except the minimum ten (10) contiguous acre requirement shall not be applicable if any portion of the agricultural or horticultural land has been acquired for a public purpose as long as the remaining land continues to meet the other requirements of this section***.

(d) When in the opinion of the property valuation administrator any land has a value in excess of that for agricultural or horticultural use the property valuation administrator shall enter into the tax records the value of the property according to its fair cash value. When the property valuation administrator determines that the land meets the requirements for valuation as agricultural or horticultural land, the valuation for tax purposes shall be its agricultural or horticultural value.

(3) When land which has been valued and taxed as agricultural land for five (5) or more consecutive years under the same ownership, fails to qualify for the classification through no other action on the part of the owner or owners other than ceasing to farm the land, the land shall retain its agricultural classification for assessment and taxation purposes. Classification as agricultural land shall expire upon change of use by the owner or owners or upon conveyance of the property to a person other than a surviving spouse.

(4) If the property valuation administrator assesses any property, except stocks and bonds at the market value listed in recognized publications, at a greater value than that listed by the taxpayer or assesses unlisted property, the property valuation administrator shall serve notice on the taxpayer of such action. The notice shall be given by first-class mail or as provided in the Kentucky Rules of Civil Procedure.

(5) Any taxpayer may designate on the property schedule any property which he does not consider to be subject to taxation, and it shall be the duty of the property valuation administrator to obtain and follow advice from the cabinet relative to the taxability of such property.

HB 346, AN ACT relating to government reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. The General Assembly hereby confirms Executive Order 97-1374, dated October 17, 1997, which attaches the Animal Diagnostic Laboratory Advisory Committee to the Department of Agriculture for administrative purposes and which specifies the functions of the Advisory Committee.

HB 407, AN ACT relating to ownership and conveyance of property.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 381.135 is amended to read as follows:

(1) ***(a) As used in this subsection:***

1. "Ownership interest in a closely held farm corporation or partnership" means any interest in a farm with one (1) or more of the shareholders or partners owning twenty percent (20%) or more of the corporation or partnership.

2. "Farm" means a tract of at least five (5) contiguous acres used for the production of agricultural or horticultural crops including, but not limited to, livestock, livestock products, poultry, poultry products, grain, hay, pastures, soybeans, tobacco, timber, orchard fruits, vegetables, flowers, or ornamental plants, including provision for dwellings for persons and their families who are engaged in the above agricultural use on the tract, but not including residential building development for sale or lease to the public.

(b) A person desiring a division of land held jointly with others,[~~or~~] ***a person desiring*** an allotment of dower or curtesy, ***or a person with an ownership interest of twenty percent (20%) or more in a closely held farm corporation or partnership*** may file in the Circuit Court of the county in which the land or the greater part thereof lies a petition containing a description of the land, a statement of the names of those having an interest in it, and the amount of such interest, with a prayer for the division or allotment; and, thereupon, all persons interested in the property who have not united in the petition shall be summoned to answer not more than twenty (20) days after service of the summons. The written evidences of the title to the land, or copies thereof, if there be any, must be filed with the petition.

(2) The statutory guardian of an infant or guardian or conservator of a person adjudged mentally disabled may file or unite in the petition, in the names of, and in conjunction with such infant or mentally disabled person; and, if the petition be against an infant or mentally disabled person the guardian or conservator may appear and defend for them; if they fail to do so, the court shall appoint a discreet person for that purpose.

(3) Upon such a petition by all interested in the property, or upon the expiration of twenty (20) days after the service of a summons on all who have an interest in the property and have not united in the petition, the court may order the division, or allotment of dower or curtesy, according to the rights of the parties.

(4) The court shall appoint three (3) competent persons as commissioners to determine the division or allotment of land, having a due regard for the rights of all parties interested. Before proceeding to act, the commissioners shall take an oath to discharge their duty impartially.

(5) The order of appointment shall fix a time and place for the meeting of the commissioners who shall meet accordingly; but, if prevented from meeting at the time and place so fixed, they may meet as soon thereafter as convenient, and may adjourn to such other time and place as they may agree upon, until their duty shall be performed.

(6) The commissioners shall equitably determine the allotment to the parties of their respective interests in the land. A registered land surveyor shall perform the actual survey of the land in accordance with the determination made by the commissioners, and prepare the descriptions of the land, including all related maps, plats and documents, and he shall affix thereto his personal seal and signature, unless such actual survey and the resultant description, maps, plats, and documents pertaining to this land are already in existence. The commissioners shall make report thereof to the court, which may either confirm, set aside or remand the report to the commissioners for correction.

(7) If the report be confirmed, a commissioner to be appointed for the purpose shall, by deed, convey to each party the land allotted to him.

(8) If the report be confirmed by the Circuit Court, it, together with said surveyor's descriptions, survey and all related documents, and the applicable deeds shall be certified by the clerk of that court to the county clerk, for record.

(9) Two (2) of the commissioners may act, if one (1) refuses or fails to do so.

(10) A party summoned may, by answer, controvert the allegations of the petition or contest the rights claimed therein; and, thereupon, the case shall be tried and decided as an ordinary action, but without the intervention of a jury.

(11) The costs of the action shall be apportioned among the parties in the ratio of their interests, except that the costs arising from a contest of fact or law shall be adjudged against the unsuccessful party.

(12) No verification of the pleadings shall be required.

(13) The commissioners and the land surveyor shall be paid a reasonable compensation, to be taxed as costs.

(14) This section shall not affect the jurisdiction of courts of equity to make partition or allot dower or curtesy.

SB 17, AN ACT relating to sales and use tax exemptions.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 139.480 is amended to read as follows:

Any other provision of this chapter to the contrary notwithstanding, the terms "sale at retail," "retail sale," "use," "storage," and "consumption," as used in this chapter, shall not include the sale, use, storage, or other consumption of:

(1) Locomotives or rolling stock, including materials for the construction, repair, or modification thereof, or fuel or supplies for the direct operation of locomotives and trains, used or to be used in interstate commerce;

(2) Coal for the manufacture of electricity;

(3) All energy or energy-producing fuels used in the course of manufacturing, processing, mining, or refining to the extent that the cost of the energy or energy-producing fuels used exceeds three percent (3%) of the cost of production. Cost of production shall be computed on the basis of plant facilities which shall mean all permanent structures affixed to real property at one (1) location;

(4) Livestock of a kind the products of which ordinarily constitute food for human consumption, provided the sales are made for breeding or dairy purposes and by or to a person regularly engaged in the business of farming;

(5) Poultry for use in breeding or egg production;

(6) Farm work stock for use in farming operations;

(7) Seeds, the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business, and commercial fertilizer to be applied on land, the products from which are to be used for food for human consumption or are to be sold in the regular course of business; provided such sales are made to farmers who are regularly engaged in the occupation of tilling and cultivating the soil for the production of crops as a business, or who are regularly engaged in the occupation of raising and feeding livestock or poultry or producing milk for sale; and provided further that tangible personal property so sold is to be used only by those persons designated above who are so purchasing;

(8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be used in the production of crops as a business, or in the raising and feeding of livestock or poultry, the products of which ordinarily constitute food for human consumption;

(9) Feed, including pre-mixes and feed additives, for livestock or poultry of a kind the products of which ordinarily constitute food for human consumption;

(10) Machinery for new and expanded industry;

(11) Farm machinery. As used in this section, the term "farm machinery" means machinery used exclusively and directly in the occupation of tilling the soil for the production of crops as a business, or in the occupation of raising and feeding livestock or poultry or of producing milk for sale. The term "farm machinery," as used in this section, includes machinery, attachments, and replacements therefor, repair parts, and replacement parts which are used or manufactured for use on, or in the operation of farm machinery and which are necessary to the operation of the machinery, and are customarily so used; but this exemption shall not include automobiles, trucks, trailers, and truck-trailer combinations;

(12) Property which has been certified as a pollution control facility as defined in KRS 224.01-300, and all materials, supplies, and repair and replacement parts purchased for use in the operation or maintenance of the facilities used specifically in the steel-making process. The exemption provided in this subsection for materials, supplies, and repair and replacement parts purchased for use in the operation of pollution control facilities shall be effective for sales made through June 30, 1994;

(13) Tombstones and other memorial grave markers;

(14) On-farm facilities used exclusively for grain or soybean storing, drying, processing, or handling. The exemption applies to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;

(15) On-farm facilities used exclusively for raising ***poultry***[~~chickens~~] or livestock. The exemption shall apply to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply, but not be limited to, vent board equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities.

(16) Gasoline, special fuels, and liquefied petroleum gas used ***exclusively and directly*** to operate[~~ or propel stationary engines or tractors for agricultural purposes. As used in this subsection~~]:

(a) ***Farm machinery***[~~"Gasoline" is defined as in KRS 138.210(4)~~];

(b) ***On-farm grain and soybean facilities***[~~"Special fuels" is defined as in KRS 138.560(3)~~];

(c) ***On-farm poultry or livestock facilities***[~~"Liquefied petroleum gas" is defined as in KRS 234.100(1)~~];[~~ and~~]

(d) ***On-farm ratite facilities***[~~"Agricultural purposes" is defined as in KRS 138.343(4)~~];

(e) On-farm llama and alpaca facilities; and

(f) On-farm dairy facilities;

(17) Textbooks, including related workbooks and other course materials, purchased for use in a course of study conducted by an institution which qualifies as a nonprofit educational institution under KRS 139.495. The term "course materials" means only those items specifically required of all students for a particular course but shall not include notebooks, paper, pencils, calculators, tape recorders, or similar student aids;

(18) Any property which has been certified as an alcohol production facility as defined in KRS 247.910;

(19) Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property or passengers for hire. Nominal intrastate use shall not subject the property to the taxes imposed by this chapter;

(20) Any property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;

(21) Any property to be incorporated into the construction, rebuilding, modification, or expansion of a blast furnace or any of its components or appurtenant equipment or structures. The exemption provided in this subsection shall be effective for

sales made through June 30, 1994;

(22) Beginning on October 1, 1986, food or food products purchased for human consumption with food coupons issued by the United States Department of Agriculture pursuant to the Food Stamp Act of 1977, as amended, and required to be exempted by the Food Security Act of 1985 in order for the Commonwealth to continue participation in the federal food stamp program;

(23) Machinery or equipment purchased or leased by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes;

(24) Ratite birds and eggs to be used in an agricultural pursuit for the breeding and production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-products, and the following items used in this agricultural pursuit:

(a) Feed and feed additives;

(b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;

(c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to incubation systems, egg processing equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;

(25) Embryos and semen that are used in the reproduction of livestock, if the products of these embryos and semen ordinarily constitute food for human consumption, and if the sale is made to a person engaged in the business of farming[~~. The exemption provided in this subsection shall be effective for sales made through July 31, 2000~~]; and

(26) Llamas and alpacas to be used as beasts of burden or in an agricultural pursuit for the breeding and production of hides, breeding stock, fiber and wool products, meat, and llama and alpaca by-products, and the following items used in this pursuit:

(a) Feed and feed additives;

(b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;

(c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to waterer and feeding systems, ventilation systems, and alarm systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities.

[~~The exemption provided in this subsection shall be effective for sales made through July 31, 2000.~~]

Section 2. This Act takes effect August 1, 1998.

SCR 3, A CONCURRENT RESOLUTION requesting reauthorization of the Tobacco Task Force.

WHEREAS, tobacco production is at the heart of Kentucky's economy; and

WHEREAS, loss of tobacco production or the tobacco program would have a devastating effect on Kentucky and its tobacco farmers; and

WHEREAS, such losses would cause failure of many farms and businesses, decreases in land values, the default of loans, and the loss of state and local revenues; and

WHEREAS, the Tobacco Task Force was created by the Legislative Research Commission in 1984 to address problems which threaten the tobacco industry and the tobacco price support program; and

WHEREAS, the Task Force has been instrumental in helping resolve those problems; and

WHEREAS, the tobacco industry and tobacco farmers remain in jeopardy because of threats to the program, increased imports, labor shortages, marginal prices, possible increases in excise taxes, and other problems;

NOW, THEREFORE,

Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky, the House of Representatives concurring therein:

Section 1. That the Kentucky Tobacco Task Force be reauthorized to help resolve the problems facing the tobacco industry and the tobacco program.

Section 2. Staff services to be utilized by the Task Force are estimated to cost $20,000 and are to be provided by the Commission from its regular budget, subject to the limitations and other research responsibilities of the Commission.

Motions, Petitions and Communications (Continued)

Representative Moberly moved the adoption of the following **Legislative Citation No. 60**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby extends its sincerest condolences and genuine expressions of sympathy for the grievous death of Martha "Marti" Miller. For inasmuch as death, like life, is a gift from God, it is inevitable that this honoree is destined to sit at the foot of the cross for her phenomenal Christian deeds throughout her lifetime and most surely earned the jewel in her sacred crown. Therefore, this prestigious body doth hereby recognize the lady as an individual dedicated to Christian principles and the publication of The Seeker Christian News that has more than 5,200 readers; always the loving mother, said recipient was an inspiration and a beacon of unselfish acts and love for fellowmen. Members of the Kentucky House of Representatives reach out to the Miller family, her daughter and her readers, offering heartfelt condolences and adjourning the House, February 4, 1998, in memory of Martha "Marti" Miller. **Legislative Citation No. 60** was adopted without objection.

Floor Amendments (Continued)

Floor Amendment No. 4 to the Committee Substitute No. 2 to **HB 315**, by Representative Anderson:

Page 1, by deleting everything in the bill after the enacting clause and inserting:

"SECTION 1. A NEW SECTION OF SUBTITLE 17 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

As used in this subtitle, unless the context requires otherwise:

(1) "COBRA" means any of the following:

- *(a) 26 U.S.C. sec. 4980B other than subsection (f)(1) as it relates to pediatric vaccines;*
- *(b) The Employees Retirement Income Security Act of 1974 (29 U.S.C. sec. 1161 et seq. other than sec. 1169);*
- *(c) 42 U.S.C. sec. 300bb.*

(2) "Eligible individual" means an individual:

- *(a) For whom, as of the date on which the individual seeks coverage, the aggregate of the periods of creditable coverage is eighteen (18) or more months and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan;*
- *(b) Who is not eligible for coverage under a group health plan, Part A or Part B of Title XVIII of the Social Security Act (42 U.S.C. sec. 1395j et seq.) or a state plan under Title XIX of the Social Security Act (42 U.S.C. sec. 1396 et seq.) and does not have other health insurance coverage;*
- *(c) With respect to whom the most recent coverage within the coverage period described in paragraph (a) of this subsection was not terminated based on a factor described in subsection (2)(a) and (b) of Section 7 of this Act;*
- *(d) If the individual had been offered the option of continuation coverage under a COBRA continuation provision or under KRS 304.18-110, who elected the coverage; and*
- *(e) Who, if the individual elected the continuation coverage, has exhausted the continuation coverage under the provision or program.*

(3) "Health insurance coverage" means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer.

(4) "Health insurance issuer" means an insurance company, insurance service, or insurance organization, including a health maintenance organization, licensed under this chapter. It does not include a group health plan.

(5) "Individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, but does not include short-term limited duration insurance.

SECTION 2. A NEW SECTION OF SUBTITLE 18 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

As used in this subtitle, unless the context requires otherwise:

(1) "COBRA" means any of the following:

- *(a) 26 U.S.C. sec. 4980B other than subsection (f)(1) as it relates to pediatric vaccines;*
- *(b) The Employees Retirement Income Security Act of 1974 (29 U.S.C. sec. 1161 et seq. other than Section 1169);*
- *(c) 42 U.S.C. sec. 300bb.*

(2) "Eligible individual" means an individual:

(a) For whom, as of the date on which the individual seeks coverage, the aggregate of the periods of creditable coverage is eighteen (18) or more months and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan;

(b) Who is not eligible for coverage under a group health plan, Part A or Part B of Title XVIII of the Social Security Act (42 U.S.C. sec. 1395j et seq.) or a state plan under Title XIX of the Social Security Act (42 U.S.C. sec. 1396 et seq.) and does not have other health insurance coverage;

(c) With respect to whom the most recent coverage within the coverage period described in paragraph (a) of this subsection was not terminated based on a factor described in subsection (2)(a) and (b) of Section 8 of this Act;

(d) If the individual had been offered the option of continuation coverage under a COBRA continuation provision or under KRS 304.18-110, who elected the coverage; and

(e) Who, if the individual elected the continuation coverage, has exhausted the continuation coverage under the provision or program.

(3) "Group health plan" means an employee welfare benefit plan as defined in 29 U.S.C. sec. 1002(1) to the extent that the plan provides medical care to employees or their dependents directly or through insurance, reimbursement, or otherwise.

(4) "Group health insurance coverage" means, in connection with a group health plan, health insurance coverage offered in connection with such a plan.

(5) "Health insurance coverage" means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer.

(6) "Health insurance issuer" means an insurance company, insurance service, or insurance organization, including a health maintenance organization, licensed under this chapter. It does not include a group health plan.

SECTION 3. A NEW SECTION OF SUBTITLE 17 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Each health insurance issuer that offers health insurance coverage in the individual market may not, with respect to an eligible individual desiring to enroll in individual health insurance coverage, decline to offer coverage to, or deny enrollment of, the individual and shall comply with the provisions of 42 U.S.C. sec. 300gg-41.

(2) Each health insurance issuer that offers health insurance coverage in the individual market may not, with respect to an individual, who is not an eligible individual under subsection (1) of this section, desiring to enroll in individual health insurance coverage, decline to offer coverage to, or deny enrollment of, the individual if the individual has been a resident of Kentucky for at least twelve (12) months immediately preceding the effective date of this Act and is covered under an individual health benefit plan on the effective date of this Act or at any time during the sixty (60) days immediately preceding the effective date of this Act.

SECTION 4. A NEW SECTION OF SUBTITLE 18 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) For purposes of this section, unless the context requires otherwise:

(a) "Small employer" means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least two (2) but not more than fifty (50) employees on business days during the preceding calendar year and who employs at least two (2) employees on the first day of the plan year.

(b) "Small group market" means the health insurance market under which individuals obtain health insurance coverage, directly or through any arrangement, on behalf of themselves and their dependents through a group health plan maintained by a small employer.

(2) Each health insurance issuer that offers health insurance coverage in the small group market shall accept every small employer that applies for coverage and shall accept for enrollment under this coverage every eligible individual who applies for enrollment during the period in which the individual first becomes eligible to enroll under the terms of the group health plan and shall comply with the provisions of 42 U.S.C. sec. 300gg-11.

SECTION 5. A NEW SECTION OF SUBTITLE 18 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

All group health plans and health insurance issuers offering group health insurance coverage in the Commonwealth shall comply with the provisions of 42 U.S.C. sec. 300gg, which establishes standards and requirements for pre-existing conditions exclusions, including crediting previous coverage, special enrollment periods, and use of affiliation periods.

SECTION 6. A NEW SECTION OF SUBTITLE 17 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) A health insurance issuer offering individual health insurance coverage in the individual market in the Commonwealth shall not impose any preexisting exclusions as to any eligible individual.

(2) Each health insurance issuer offering individual health insurance coverage in the individual market in the Commonwealth that chooses to impose a preexisting conditions exclusion on individuals who do not meet the definition of eligible individual shall comply with the provisions of 42 U.S.C. sec. 300gg, which establishes standards and requirements for preexisting conditions exclusions for group health plans.

SECTION 7. A NEW SECTION OF SUBTITLE 17 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Except as provided in this section, a health insurance issuer that provides individual health insurance coverage to an individual shall renew or continue in force coverage at the option of the individual.

(2) A health insurance issuer may nonrenew or discontinue health insurance coverage of an individual in the individual market based only on one (1) or more of the following:

(a) The individual has failed to pay premiums or contributions in accordance with the terms of the health insurance coverage or the issuer has not received timely premium payments.

(b) The individual has performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the coverage.

(c) The issuer is ceasing to offer coverage in the individual market in accordance with subsection (3) of this section.

(d) In the case of a health insurance issuer that offers health insurance coverage in the market through a network plan, the individual no longer resides, lives, or works in the service area (or in an area for which the issuer is authorized to do business) but only if the coverage is terminated under this paragraph uniformly without regard to any health status-related factor of covered individuals.

(e) In the case of health insurance coverage that is made available in the individual market only through one (1) or more bona fide associations, the membership of the individual in the association (on the basis of which the coverage is provided) ceases but only if the coverage is terminated under this paragraph uniformly without regard to any health status-related factor of covered individuals.

(3) (a) In any case in which an issuer decides to discontinue offering a particular type of health insurance coverage offered in the individual market, coverage of the type may be discontinued by the issuer only if:

1. The issuer provides notice to each covered individual provided coverage of this type in the market of the discontinuation at least ninety (90) days prior to the date of the discontinuation of the coverage;

2. The issuer offers to each individual in the individual market provided coverage of this type, the option to purchase any other individual health insurance coverage currently being offered by the issuer for individuals in the market; and

3. In exercising the option to discontinue coverage of this type and in offering the option of coverage under subparagraph 2. of this paragraph, the issuer acts uniformly without regard to any health status-related factor of enrolled individuals or individuals who may become eligible for coverage.

(b) 1. Subject to paragraph (a)3. of this subsection, in any case in which a health insurance issuer elects to discontinue offering all health insurance coverage in the individual market in Kentucky, health insurance coverage may be discontinued by the issuer only if:

a. The issuer provides notice to the commissioner and to each individual of the discontinuation at least one hundred eighty (180) days prior to the date of the expiration of the coverage; and

b. All health insurance issued or delivered for issuance in Kentucky in the market is discontinued and coverage under the health insurance coverage in the market is not renewed.

2. In the case of a discontinuation under subparagraph 1. of this paragraph in the individual market, the issuer may not provide for the issuance of any health insurance coverage in the market in Kentucky during the five (5) year period beginning on the date of the discontinuation of the last health insurance coverage not so renewed.

(4) At the time of coverage renewal, a health insurance issuer may modify the health insurance coverage for a policy form offered to individuals in the individual market so long as the modification is consistent with this chapter and effective on a uniform basis among all individuals with that policy form.

(5) In applying this section in the case of health insurance coverage that is made available by a health insurance issuer in the individual market to individuals only through one (1) or more associations, a reference to an individual is deemed to include a reference to such an association of which the individual is a member.

SECTION 8. A NEW SECTION OF SUBCHAPTER 18 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Except as provided in this section, if a health insurance issuer offers health insurance coverage in the group market in connection with a group health plan, the issuer shall renew or continue in force coverage at the option of the plan

sponsor of the plan.

(2) A health insurance issuer may nonrenew or discontinue health insurance coverage offered in connection with a group health plan in the group market based only on one (1) or more of the following:

- *(a) The plan sponsor has failed to pay premiums or contributions in accordance with the terms of the health insurance coverage or the issuer has not received timely premium payments.*
- *(b) The plan sponsor has performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the coverage.*
- *(c) The plan sponsor has failed to comply with a material plan provision relating to employer contribution or group participation rules.*
- *(d) The issuer is ceasing to offer coverage in the group market in accordance with subsection (3) of this section.*
- *(e) In the case of a health insurance issuer that offers health insurance coverage in the market through a network plan, there is no longer any enrollee in connection with the plan who resides, lives, or works in the service area of the issuer (or in the area for which the issuer is authorized to do business).*
- *(f) In the case of health insurance coverage that is made available in the group market only through one (1) or more bona fide associations, the membership of an employer in the association (on the basis of which the coverage is provided) ceases but only if the coverage is terminated under this paragraph uniformly without regard to any health status-related factor of covered individuals.*

(3) (a) In any case in which an issuer decides to discontinue offering a particular type of health insurance coverage offered in the group market, coverage of the type may be discontinued by the issuer in the market only if:

- *1. The issuer provides notice to each plan sponsor provided coverage of this type in the market (and participants and beneficiaries covered under the coverage) of the discontinuation at least ninety (90) days prior to the date of the discontinuation of the coverage;*
- *2. The issuer offers to each plan sponsor provided coverage of this type in the market, the option to purchase all other health insurance coverage currently being offered by the issuer to a group health plan in the market; and*
- *3. In exercising the option to discontinue coverage of this type and in offering the option of coverage under subparagraph 2. of this paragraph, the issuer acts uniformly without regard to the claims experience of those sponsors or any health status-related factor relating to any participants or beneficiaries covered or new participants or beneficiaries who may become eligible for coverage.*

(b) 1. In any case in which a health insurance issuer elects to discontinue offering all health insurance coverage in the group market in Kentucky, health insurance coverage may be discontinued by the issuer only if:

- *a. The issuer provides notice to the commissioner and to each plan sponsor (and participants and beneficiaries covered under the coverage) of the discontinuation at least one hundred eighty (180) days prior to the date of the expiration of the coverage; and*
- *b. All health insurance issued or delivered for issuance in Kentucky in the market is discontinued and coverage under the health insurance coverage in the market is not renewed.*

2. In the case of a discontinuation under subparagraph 1. of this paragraph in the group market, the issuer may not provide for the issuance of any health insurance coverage in the market in Kentucky during the five (5) year period beginning on the date of the discontinuation of the last health insurance coverage not so renewed.

(4) At the time of coverage renewal, a health insurance issuer may modify the health insurance coverage for a product offered to a group health plan in the group market if, for coverage that is available in the market other than only through one (1) or more bona fide associations, the modification is consistent with this chapter and effective on a uniform basis among group health plans with that product.

(5) In applying this section in the case of health insurance coverage that is made available by a health insurance issuer in the group market to employers only through one (1) or more associations, a reference to plan sponsor is deemed, with respect to coverage provided to an employer member of the association, to include a reference to the employer.

SECTION 9. A NEW SECTION OF SUBTITLE 17 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

An insurer that, on or after July 15, 1995 until the effective date of this Act, issued standard health benefit plans under KRS 304.17A-160 and then ceased doing business in Kentucky, may apply to the commissioner on or after the effective date of this Act to reenter Kentucky and engage in the health insurance business notwithstanding the provisions of KRS 304.17A-110(1)(d) as it existed on the date the insurer ceased doing business in Kentucky.

SECTION 10. A NEW SECTION OF SUBTITLE 18 OF KRS CHAPTER 304 IS CREATED TO READ AS

FOLLOWS:

An insurer that, on or after July 15, 1995 until the effective date of this Act, issued standard health benefit plans under to KRS 304.17A-160 and then ceased doing business in Kentucky, may apply to the commissioner on or after the effective date of this Act to reenter Kentucky and engage in the health insurance business notwithstanding the provisions of KRS 304.17A-110(1)(d) as it existed on the date the insurer ceased doing business in Kentucky.

Section 11. KRS 304.17-383 is amended to read as follows:

(1) No filing under KRS 304.17-380 that contains an increase in premium rates shall become effective until the commissioner has issued an order approving the filing. The commissioner may hold a hearing within thirty (30) days after receiving a filing under this subtitle containing a rate increase, and after the hearing shall issue a final order approving or disapproving the filing.

(2) In approving or disapproving a filing under subsection (1) of this section, the commissioner shall consider:

(a) Whether the benefits provided are reasonable in relation to the premium charged;

(b) Previous premium rates for the policies to which the filing applies; and

(c) The effect of the increase on policyholders.

(3) The commissioner shall notify the Attorney General in writing of the hearing and of the premium increase to be considered. The Attorney General shall be considered a party to the hearing if he chooses to participate.

(4) No insurer receiving the commissioner's approval of a filing under this section shall submit a new filing containing a rate increase for any of the same policies until at least six (6) months have elapsed following the effective date of the approved increase.

(5) At any time, the commissioner, after an administrative hearing may withdraw approval of rates previously approved under this section if he determines that the benefits are no longer reasonable in relation to the premium charged. Administrative hearings conducted under authority of this section shall be conducted in accordance with KRS Chapter 13B.

(6) (a) Subsections (1) to (3) of this section shall not apply and premium rates shall be deemed approved upon filing with the Department of Insurance if the filing is accompanied by a loss ratio guarantee, and benefits shall be deemed reasonable in relation to the premium rates so long as the insurer complies with the terms of the loss ratio guarantee. This loss ratio guarantee shall be in writing and shall contain at least the following:

1. A recitation of the anticipated loss ratio standards contained in the original actuarial memorandum filed with the policy form when it was originally approved by the commissioner;

2. A guarantee that the actual Kentucky loss ratio for the calendar year in which the new rates take effect, and for each year thereafter until new rates are filed, will meet or exceed the loss ratio standards referred to in subparagraph 1. of this paragraph. If the annual earned premium volume in Kentucky under the particular policy form is less than one million dollars ($1,000,000) and therefore not actuarially credible, the loss ratio guarantee shall be based on the actual nationwide loss ratio for the policy form;

3. A guarantee that the actual Kentucky loss ratio results for each year at issue shall be independently audited at the insurer's expense. This audit shall be done in the second quarter of the next year and the audited results shall be reported to the commissioner not later than the date for filing the applicable accident and health policy experience exhibit;

4. A guarantee that affected Kentucky policyholders will be issued a proportional refund, based on premium paid, of the amount necessary to bring the actual aggregate loss ratio up to the anticipated loss ratio standards referred to in subparagraph 1. of this paragraph. The refund shall be made to all Kentucky policyholders insured under the applicable policy form as of the last of the year at issue if the refund would equal ten dollars ($10) or more per policy. The refund shall include statutory interest from the end of the year at issue until the date of payment. Payment shall be made during the third quarter of the next year; and

5. A guarantee that refunds of less than ten dollars ($10) will be aggregated by the insurer and paid to the Department of Insurance.

(b) As used in this subsection, the term "loss ratio" means the ratio of incurred claims to earned premium by number of years of policy duration, for all combined durations.

Section 12. KRS 304.14-130 is amended to read as follows:

(1) The commissioner shall disapprove any form filed under KRS 304.14-120, or withdraw any previous approval thereof, only on one (1) or more of the following grounds:

(a) If it is in any respect in violation of, or does not comply with, this code.

(b) If it contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.

(c) If it has any title, heading, or other indication of its provisions which is misleading, or is printed in such size of type or manner of reproduction as to be substantially illegible.

(d) If it excludes coverage for human immunodeficiency virus infection or acquired immunodeficiency syndrome or contains limitations in the benefits payable, or in the terms or conditions of the contract, for human immunodeficiency virus infection or acquired immunodeficiency syndrome which are different than those which apply to any other sickness or medical condition.

(e) As to an individual health insurance policy, if the benefits provided therein are unreasonable in relation to the premium charged.

(2) The insurer shall not use in this state any such form after disapproval or withdrawal of approval.

Section 13. KRS 367.160 is amended to read as follows:

(1) All departments, agencies, officers, and employees of the Commonwealth shall fully cooperate with the Attorney General in carrying out the functions of KRS 367.120 to 367.300.

(2) The persons designated by the Attorney General as utility consumer intervenors shall have the same access to material evidence and information of the Public Service Commission relating to any case before it as other parties to the case.

[~~(3) The persons designated by the Attorney General as health insurance consumer intervenors shall have the same access to material evidence and information of the commissioner of the Department of Insurance relating to any health insurance rate hearings before it as other parties to the hearing.~~]

Section 14. KRS 304.18-050 is amended to read as follows:

[~~(1)~~]Any contract of group health insurance may provide for the readjustment of the rate of premium based upon the experience thereunder.

[~~(2) Notwithstanding any other provision of any subtitle of this chapter, any standard health benefit plan or contract of group health insurance issued to an eligible association shall not be required to determine the amount or rate of premium thereunder using a community rating methodology or a modified community rating methodology and may determine the amount or rate of premium based upon the experience or projected experience thereunder without restriction.~~

~~(3) As used in this section, "eligible association" means an organization which meets all of the following criteria:~~

~~(a) Was in existence on January 30, 1996;~~

~~(b) Is either an association within the meaning of KRS 304.18-020(1)(b) or the trustees of a fund established by one (1) or more associations within the meaning of KRS 304.18-020(1)(c);~~

~~(c) Does not deny membership in the organization on the basis of health status or claims experience;~~

~~(d) Does not exclude members or employees of members or their dependents from eligibility under any standard health benefit plan or contract of group health insurance purchased by the organization on the basis of health status or claims experience; and~~

~~(e) Complies with those provisions of Subtitle 17A of this chapter, if any, relating to the renewability or portability of health benefit plans, coverage of pre-existing conditions, and issuance on a guaranteed issue basis but is not required to comply with any other provisions of Subtitle 17A of this chapter.~~

~~(4) If an organization is otherwise qualified under the criteria of subsection (3) of this section but which, as of January 30, 1996, does not offer group health insurance to its members, the organization shall be prohibited from offering any group health insurance program unless, by September 1, 1996, it has applied for approval from the Department of Insurance pursuant to Subtitle 18 of this chapter and the applicable administrative regulations promulgated under that subtitle.~~

~~(5) Eligible associations that purchase, put together, or assist in purchasing any standard health benefit plan or policy of group health insurance authorized or permitted under this section shall not be considered, for any purpose under this chapter, to be discriminating in their activities based on health status or historical or projected claims experience.~~

~~(6)~~] If a policy dividend is declared or a reduction in rate is made or continued for the first or any subsequent year of insurance under any policy of group health insurance issued prior to or after June 18, 1970, to any policyholder, the excess, if any, of the aggregate dividends or rate reductions under such policy and all other group insurance policies of the policyholder over the aggregate expenditure for insurance under such policies made from funds contributed by the policyholder, or by an employer or insured persons, or by a union or association to which the insured persons belong, including expenditures made in connection with administration of such policies, shall be applied by the policyholder for the sole benefit of insured employees or members.

[~~(7) Without limiting the general application of this section, the provisions of this section shall apply to any standard health benefit plan or contract of group health insurance issued to an eligible association and which is issued by a health maintenance organization holding a certificate of authority issued pursuant to Subtitle 38 of this chapter.~~]

Section 15. KRS 304.14-120 is amended to read as follows:

(1) No basic insurance policy or annuity contract form, or application form where written application is required and is to be made a part of the policy or contract, or printed rider or indorsement form or form of renewal certificate, shall be delivered, or issued for delivery in this state, unless the form has been filed with and approved by the commissioner. This provision shall not apply to[~~ standard health care benefit plans established under KRS 304.17A-160, or to~~] surety bonds, or to specially-rated inland marine risks, or to policies, riders, indorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject, or which relate to the manner or distribution of benefits or to the reservation of rights and benefits under life or health insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. As to group insurance policies issued and delivered to an association outside this state but covering persons resident in this state, all or substantially all of the premiums for which are payable by the insured members, the group certificates to be delivered or issued for delivery in this state shall be filed with and approved by the commissioner. As to forms for use in property, marine (other than wet marine and transportation insurance), casualty and surety insurance coverages the filing required by this subsection may be made by rating organizations on behalf of its members and subscribers; but this provision shall not be deemed to prohibit any such member or subscriber from filing any such forms on its own behalf.

(2) Every such filing shall be made not less than sixty (60) days in advance of any such delivery. At the expiration of such sixty (60) days the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner. Approval of any such form by the commissioner shall constitute a waiver of any unexpired portion of such waiting period. The commissioner may extend by not more than a thirty (30) day period within which he may so affirmatively approve or disapprove any such form, by giving notice to the insurer of such extension before expiration of the initial sixty (60) day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The commissioner may at any time, after notice and for cause shown, withdraw any such approval.

(3) Any order of the commissioner disapproving any such form or any notice of the commissioner withdrawing a previous approval shall state the grounds therefor and the particulars thereof in such detail as reasonably to inform the insurer thereof. Any such withdrawal of a previously approved form shall be effective at expiration of such period, not less than thirty (30) days after the giving of the notice of withdrawal, as the commissioner shall in such notice prescribe.

(4) The commissioner may, by order, exempt from the requirements of this section for so long as he deems proper any insurance document or form or type thereof as specified in such order, to which, in his opinion, this section may not practicably be applied, or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.

(5) Appeals from orders of the commissioner disapproving any such form or withdrawing a previous approval shall be taken as provided in Subtitle 2 of this chapter.

Section 16. KRS 304.38-200 is amended to read as follows:

Health maintenance organizations shall be subject to the provisions of this subtitle, and to the following provisions of this chapter, to the extent applicable and not in conflict with the expressed provisions of this subtitle:

(1) Subtitle 1 -- Scope -- General Definitions and Provisions;
(2) Subtitle 2 -- Insurance Commissioner;
(3) Subtitle 3 -- Authorization of Insurers and General Requirements;
(4) Subtitle 4 -- Fees and Taxes;
(5) Subtitle 5 -- Kinds of Insurance -- Limits of Risk -- Reinsurance;
(6) Subtitle 7 -- Investments;
(7) Subtitle 12 -- Trade Practices and Frauds;
(8) Subtitle 14 -- KRS 304.14-500 to 304.14-560;
(9) Subtitle ***17 -- Sections 3, 6, 7, and 9 of this Act***[~~17A -- Health Benefit Plans~~];
(10) Subtitle 18 -- ***Sections 4, 5, 8, and 10 of this Act***[~~KRS 304.18-050~~];
(11) Subtitle 25 -- Continuity of Management;
(12) Subtitle 33 -- Insurers Rehabilitation and Liquidation;
(13) Subtitle 37 -- Insurance Holding Company Systems; and
(14) Subtitle 99 -- Penalties.

[~~The provisions of KRS 304.18-050 are hereby declared not to be in conflict with the expressed provisions of this subtitle.~~]

SECTION 17. A NEW SECTION OF SUBTITLE 17 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Each individual health insurance policy issued, delivered, or renewed on or after the effective date of this Act that provides

coverage for a family member of the insured shall provide that the benefits applicable for children shall be payable with respect to legally adopted children of the insured or any child for which the insured is a court-appointed guardian from and after the date of the filing of the petition for adoption or the filing of the application for appointment of guardian.

SECTION 18. A NEW SECTION OF SUBTITLE 18 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Each group health insurance policy issued, delivered, or renewed on or after the effective date of this Act, that provides coverage for a family member of the insured shall provide that the benefits applicable for children shall be payable with respect to legally adopted children of the insured or any child for which the insured is a court-appointed guardian from and after the date of the filing of the petition for adoption or the filing of the application for appointment of guardian.

SECTION 19. A NEW SECTION OF SUBTITLE 32 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Each policy, contract, or plan issued, delivered, or renewed on or after the effective date of this Act, that provides coverage for a family member of the insured shall provide that the benefits applicable for children shall be payable with respect to legally adopted children of the insured or any child for which the insured is a court-appointed guardian from and after the date of the filing of the petition for adoption or the filing of the application for appointment of guardian.

SECTION 20. A NEW SECTION OF SUBTITLE 38 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Each certificate, agreement, policy, or contract issued, delivered, or renewed by a health maintenance organization on or after the effective date of this Act, that provides coverage for a family member of the insured shall provide that the benefits applicable for children shall be payable with respect to legally adopted children of the insured or any child for which the insured is a court-appointed guardian from and after the date of the filing of the petition for adoption or the filing of the application for appointment of guardian.

SECTION 21. A NEW SECTION OF SUBTITLE 17 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) An individual health insurance policy issued or renewed on or after the effective date of this Act that provides maternity coverage shall provide coverage for inpatient care for a mother and her newly born child for a minimum of forty-eight (48) hours after vaginal delivery and a minimum of ninety-six (96) hours after delivery by cesarean section.

(2) The provisions of subsection (1) of this section shall not apply to a policy if the policy authorizes an initial postpartum home visit that would include the collection of an adequate sample for the hereditary and metabolic newborn screening, and if the attending physician, with the consent of the mother of the newly born child, authorizes a shorter length of stay than that required of policies in subsection (1) of this section upon the physician's determination that the mother and newborn meet the criteria for medical stability in the most current version of "Guidelines for Perinatal Care" prepared by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists.

SECTION 22. A NEW SECTION OF SUBTITLE 18 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) A group health insurance policy issued or renewed on or after the effective date of this Act that provides maternity coverage shall provide coverage for inpatient care for a mother and her newly born child for a minimum of forty-eight (48) hours after vaginal delivery and a minimum of ninety-six (96) hours after delivery by cesarean section.

(2) The provisions of subsection (1) of this section shall not apply to a policy if the policy authorizes an initial postpartum home visit that would include the collection of an adequate sample for the hereditary and metabolic newborn screening, and if the attending physician, with the consent of the mother of the newly born child, authorizes a shorter length of stay than that required of policies in subsection (1) of this section upon the physician's determination that the mother and newborn meet the criteria for medical stability in the most current version of "Guidelines for Perinatal Care" prepared by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists.

SECTION 23. A NEW SECTION OF SUBTITLE 32 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) A policy, contract, or plan issued or renewed on or after the effective date of this Act that provides maternity coverage shall provide coverage for inpatient care for a mother and her newly born child for a minimum of forty-eight (48) hours after vaginal delivery and a minimum of ninety-six (96) hours after delivery by cesarean section.

(2) The provisions of subsection (1) of this section shall not apply to a policy if the policy authorizes an initial postpartum home visit that would include the collection of an adequate sample for the hereditary and metabolic newborn screening, and if the attending physician, with the consent of the mother of the newly born child,

authorizes a shorter length of stay than that required of policies in subsection (1) of this section upon the physician's determination that the mother and newborn meet the criteria for medical stability in the most current version of "Guidelines for Perinatal Care" prepared by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists.

SECTION 24. A NEW SECTION OF SUBTITLE 38 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) A certificate, agreement, policy, or contract issued or renewed on or after the effective date of this Act that provides maternity coverage shall provide coverage for inpatient care for a mother and her newly born child for a minimum of forty-eight (48) hours after vaginal delivery and a minimum of ninety-six (96) hours after delivery by cesarean section.

(2) The provisions of subsection (1) of this section shall not apply to a policy if the policy authorizes an initial postpartum home visit that would include the collection of an adequate sample for the hereditary and metabolic newborn screening, and if the attending physician, with the consent of the mother of the newly born child, authorizes a shorter length of stay than that required of policies in subsection (1) of this section upon the physician's determination that the mother and newborn meet the criteria for medical stability in the most current version of "Guidelines for Perinatal Care" prepared by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists.

SECTION 25. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Health Purchasing Alliance created under this subtitle shall not issue or renew any business after the effective date of this Act. The commissioner shall take necessary and appropriate actions to terminate all activities of the alliance no later than June 30, 1999, and shall provide assistance to persons who are members of the alliance in obtaining health insurance coverage in the private market. KRS 304.17A-010 to 304.17A-070 shall become null and void on July 1, 1999.

(2) A provider-sponsored integrated health delivery network created under this subtitle shall not accept any new business on or after the effective date of this Act. The commissioner shall not issue a certificate of filing to a network on or after the effective date of this Act. KRS 304.17A-300 and 304.17A-310 shall become null and void on July 1, 1999.

(3) No health benefit plans shall be issued, delivered, or renewed under the provisions of this subtitle on or after the effective date of this Act. Health benefit plans in effect on the effective date of this Act shall be subject to the provisions of KRS Chapter 17A until the end of the contract or policy perio. The provisions of KRS 304.17A-095 to 304.17A-171 shall become null and void on July 1, 1999.

SECTION 26. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

As used in Sections 26 to 39 of this Act, unless the context requires otherwise:

(1) "Contract holder" means an employer or organization that purchases a contract for services;

(2) "Covered person" means a person on whose behalf an insurer offering the plan is obligated to pay benefits or provide services under the health insurance policy;

(3) "Emergency medical condition" means:

  (a) A medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in:

    1. Placing the health of the individual or, with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy;

    2. Serious impairment to bodily functions; or

    3. Serious dysfunction of any bodily organ or part; or

  (b) With respect to a pregnant woman who is having contractions:

    1. A situation in which there is inadequate time to effect a safe transfer to another hospital before delivery; or

    2. A situation in which transfer may pose a threat to the health or safety of the woman or the unborn child.

(4) "Enrollee" means a person who is enrolled in a managed health care plan;

(5) "Experimental treatment" means services or supplies, including treatments, procedures, hospitalizations, drugs, biological products or medical devices, which a peer review panel determines are not of proven benefit for the

particular diagnosis or treatment of the covered person's particular condition, or not generally recognized by the medical community as effective or appropriate for the particular diagnosis or treatment of the covered person's particular condition, or provided or performed in special settings for research purposes or under a controlled environment or clinical protocol. Unless otherwise required by law with respect to drugs that have been prescribed for the treatment of a type of cancer for which the drug has not been approved by the United States Food and Drug Administration, the plan shall not cover any services or supplies including treatment, procedures, drugs, biological products, or medical devices or any hospitalization in connection with experimental or investigational services or supplies. The plan shall also not cover any technology or any hospitalization in connection with that technology if that technology is obsolete or ineffective and is not used generally by the medical community for the particular diagnosis or treatment of the covered person's particular condition. Governmental approval of a technology is not necessarily sufficient to render it of proven benefit or appropriate or effective for a particular diagnosis or treatment of the particular condition as provided in this subsection. The plan shall apply the following five (5) criteria in determining whether services or supplies are experimental or investigational:

(a) Any medical device, drug, or biological product shall have received final approval to market by the United States Food and Drug Administration (FDA) for the particular diagnosis or condition. Any other approval granted as an interim step in the FDA regulatory process, such as an investigational device exemption or an investigational new drug exemption, is not sufficient. Once FDA approval has been granted for a particular diagnosis or condition, use of the medical device, drug, or biological product for another diagnosis or condition requires that one (1) or more of the following established reference compendia: the American Medical Association Drug Evaluations, the American Hospital Formulary Service Drug Information, or the United States Pharmacopeia Drug Information, recognize the usage as appropriate medical treatment. As an alternative to this recognition in one (1) or more of the compendia, the usage of the drug shall be recognized as appropriate if it is recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal. A medical device, drug, or biological product that meets the tests in this paragraph shall not be considered experimental or investigational. Any drug that the FDA has determined to be contraindicated for the specific treatment for which the drug has been prescribed shall be considered experimental or investigational;

(b) Conclusive evidence from the published peer-review medical literature shall exist that the technology has a definite positive effect on health outcome; this evidence shall include well-designed investigations that have been reproduced by nonaffiliated authoritative sources, with measurable results, backed up by the positive endorsements of national medical bodies or panels regarding scientific efficacy and rationale;

(c) Demonstrated evidence as reflected in the published peer-review medical literature shall exist that over time the technology leads to improvement in health outcomes, such as the beneficial effects outweigh any harmful effects;

(d) Proof as reflected in the published peer-reviewed medical literature shall exist that the technology is at least as effective in improving health outcomes as established technology, or is usable in appropriate clinical contexts in which established technology is not employable; and

(e) Proof as reflected in the published peer-reviewed medical literature shall exist that improvements in health outcomes, as defined in paragraph (c) of this subsection, is possible in standard conditions of medical practice, outside clinical investigatory settings;

(6) "Grievance" means a written complaint submitted by or on behalf of an enrollee;

(7) "Health benefit plan" means any hospital or medical expense policy or certificate; nonprofit hospital, medical-surgical, and health service corporation contract or certificate; a self-insured plan or a plan provided by a multiple employer welfare arrangement, to the extent permitted by ERISA; or health maintenance organization contract; or any health benefit plan which affects the rights of a Kentucky insured and bears a reasonable relation to Kentucky, whether delivered or issued for delivery in Kentucky, and does not include policies covering only accident, credit, dental, disability income, fixed indemnity, long-term care, Medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance, short-term coverage, or student health insurance offered by a Kentucky-licensed insurer under written contract with a university or college whose students it proposes to insure.

(8) "Health care provider" or "provider" means any facility or service required to be licensed pursuant to KRS Chapter 216B, pharmacist as defined pursuant to KRS Chapter 315, and any of the following independent practicing practitioners:

(a) Physicians, osteopaths, and podiatrists licensed under KRS Chapter 311;

(b) Chiropractors licensed under KRS Chapter 312;

(c) Dentists licensed under KRS Chapter 313;

(d) Optometrists licensed under KRS Chapter 320;

(e) Physician assistants regulated under KRS Chapter 311;

(f) Nurse practitioners licensed under KRS Chapter 314; and

(g) Other health care practitioners as determined by the department by administrative regulations promulgated under KRS Chapter 13A.

(9) "Health insurance policy" means "health benefit plan" as defined in this section;

(10) "Insurer" means any insurance company; health maintenance organization; self-insurer or multiple employer welfare arrangement not exempt from state regulation by ERISA; provider-sponsored integrated health delivery network; self-insured employer-organized association, or nonprofit hospital, medical-surgical, dental, or health service corporation authorized to transact health insurance business in Kentucky;

(11) "Managed care plan" means a health insurance policy that integrates the financing and delivery of appropriate health care services to covered persons by arrangements with participating providers who are selected to participate on the basis of explicit standards to furnish a comprehensive set of health care services and financial incentives for covered persons to use the participating providers and procedures provided for in the plan;

(12) "Participating health care provider" means a health care provider that has entered into an agreement with an insurer to provide health care services to an enrollee in its managed care plan;

(13) "Quality assurance or improvement" means the ongoing evaluation by a managed care plan of the quality of health care services provided to its enrollees;

(14) "Record" means any written, printed, or electronically recorded material maintained by a provider in the course of providing health services to a patient concerning the patient and the services provided. "Record" also includes the substance of any communication made by a patient to a provider in confidence during or in connection with the provision of health services to a patient or information otherwise acquired by the provider about a patient in confidence and in connection with the provision of health services to a patient; and

(15) "Utilization management" means a system for reviewing the appropriate and efficient allocation of health care services under a health benefits plan according to specified guidelines, in order to recommend or determine whether, or to what extent, a health care service given or proposed to be given to a covered person should or will be reimbursed, covered, paid for, or otherwise provided under the plan. The system may include: preadmission certification, the application of practice guidelines, continued stay review, discharge planning, preauthorization of ambulatory care procedures, and retrospective review.

SECTION 27. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

An insurer shall disclose in writing to an enrollee, in a manner consistent with the provisions of KRS 304.14-420 to 304.14-450, the terms and conditions of its health insurance contract, and shall promptly provide the enrollee with written notification of any change in the terms and conditions prior to the effective date of the change. The insurer shall provide the required information at the time of enrollment and upon request thereafter.

(1) The information required to be disclosed under this section shall include a description of:

(a) Covered services and benefits to which the enrollee or other covered person is entitled;

(b) Restrictions or limitations on covered services and benefits;

(c) Financial responsibility of the covered person, including copayments and deductibles;

(d) Prior authorization and any other review requirements with respect to accessing covered services;

(e) Where and in what manner covered services may be obtained;

(f) Changes in covered services or benefits, including any addition, reduction, or elimination of specific services or benefits;

(g) The covered person's right to appeal and the procedure for initiating an appeal of a utilization management decision made by or on behalf of the insurer with respect to the denial, reduction, or termination of a health care benefit or the denial of payment for a health care service;

(h) The procedure to initiate an appeal through the process under KRS 211.464(1)(g);

(i) Measures in place to ensure the confidentiality of the relationship between an enrollee and a health care provider; and

(j) Other information as the commissioner shall require by administrative regulation.

(2) The insurer shall file the information required under this section with the department.

SECTION 28. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) In addition to the disclosure requirements provided in Section 27 of this Act, an insurer that offers a managed care plan shall disclose to an enrollee, in writing, in a manner consistent with KRS 304.14-420 to 304.14-450, the following information at the time of enrollment and upon request:

(a) A current participating provider directory providing information on a covered person's access to primary care physicians and specialists, including available participating physicians, by provider category or specialty and by county. The directory shall include the professional office address of a primary care physician. The directory shall also provide information about participating hospitals. The insurer shall promptly notify each covered person on the termination or withdrawal from the insurer's provider network of the covered person's designated primary care physician;

(b) General information about the type of financial incentives between participating physicians under contract with the insurer and other participating health care providers and facilities to which the participating physicians refer their managed care patients; and

(c) The insurer's managed care plan's standard for customary waiting times for appointments for urgent and routine care.

The insurer shall provide a prospective enrollee with information about the provider network, including hospital affiliations, and other information specified in this subsection, upon request.

(2) Upon request of a covered person, an insurer shall promptly inform the person:

(a) Whether a particular network physician is board certified; and

(b) Whether a particular network physician is currently accepting new patients.

(3) Each insurer shall annually make available to its enrollees at its principal office and place of business:

(a) Its most recent annual statement of financial condition including a balance sheet and summary of receipts and disbursement; and

(b) A current description of its organizational structure and operation.

SECTION 29. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) A managed care plan shall arrange for a sufficient number and type of primary care providers and specialists throughout the plan's service area to meet the needs of enrollees. Each managed care plan shall demonstrate that it offers:

(a) An adequate number of accessible acute care hospital services, where available;

(b) An adequate number of accessible primary care providers, including family practice and general practice physicians, internists, obstetricians/gynecologists, and pediatricians, where available;

(c) An adequate number of accessible specialists and subspecialists, and when the medical specialist needed for a specific condition is not represented on the plan's list of participating specialists, enrollees have access to nonparticipating health care providers with prior plan approval;

(d) The availability of specialty medical services; and

(e) A provider network that is available to all persons enrolled in the plan within thirty (30) miles or thirty (30) minutes of each person's place of residence, to the extent those services are available.

(2) A managed care plan shall provide telephone access to the plan during business hours to ensure plan approval of nonemergency care. A managed care plan shall provide adequate information to enrollees regarding access to urgent and emergency care.

(3) A managed care plan shall establish reasonable standards for waiting times to obtain appointments, except as provided for emergency care.

(4) A managed care plan shall cover emergency-room screening and stabilization without prior authorization as needed for conditions that reasonably appear to constitute an emergency medical condition, based on the patient's presenting symptoms. To promote continuity of care and optimal care by the treating physician, the emergency department should contact the patient's primary care physician as soon as possible.

SECTION 30. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) An enrollee shall have adequate choice among participating primary care providers in a managed care plan who are accessible and qualified.

(2) A managed care plan shall permit enrollees to choose their own primary care provider from a list of health care providers within the plan. This list shall be updated as health care providers are added or removed and shall include a sufficient number of primary care providers who are accepting new enrollees.

(3) A managed care plan shall develop a system to permit an enrollee to use a participating medical specialist when the enrollee's medical condition warrants it.

(4) A managed care plan shall arrange for continuity of care and appropriate referral to specialists within the plan when specialty care is warranted.

(a) Enrollees shall have access to participating medical specialists on a timely basis.

(b) Enrollees shall be provided with a choice of specialists when a referral is made, where available.

(5) A managed care plan shall provide an enrollee with access to a consultation with a participating health care provider for a second opinion.

SECTION 31. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Insurers shall establish objective standards for initial consideration of providers and for providers to continue as a participating provider in the plan. Selection or participation standards based on the economics or capacity of a provider's practice shall be adjusted to account for case mix, severity of illness, patient age and other features that may account for higher-than- or lower-than-expected costs. All data profiling or other data analysis pertaining to participating providers shall be done in a manner which is valid and reasonable. Plans shall not use criteria that would allow an insurer to avoid high-risk populations by excluding providers because they are located in geographic areas that contain populations or providers presenting a risk of higher-than-average claims, losses, or health services utilization or that would exclude providers because they treat or specialize in treating populations presenting a risk of higher-than-average claims, losses, or health services utilization.

(2) Each insurer shall establish mechanisms for soliciting and acting upon applications for provider participation in the plan in a fair and systematic manner. These mechanisms shall, at a minimum, include:

(a) Allowing all providers who desire to apply for participation in the plan an opportunity to apply at any time during the year or, where an insurer does not conduct open continuous provider enrollment, conducting a provider enrollment period at least annually with the date publicized to providers located in the geographic service area of the plan at least thirty (30) days in advance of the enrollment periods; and

(b) Making criteria for provider participation in the plan available to all applicants.

(3) If a managed care plan terminates the participation of an enrollee's primary care provider, the plan shall provide notice to the enrollee and arrange for the enrollee's continuity of care with an approved primary care provider.

(4) An insurer that offers a managed care plan shall establish a policy governing the removal of and withdrawal by health care providers from the provider network that includes the following:

(a) The insurer shall inform a participating health care provider of the insurer's removal and withdrawal policy at the time the insurer contracts with the health care provider to participate in the provider network, and when changed thereafter;

(b) If a participating health care provider's participation will be terminated or withdrawn prior to the date of the termination of the contract as a result of a professional review action, the insurer and participating health care provider shall comply with the standards in 42 U.S.C. sec. 11112; and

(c) If the insurer finds that a health care provider represents an imminent danger to an individual patient or to the public health, safety, or welfare, the medical director shall promptly notify the appropriate professional state licensing board.

SECTION 32. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) A managed care plan may not contract with a health care provider to limit the provider's disclosure to an enrollee, or to another person on behalf of an enrollee, of any information relating to the enrollee's medical condition or treatment options.

(2) A health care provider shall not be penalized, or a health care provider's contract with a managed care plan terminated, because the provider discusses medically necessary or appropriate care with an enrollee or another person on behalf of an enrollee.

(a) The health care provider may not be prohibited by the plan from discussing all treatment options with the enrollee.

(b) Other information determined by the health care provider to be in the best interests of the enrollee may be disclosed by the provider to the enrollee, or to another person on behalf of an enrollee.

(3) (a) A health care provider shall not be penalized for discussing financial incentives and financial arrangements between the provider and the insurer with an enrollee.

(b) Upon request, a managed care plan shall inform its enrollees in writing of the type of financial arrangements between the plan and participating providers if those arrangements include an incentive or bonus.

SECTION 33. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) A managed care plan shall include a drug utilization review program, the primary emphasis of which shall be to enhance quality of care for enrollees by assuring appropriate drug therapy, that includes the following:

(a) Retrospective review of prescription drugs furnished to enrollees;

(b) Education of physicians, enrollees, and pharmacists regarding the appropriate use of prescription drugs; and

(c) Ongoing periodic examination of data on outpatient prescription drugs to ensure quality therapeutic outcomes for enrollees.

(2) The drug utilization review program shall utilize the following to effectuate the purposes of subsection (1) of this section:

(a) Relevant clinical criteria and standards for drug therapy;

(b) Nonproprietary criteria and standards developed and revised through input from participating physicians and pharmacists;

(c) Intervention that focuses on improving therapeutic outcomes; and

(d) Measures to ensure the confidentiality of the relationship between an enrollee and a health care provider.

(3) When, in a physician's professional opinion, a physician determines that generic substitution of a pharmaceutical product is medically inappropriate, the physician shall prescribe the pharmaceutical product the physician determines medically appropriate with the indication "Do Not Substitute" and no substitution shall be made without the physician's approval.

SECTION 34. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

A managed care plan that denies coverage for experimental services, including treatments, procedures, drugs, or devices for an enrollee, shall provide the enrollee with a denial letter within twenty (20) working days of the submitted request for the coverage. The letter shall include:

(1) The name and title of the person making the decision;

(2) A statement setting forth the specific medical and scientific reasons for denying coverage;

(3) A description of alternative treatment, services, or supplies covered by the plan, if any; and

(4) A copy of the plan's grievance and appeal procedure.

SECTION 35. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) A managed care plan shall appoint a medical director who is a physician licensed to practice in Kentucky or a contiguous state, and who shall be responsible for the treatment policies, protocols, quality assurance activities, and utilization management decisions of the plan.

(2) The medical director shall ensure that:

(a) Any utilization management decision to deny, reduce, or terminate a health care benefit or to deny payment for a health care service, because that service is not medically necessary, shall be made by a physician;

(b) A utilization management decision shall not retrospectively deny coverage for health care services provided to a covered person when prior approval has been obtained from the insurer for those services, unless the approval was based upon fraudulent, materially inaccurate, or misrepresented information submitted by the covered person or the participating provider;

(c) In the case of a managed care plan, a procedure is implemented whereby participating physicians have an opportunity to review and comment on all medical and surgical protocols, respectively, of the insurer;

(d) The utilization management program is available to respond to authorization requests for urgent services and is available, at a minimum, during normal working hours for inquiries and authorization requests for nonurgent health care services; and

(e) In the case of a managed care plan, a covered person is permitted to choose or change a primary care physician from among participating providers in the provider network, and, when appropriate, choose a specialist from among participating network providers following an authorized referral, if required by the

insurer, and subject to the ability of the specialist to accept new patients.

(3) A managed care plan shall develop comprehensive quality assurance or improvement standards adequate to identify, evaluate, and remedy problems relating to access, continuity, and quality of health care services. These standards shall be made available to the public during regular business hours and include:

(a) An ongoing written, internal quality assurance or improvement program;

(b) Specific written guidelines for quality of care studies and monitoring, including attention to vulnerable populations;

(c) Performance and clinical outcomes-based criteria;

(d) A procedure for remedial action to correct quality problems, including written procedures for taking appropriate corrective action;

(e) A plan for data gathering and assessment; and

(f) A peer review process.

(4) Each managed care plan shall have a process for the selection of health care providers who will be on the plan's list of participating providers, with written policies and procedures for review and approval used by the plan.

(a) The plan shall establish minimum professional requirements for participating health care providers.

(b) The plan shall demonstrate that it has consulted with appropriately qualified health care providers to establish the minimum professional requirements.

(c) The plan's selection process shall include verification of each health care provider's license, history of license suspension or revocation, and liability claims history.

(d) A managed care plan shall establish a formal written, ongoing process for the reevaluation of each participating health care provider within a specified number of years after the provider's initial acceptance into the plan. The reevaluation shall include an update of the previous review criteria and an assessment of the provider's performance pattern based on criteria such as enrollee clinical outcomes, number of complaints, and malpractice actions.

(5) A managed care plan shall not use a health care provider beyond, or outside of, the provider's legally authorized scope of practice.

SECTION 36. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

There is hereby recognized a patient's right of privacy in the content of a patient's record and communications between a patient and a health care provider with regard to mental health or chemical dependency.

(1) An insurer may request the provider to furnish the insurer only such limited information from a patient's record as is necessary for determining covered services and benefits, medical necessity, appropriateness, and quality of care for authorization of mental health and chemical dependency health services to be provided to the patient, and for payment for those services.

(2) No third party to whom disclosure of patient records is made by a provider may redisclose or otherwise reveal the mental health and chemical dependency records of a patient, beyond the purpose for which the disclosure was made, without first obtaining the patient's specific consent to the redisclosure.

SECTION 37. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) No insurance contract with a provider shall contain a most-favored-nation provision except where the commissioner determines that the market share of the insurer is nominal.

(2) Nothing in this section shall be construed to prohibit a health insurer and a provider from negotiating payment rates and performance-based contract terms that would result in the health insurer issuer receiving a rate that is as favorable, or more favorable, than the rates negotiated between a provider and other health insurance issuers.

SECTION 38. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The commissioner shall enforce the provisions of Sections 29 to 42 of this Act and shall adopt administrative regulations necessary to carry out the provisions of Sections 29 to 42 of this Act.

SECTION 39. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

No health insurance contract or certificate subject to the provisions of this subtitle shall be delivered, issued, executed, or renewed on or after the effective date of this section unless it and the insurer meet the requirements of Sections 26 to 39 of this Act

Section 40. KRS 304.17A-080 is repealed, reenacted as a new section of Subtitle 2 of KRS Chapter 304, and amended to read as follows:

(1) There is hereby created and established a Health Insurance Advisory Council whose duty shall be to review and discuss with the commissioner any issues which impact the provision of health insurance in the state. The advisory council shall consist of seven (7) members: the commissioner plus six (6) persons appointed by the Governor with the advice of the commissioner to serve two (2) year terms. The commissioner shall serve as chair of the advisory council.

(2) The six (6) persons appointed by the Governor with the advice of the commissioner shall be:

(a) Two (2) representatives of insurers currently offering health benefit plans in the state;

(b) Two (2) practicing health care providers; and

(c) Two (2) representatives of purchasers of health benefit plans.

(3) At least quarterly, but not more often than six (6) times per year, the commissioner shall convene a meeting of the Health Insurance Advisory Council to review and discuss any of the following:

(a) [~~The design of the standard health benefit plans pursuant to KRS 304.17A-160;~~

~~(b)~~] The rate-filing process for all health benefit plans;

(b)[~~(c)~~]The definition of high-risk conditions;

(c)[~~(d)~~]The administrative regulations concerning this subtitle to be promulgated by the department; and

(d)[~~(e)~~]Other issues at the request of the commissioner.

(4) The advisory council shall be a budgetary unit of the department which shall pay all of the advisory council's necessary operating expenses and shall furnish all office space, personnel, equipment, supplies, and technical or administrative services required by the advisory council in the performance of the functions established in this section.

[~~(5) The Health Insurance Advisory Council created pursuant to this section may at any time review the standard health benefit plans and supplemental plans in effect on July 15, 1996, and may recommend to the commissioner changes to or replacements for any or all of those plans. The council may recommend additional standard health benefit plans and supplemental plans. The commissioner shall review the proposed plan, make whatever changes the commissioner deems necessary, and give final approval within thirty (30) days of receipt of the council's recommendation. The standard health benefit plans and supplemental plans shall become available for filing upon final approval of the commissioner.~~]

Section 41. The following KRS section is repealed:

304.17A-090 Commissioner's review of rates and charges filed between July 15, 1995, and July 15, 1996 -- Refunds -- Suspension of certificate of authority -- Notification of review.

Section 26. Effective July 1, 1999 the following KRS sections are repealed:

304.17A-010 Definitions for KRS 304.17A-010 to 304.17A-070.

304.17A-020 Kentucky Health Purchasing Alliance -- Regional advisory boards.

304.17A-030 Duties of the Kentucky Health Purchasing Alliance.

304.17A-040 Conditions of participation in the alliance.

304.17A-050 Duties of the Department of Insurance with respect to the alliance.

304.17A-060 Supervision of alliance by department relative to antitrust laws.

304.17A-070 Creation of accountable health plans -- Certification.

304.17A-095 Insurer issuing health benefit plan must file rates and charges -- Commissioner's approval -- Hearing -- Notification of Attorney General -- Administrative regulations.

304.17A-100 Definitions for KRS 304.17A-100 to 304.17A-160 and KRS 304.18-023.

304.17A-110 Requirement of compliance with specified conditions regarding renewability and pre-existing conditions.

304.17A-120 Use of approved modified rating methodology required for issuance or renewal of plans -- Geographic rating areas -- Exemption -- Permitted deviation from index community rates.

304.17A-130 Risk adjustment process -- Authority for administrative regulations.

304.17A-135 Coverage for treatment of breast cancer.

304.17A-140 Coverage applicable to children to include legally-adopted children.

304.17A-145 Maternity coverage to include specified amounts of inpatient care for mothers and newly-born children -- Exemption.

304.17A-150 Unfair trade practices.

304.17A-160 Standard health benefit plans -- Written agreement required before provider may be represented as participating.

304.17A-170 Definitions for KRS 304.17A-170 and 304.17A-171.

304.17A-171 Requirements for health benefit plans that include chiropractic benefits.

304.17A-300 Provider-sponsored integrated health delivery network – Qualifications – Fees – Network subject to provisions of other subtitles.

304.17A-310 Financial solvency requirements for network.

Section 27. Whereas the competition in the health insurance market in Kentucky has diminished since the enactment of legislation in 1994 to the disadvantage of residents of the Commonwealth and premium rates have increased which has made coverage less affordable for some Kentuckians, an emergency is declared to exist, and Sections 1 to 40 of this Act take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.".

Floor Amendment No. 3 to the Committee Substitute No. 2 to **HB 315**, by Representative Anderson:

On page 49, lines 5 and 7, by deleting "***(c)***" and inserting "***(b)***"; and

On page 49, by deleting line 26 in its entirety; and

On page 49, line 27, by deleting "***(b)***" and inserting "***(a)***"; and

On page 50, line 4, by deleting "***(c)***" and inserting "***(b)***"; and

On page 50, line 7, by deleting "***(d)***" and inserting "***(c)***"; and

On page 50, line 21, by deleting "***(e)***" and inserting "***(d)***"; and

On page 50, line 22, by deleting "***(f)***" and inserting "***(e)***"; and

On page 50, line 23, by deleting "***(g)***" and inserting "***(f)***"; and

On page 51, lines 8 and 10, by deleting "***(d)***" and inserting "***(c)***"; and

On page 101, by deleting lines 8, 9, and 10 in their entirety; and

On page 101, line 11, by deleting "61" and inserting "60".

Floor Amendment No. 7 to the Committee Substitute No. 2 to **HB 315**, by Representative Damron:

On page 45, line 19, after "***(5)***" by inserting "***(a)***"; and

On page 45, after line 21, by inserting:

"***(b) Self-insured health benefit plans covering employees of institutions of higher education and self-insured plans covering elected and salaried employees of cities, counties, urban-counties, charter counties, or special districts shall not be subject to the provisions of Sections 15 to 23 of this Act.***".

Floor Amendment No. 6 to the Committee Substitute No. 2 to **HB 315**, by Representative Anderson:

On page 100, line 15, after "Section 58." and before "The following" by inserting:

"KRS 161.158 is amended to read as follows:

(1) Each district board of education may form its employees into a group or groups or recognize existing groups for the purpose of obtaining the advantages of group life, disability, medical, and dental insurance, or any group insurance plans to aid its employees, as long as the employees continue to be employed by the board of education. Medical and dental group insurance plans obtained under authority of this section may include insurance benefits for the families of the insured group or groups of employees. Any district board of education may pay all or part of the premium on the policies, and may deduct from the salaries of the employees that part of the premium which is to be paid by them and may contract with the insurer to provide the above benefits. As permitted in KRS 160.280(5), board members shall be eligible to participate in any group medical or dental insurance provided by the district for employees.

(2) Each district board of education shall adopt policies or regulations which will provide for deductions from salaries of its employees or groups of employees whenever a request is presented to the board by said employees or groups thereof. The deductions shall be made from salaries earned in at least eight (8) different pay periods, and shall be remitted to the appropriate organization or association as specified by the employees. The deductions may be made for, but are not limited to, membership dues, tax-sheltered annuities, and group insurance premiums. With the exception of membership dues, the board shall not be required to make more than one (1) remittance of amounts deducted during a pay period for a separate type of deduction. Health insurance, life insurance, and tax-sheltered annuities shall be interpreted as separate types of deductions. When amounts have been correctly deducted and remitted by the board, the board shall bear no further responsibility or liability for subsequent transaction.

(3) ***If the health insurance contract for state employees under KRS 18A.225 includes fewer than three (3) different***

health insurers serving the county of the school district, the board may notify the secretary of the Finance and Administration Cabinet of its intent to not participate in the state health insurance program. The allotment for state employee health insurance for each employee who elects during the open enrollment period to obtain coverage under the district's policy shall be transferred to the local district.

(4) Payments and deductions made by the board of education under the authority of this section are presumed to be for services rendered and for the benefit of the common schools, and the payments and deductions shall not affect the eligibility of any school system to participate in the public school funding program as established in KRS Chapter 157.

Section 59. KRS 304.17A-010 is amended to read as follows:

As used in KRS 304.17A-010 to 304.17A-070:

(1) "Accountable health plan" means an organization that integrates health care providers and facilities and assumes financial risk, in order to provide health care services to alliance members, and is certified by the alliance pursuant to KRS 304.17A-070. The term includes any self-insured plan provided by the state employee benefit fund established under KRS 18A.2281.

(2) "Alliance" means the Kentucky Health Purchasing Alliance created by KRS 304.17A-020.

(3) "Alliance member" means both mandatory and voluntary alliance members.

(4) "Antitrust laws" means federal and state laws intended to protect commerce from unlawful restraints, monopolies, and unfair business practices.

(5) "Commissioner" means the commissioner of the Kentucky Department of Insurance.

(6) "Business health coalition" means a group of employers organized to share information about health services and insurance coverage, to enable the employers to obtain more cost-effective care for their employees.

(7) "Health purchasing alliance" means an agency attached for administrative purposes to the department but which operates independently of the department and that provides member purchasing services and detailed information to its members on comparative prices, usage, outcomes, quality, and enrollee satisfaction with accountable health plans and which was previously certified by the Kentucky Health Policy Board.

(8) "Consumer" means an individual user of health care services.

(9) "Department" means the Kentucky Department of Insurance.

(10) "Grievance procedure" means an established set of rules that specify a process for appeal of an organizational decision.

(11) "Health care provider" or "provider" means any facility or service required to be licensed pursuant to KRS Chapter 216B, pharmacist as defined pursuant to KRS Chapter 315, and any of the following independent practicing practitioners:

- (a) Physicians, osteopaths, and podiatrists licensed pursuant to KRS Chapter 311;
- (b) Chiropractors licensed pursuant to KRS Chapter 312;
- (c) Dentists licensed pursuant to KRS Chapter 313;
- (d) Optometrists licensed pursuant to KRS Chapter 320;
- (e) Physician assistants regulated pursuant to KRS Chapter 311;
- (f) Nurse practitioners licensed pursuant to KRS Chapter 314; and
- (g) Other health care practitioners as determined by the department by administrative regulations promulgated pursuant to KRS Chapter 13A.

(12) "Health insurer" or "insurer" means any insurance company; health maintenance organization; self-insurer or multiple employer welfare arrangement not exempt from state regulation by ERISA; a provider-sponsored integrated health delivery network which complies with financial and other criteria established by the department to protect against financial insolvency and to assure capability of providing required services or nonprofit hospital, medical-surgical, dental, or health service corporation authorized to transact health insurance business in Kentucky.

(13) "Health benefit plan" means any hospital or medical expense policy or certificate; nonprofit hospital, medical-surgical, and health service corporation contract or certificate; a self-insured plan or a plan provided by a multiple employer welfare arrangement, to the extent permitted by ERISA; or health maintenance organization contract; or standard and supplemental health benefit plan which affects the rights of a Kentucky insured and bears a reasonable relation to Kentucky, whether delivered or issued for delivery in Kentucky, and does not include policies covering only accident, credit, dental, disability income, fixed indemnity, long-term care, Medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance, or student health insurance offered by a Kentucky-licensed insurer under written contract with a university or college whose students it proposes to insure, and, upon approval by the department, individual limited guaranteed renewable hospital or medical expense policies whose provisions and terms may not be changed by the insurer, which were issued prior to

January 1, 1994, and conversion policies for group health policies existing on January 1, 1994, if the department determines that the individual limited guaranteed renewable expense policies and conversion policies provide benefits that are less than the benefits provided by the basic health benefit plan as defined by the department.

(14) "Health status" means an assessment of an individual's mental and physical condition.

(15) "Managed care" means systems or techniques generally used by third-party payors or their agents to affect access to and control payment for health care services. Managed care techniques may include one (1) or more of the following:

(a) Prior, concurrent, and retrospective review of the medical necessity and appropriateness of services or site of services;

(b) Contracts with selected health care providers;

(c) Financial incentives or disincentives related to the use of specified providers, services, or service sites;

(d) Controlled access to and coordination of services by a case manager; and

(e) Payor efforts to identify treatment alternatives and modify benefit restrictions for high cost patient care.

(16) "Managed competition" means a process by which purchasers participate in alliances to obtain information on health benefit plans, and purchase from, competing accountable health plans.

(17) (a) "Mandatory alliance member" means:

1. Any person for whom the Commonwealth provides health insurance pursuant to KRS 18A.225 to 18A.229;

2.[~~Elected and salaried employees of local school districts;~~

~~3.~~] Employees of local and district health departments;

3.[~~4.~~] Justices, judges, clerks, deputy clerks, and all other employees of the Judicial Department; and

4.[~~5.~~] Recipients under the Kentucky Medical Assistance Program under KRS Chapter 205, to the extent the basic benefit package offered by the alliance covers those mandatory Medicaid services required to be offered by federal law if the following conditions are met:

a. The Cabinet for Human Resources determines enrolling Medicaid recipients in the alliance to be practicable; and

b. Necessary waivers are obtained by the Cabinet for Human Resources from the Federal Health Care Financing Administration to permit enrolling Medicaid recipients in the alliance.

(b) With respect to subparagraphs 2. ***and 3.***[~~to 4.~~] of paragraph (a) of this subsection, "mandatory alliance member" means only those positions or offices for which health care coverage is provided on July 15, 1994 or for which health care coverage is extended after July 15, 1994, and nothing in this subsection shall be construed to mandate provision of health care coverage for positions and offices within the scope of those subparagraphs if that coverage was not in effect on July 15, 1994.

(c) With respect to those persons listed in subparagraphs 2. ***and 3.***[~~to 4.~~] of paragraph (a) of this subsection, alliance membership shall be mandatory effective January 1, 1996, except those persons covered under a health insurance contract in effect as of April 1, 1994, and which is still in effect as of January 1, 1996, shall not be required to be a member of the alliance until the termination date of the contract.

(18) "Medical outcomes" means a change in an individual's health status after the provision of health services.

(19) "Provider network" means an affiliated group of varied health care providers that is established to provide a continuum of health care services to individuals.

(20) "Purchaser" means an individual, an organization, or the Commonwealth that makes health benefit purchasing decisions on behalf of a group of individuals.

(21) "Self-funded plan" means a group health insurance plan in which the sponsoring organization assumes the financial risk of paying for all covered services provided to its enrollees.

(22) "Utilization management" means programs designed to control the overutilization of health services by reviewing their appropriateness relative to established standards or norms.

(23) "Voluntary alliance member" means:

(a) An employer with fifty (50) employees or less who voluntarily chooses to participate in a health purchasing alliance except that any employer who provides health plan benefits for one employee shall provide health plan benefits for all employees, including part-time employees; or

(b) An individual who voluntarily chooses to participate in a health purchasing alliance; or

(c) An affiliated group or association consisting of fifty (50) individuals or less who voluntarily choose to participate in the health purchasing alliance as a group; or

(d) Employees of state institutions of higher education; or

(e) ***Elected board members and salaried employees of local school districts; or***

(f) Elected and salaried employees of cities, counties, urban-counties, charter counties, or special districts excluding school districts..

Section 60. KRS 18A.225 is amended to read as follows:

(1) (a) The term "health maintenance organization" for the purposes of this section means a health maintenance organization as defined in KRS 304.38-030 or as a nonprofit hospital, medical-surgical, dental, and health service corporation, which has been licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board or its successor agency and issued a certificate of authority by the Department of Insurance as a health maintenance organization or as a nonprofit hospital, medical-surgical, dental, and health service corporation and which is qualified under the requirements of the United States Department of Health, Education and Welfare except as provided in subsection (2) of this section; and

(b) The term "state employee" for purposes of this section shall include a person, including an elected public official, who is regularly employed by any department, board, agency, branch of state government, or any municipal, urban-county, charter county, or county government, whose legislative body has opted to participate in the state health insurance program pursuant to KRS 79.080 and who is a contributing member to any one (1) of the retirement systems administered by the state and including any federally-funded time-limited employee. ***It shall not include the elected board members and salaried employees of local school districts whose board has opted not to participate in the state health insurance program in accordance with Section 58 of this Act.*** It shall also include a person who must fulfill the requirements established by the Kentucky Board of Education for eligibility and a person who is a present or future recipient of a retirement allowance from any of the Kentucky Retirement Systems who either satisfies the requirements of KRS 61.559 or who is board authorized under KRS 61.702(1), including a beneficiary of a retired employee as defined in KRS 61.542 who is receiving a retirement allowance from any of the Kentucky Retirement Systems and includes members of the Legislators' Retirement Plan as provided in KRS 18A.2287.

(2) The secretary of the Finance and Administration Cabinet, upon the recommendation of the commissioner of personnel, shall procure, in compliance with the provisions of KRS 45A.080, 45A.085, and 45A.090, from one (1) or more health, hospitalization, medical, major medical, and dental insurance companies or from one (1) or more health maintenance organizations authorized to do business in this state, a policy or policies of group health, hospitalization, medical, and major medical insurance or health maintenance organization coverage encompassing all or any class or classes of state employees. Health insurance coverage provided to state employees under this section shall, at a minimum, contain the same benefits as provided under Kentucky Kare Standard as of January 1, 1994. All state employees and other persons for whom the insurance or health maintenance organization coverage is provided or made available shall annually be given an option to elect either standard insurance coverage or coverage by a health maintenance organization; if a qualified health maintenance organization is not engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside, the state employees may annually be given the option to elect either standard insurance coverage or coverage by a health maintenance organization which has been licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board or its successor agency and issued a certificate of authority by the Department of Insurance as a health maintenance organization or as a nonprofit hospital, medical-surgical, dental, and health service corporation and which is engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside. The policy or policies shall be approved by the commissioner of insurance and may contain the provisions he approves, whether or not otherwise permitted by the insurance laws. It is intended that either insurance or health maintenance organization coverage may be made available for state employees, except that the procuring of each is permissive.

(3) The secretary of the Finance and Administration Cabinet, upon the recommendation of the commissioner of personnel, may procure from one (1) or more dental insurance companies, one (1) or more health maintenance organizations, one (1) or more nonprofit hospital, medical-surgical, dental, and health service corporations organized under subtitle 32 of KRS Chapter 304, or one (1) or more prepaid dental plan organizations organized under subtitle 43 of KRS Chapter 304, a policy or policies of group dental insurance or prepaid dental plan coverage encompassing all or any class or classes of state employees. All state employees for whom the dental insurance or prepaid dental plan coverage is provided shall annually be given an option to elect either standard dental insurance coverage, health maintenance organization coverage, or coverage by a prepaid dental plan. The policy or policies shall be approved by the commissioner of insurance and may contain the provisions he approves, whether or not otherwise permitted by the insurance laws. It is intended that either dental insurance or prepaid dental plan coverage may be made available for state employees, except that the procuring of each is permissive.

(4) The premiums may be paid by the policyholder:

(a) Wholly from funds contributed by the insured employee, by payroll deduction or otherwise;

(b) Wholly from funds contributed by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government; or

(c) Partly from each, except that any premium due for health maintenance organization coverage or prepaid dental plan coverage over the premium amount contributed by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government for any other insurance coverage shall be paid by the employee.

(5) If an employee moves his place of residence or employment out of the service area of a health maintenance organization or of a prepaid dental plan organization, under which he has elected coverage, into either the service area of another health maintenance organization or prepaid dental plan organization or into an area of the state not within a health maintenance organization service area or prepaid dental plan service area, the employee shall be given an option, at the time of the move or transfer, to elect coverage either by the health maintenance organization or prepaid dental plan organization into which service area he moves or is transferred or to elect standard insurance coverage offered by the employer.

(6) No payment of premium by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government shall constitute compensation to an insured employee for the purposes of any statute fixing or limiting the compensation of such an employee. Any premium or other expense incurred by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government shall be considered a proper cost of administration.

(7) The policy or policies may contain the provisions with respect to the class or classes of employees covered, amounts of insurance or coverage for designated classes or groups of employees, policy options, terms of eligibility, continuation of insurance or coverage after retirement, and other provisions the commissioner of insurance may approve.

(8) The policy or policies shall contain the provision that employees or retired employees shall be allowed to change health insurance carriers during the reopening period without any limitation for pre-existing conditions if the employee has met the pre-existing condition limitation upon initial employment or reemployment with the group.

(9) The secretary of the Finance and Administration Cabinet is authorized to perform all acts necessary or advisable for the purpose of contracting for and maintaining insurance, prepaid dental plan organization coverage, and health maintenance organization coverage under the provisions of this section.

(10) Group rates under the insurance or health maintenance organization coverage acquired under this section shall be made available to the disabled child of a state employee regardless of the child's age if the entire premium for the disabled child's coverage is paid by the state employee. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.

(11) The health insurance contract or contracts for state employees shall be entered into for a period of not less than two (2) years, except the contract awarded October 1, 1984, shall be awarded for the period between October 1, 1984, and June 30, 1986.

(12) The commissioner of personnel shall appoint twenty-four (24) persons to an Advisory Committee of State Health Insurance Subscribers to advise the commissioner or his designee regarding the state health insurance program for state employees. The commissioner shall appoint, from a list of names submitted by appointing authorities, members representing school districts from each of the seven Supreme Court districts, members representing state government from each of the seven Supreme Court districts, two (2) members representing retirees under age sixty-five (65), one (1) member representing local health departments, and three (3) members at large. The commissioner shall also appoint two (2) members from a list of five (5) names submitted by the Kentucky Education Association, and two (2) members from a list of five (5) names submitted by the largest state employee organization of nonschool state employees. The advisory committee shall be appointed in November of each year and shall meet quarterly.

(13) Notwithstanding any other provision of law to the contrary, the policy or policies provided to state employees pursuant to this section shall not provide coverage for obtaining or performing an abortion, nor shall any state funds be used for the purpose of obtaining or performing an abortion on behalf of state employees or their dependents."; and

By renumbering the sections accordingly.

Floor Amendment No. 5 to the Committee Substitute No. 2 to **HB 315**, by Representative Damron:

On page 30, line 17, after "*Act*" by inserting "***until September 1, 1998,***".

Floor Amendment No. 2 to the Committee Substitute No. 2 to **HB 315**, by Representative Anderson:

On page 50, line 22, by deleting "***and***"; and

On page 50, line 24, by deleting the period and inserting in lieu thereof "***; and***"; and

On page 50, after line 24, by inserting:

"***(h) Assessments from each insurer, stop-loss carrier, and third-party administrator in an amount of one dollar ($1) per month per covered life insured by each insurer, stop-loss carrier, and third-party administrator. Stop-loss carriers may exclude from the calculation of their assessment covered lives who the stop-loss carrier demonstrates have been counted by the insurer or the third-party administrator.***".

Floor Amendment No. 3 to **HB 106**, by Representative Geveden:

On page 1, line 24, after the semicolon "***;***" by deleting the word "***and***"; and

On page 2, line 2, by deleting the period "***.***" and inserting in lieu thereof "***; and***"; and

On page 2, between lines 2 and 3, by inserting the following:

"***(d) Any person who does not provide proof of health insurance to the circuit clerk in accordance with subsection (4) of this section.***

(4) A person over the age of twenty-one (21) years who operates or rides as a passenger on a motorcycle without wearing protective headgear shall provide proof of health insurance coverage to the circuit clerk in the county in which the person resides. The circuit clerk shall affix a decal to the applicant's operator's license signifying that the applicant has health insurance and may operate or ride as a passenger on a motorcycle without wearing protective headgear. The applicant shall pay a fee of two dollars ($2) to the circuit clerk for the decal."; and

On page 2, line 3, by renumbering "***(4)***" as "***(5)***"; and

On page 2, line 5, by renumbering "***(5)***", as "***(6)***"; and

On page 2, line 11, by renumbering "***(6)***", as "***(7)***"; and

On page 2, line 16, by renumbering "***(7)***", as "***(8)***"; and

On page 2, after line 22, by inserting the following new section:

"Section 2. KRS 189.990 is amended to read as follows:

(1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456 and 189.960, shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense. Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars ($20) nor more than two thousand dollars ($2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars ($11) nor more than thirty dollars ($30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.

(2) (a) Any person who violates the weight provisions of KRS 189.221, 189.222, 189.226, 189.230, 189.270, or 189.271 shall be fined two cents (2¢) per pound for each pound of excess load when the excess is two thousand (2,000) pounds or less, three cents (3¢) per pound when the excess exceeds two thousand (2,000) pounds and is three thousand (3,000) pounds or less, five cents (5¢) per pound when the excess exceeds three thousand (3,000) pounds and is four thousand (4,000) pounds or less, seven cents (7¢) per pound when the excess exceeds four thousand (4,000) pounds and is five thousand (5,000) pounds or less, and nine cents (9¢) per pound when the excess exceeds five thousand (5,000) pounds but in no case shall the fine be less than sixty dollars ($60) nor more than five hundred dollars ($500).

(b) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, or 189.490, for which another penalty is not specifically provided, shall be guilty of a misdemeanor and shall be fined not less than ten dollars ($10) nor more than five hundred dollars ($500).

(c) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.

(3) (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars ($15).

(b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars ($35) nor more than two hundred dollars ($200).

(4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.

(5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars ($100) nor more than two hundred dollars ($200) or imprisoned not less than thirty (30) days nor more than sixty (60) days or both. For each subsequent offense occurring within three (3) years, such person shall be fined not less than three hundred dollars ($300) nor more than five hundred dollars ($500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.

(6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars ($15) in excess of the cost of the repair of the road.

(7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars ($20) nor more than fifty dollars ($50).

(8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100).

(9) Any person who violates KRS 189.530 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.

(10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.

(11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars ($30) nor more than one hundred dollars ($100) for each offense.

(12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and in case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.

(13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars ($20) nor more than twenty-five dollars ($25).

(15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars ($100), and upon subsequent convictions, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or imprisoned for thirty (30) days, or both.

(17) (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.

(b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name such vehicle used in the transportation of inflammable liquids or explosives is licensed, such person shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500). Each violation shall constitute a separate offense.

(18) Any person who abandons a vehicle upon the right-of-way of a state highway for seven (7) consecutive days shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.

(19) Every person violating KRS 189.393 shall be punished upon a first conviction by imprisonment for a period of not less than five (5) days nor more than ninety (90) days, or by fine of not less than thirty-five dollars ($35) nor more than five hundred dollars ($500), or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than ten (10) days nor more than six (6) months, or by a fine of not less than sixty dollars ($60) nor more than one thousand dollars ($1,000), or by both such fine and imprisonment.

(20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.

(21) A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of such a regulation shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.

(22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars ($500) or imprisoned for not more than six (6) months, or both.

(23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars ($25) nor more than three hundred dollars ($300).

(24) Any person who violates the provisions of KRS 189.125(3) shall be fined fifty dollars ($50).

(25) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars ($25).

(26) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.

(27) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle, may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:

(a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and

(b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.

(28) Any person who violates the provisions of Section 1 of this Act shall have his license suspended for a period of ninety (90) days and be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500).".

Floor Amendment No. 4 to **HB 106**, by Representative Geveden:

On page 2, after line 22, by inserting the following:

"***(8) Any person who operates or rides as a passenger on a motorcycle without wearing protective headgear and who does not have health insurance shall waive his right to treatment by any hospital, clinic, doctor, emergency medical responder as defined by KRS Chapter 211, or paramedic as defined by KRS Chapter 311 in the Commonwealth. Any person who operates or rides as a passenger on a motorcycle without wearing protective headgear and who does not have health insurance shall waive his right to sue any hospital, clinic, doctor, emergency medical responder as defined by KRS Chapter 211, or paramedic as defined by KRS Chapter 311 for not providing treatment.***".

Motions, Petitions and Communications (Continued)

Representative DeWeese moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative DeWeese moved that he be recorded as voting "yea" on **HB 340, HB 343, HB 354, HB 356, HB 357, HB 358, HB 362,** and **HB 364**. Agreed.

Representative Mason moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Mason moved that his vote be changed from "nay" to "yea" on **HCR 46**. Agreed.

Representative Moberly moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Moberly moved that he be recorded as voting "yea" on **HB 365**. Agreed.

The following members filed requests to have their names added as co-sponsors of Bills under rules previously suspended: **HB 13, HB 26, HB 78, HB 99, HB 315, HB 464**, Representative Brandstetter; **HB 36**, Representatives L. Clark, Bratcher, Horlander; **HB 106**, Representatives Hoffman, Horlander, Hatcher, Miller; **HB 230, HB 389**, Representative Hoffman; **HB 289**, Representative Richards; **HB 329**, Representative Nesler; **HB 386**, Representative Cave.

Announcements

The following meetings were announced:

Committee Chairs, Room 111, upon adjournment.

Judiciary, Room 131, upon adjournment.

Northern Kentucky Chamber of Commerce Reception, February 11, 1998, 5:00 p.m.

Adjournment

Representative Stumbo moved that the House adjourn until 10:00 a.m., February 6, 1998.

On the roll call the vote was **Yeas 72**--J. Adams, R. Adams, Adkins, Allen, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Brandstetter, Bratcher, Brown, Bruce, Burch, D. Butler, D. D. Butler, Callahan, Cave, L. Clark, P. Clark, J. Clarke, Coleman, Colter, Crimm, Curd, Damron, DeWeese, Ford, Gee, Geveden, Gooch, D. Graham, G. Graham, Hatcher, Haydon, Hoffman, Horlander, Jenkins, Johns, Kerr, Lee, Lindsay, Marcotte, Marzian, McKee, Miller, Moberly, Murgatroyd, Napier, Newsome, Palumbo, Polston, Rader, Reinhardt, Richards, Riner, Scott, Siler, Simpson, Sims, Stacy, Stine, Stumbo, Thomas, Treesh, Vincent, Walton, Weaver, Wilkey, Worthington, Yonts, Zimmerman. **Nays 6**--Crall, Hoover, Maricle, Nesler, Nunn, Stewart.

The motion to adjourn was adopted.

FRIDAY, FEBRUARY 6, 1998

TWENTY-SECOND LEGISLATIVE DAY

The House was called to order by Speaker Richards.

Prayer by Reverend Kent Allender, Corinth Christian Church, Corinth.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Allen, Brandstetter, Collins, Deskins, Hatcher, Jordan, Long, Marzian, Miller, Pope, Riggs, Stein, Turner, Wayne, and Zimmerman.

Representative Ballard moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative Ballard moved that the reading of the Journal of February 5, 1998, be dispensed with and the same approved. Agreed.

Representative Ballard moved that the Rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Ballard moved that all properly filed co-sponsor requests be approved. Agreed.

Report On Enrolled Bills

HB 6 and **HB 28** delivered to the Senate and signed by the President. Delivered to the Governor on February 5 at 5:08 p.m.

Senate Message

Announcing passage of **SB 38, SB 68, SB 101, SB 102, SB 123, SB 145, SB 155, SB 162,** and **SB 171**. (Time: 10:10 a.m.)

Report On Enrolled Bills (Continued)

The Committee on Enrollment reported that **HB 67** has been examined and found correctly enrolled. Said Bill was read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -10:12 a.m.)

Introduction of Bills

HB 528, by Representatives Horlander, Marzian, Mason, L. Clark, Bowling, Geveden, Callahan, Jenkins, Wayne, Lee, Stacy, Barrows, Bruce, D. D. Butler, Wilkey, P. Clark, Clarke, Weaver, Miller, and Zimmerman: AN ACT relating to public purchasing.

HB 529, by Representative Heleringer: AN ACT relating to living wills.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills:

Banking and Insurance: **HB 514, HB 515, HB 516, HB 527**

Cities: **HB 526, SB 198**

Counties and Special Districts: **SB 182**

Education: **HB 511, HB 513, HB 519, HB 520, HB 522**

Elections and Constitutional Amendments: **HB 523**

Health and Welfare: **HB 512, HB 518**

Judiciary: **HB 509, HB 525**

Natural Resources and Environment: **HB 510**

State Government: **SB 165, SB 176, SB 178**

Tourism Development and Energy: **HB 517, HB 521**

Transportation: **HB 524**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills and Resolution have been posted for Committee consideration:

State Government: **HCR 59, SB 93, SB 148, SB 154, HB 36, HB 271, HB 272, HB 273, HB 274, HB 275, HB 300, HB 347, HB 348, HB 350, HB 351, HB 360, HB 367, HB 428, HB 430, HB 492**

Education: **HB 50, HB 146, HB 257, HB 307, HB 308, HB 396, HB 418**

Calendar

HB 267, HB 374, HB 390, HB 402, HB 409, HB 429, HB 286, HB 420, HB 421, HB 252, HB 101, HB 258, HB 317, HB 346, HB 407, SB 17, and **SCR 3** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Recess

Representative Stumbo moved to suspend the rules to allow the House to recess for a Committee on Rules meeting in the Speaker's Office. Agreed. At the appointed hour, the Speaker resumed the Chair and called the House to order.

Representative Stumbo moved that the rules be suspended for a Committee on Rules Report. Agreed.

Report of Committees

The Committee on Rules reported that the following Bill has been recommitted:

State Government: **SB 26**

Floor Amendments

Floor Amendment No. 5 to **HB 106**, by Representative Gray:

On page 1, line 17, after the subsection number "(3)" insert "***Except as provided in subsection (4) of this section,***"; and

On page 1, line 17, after the subsection number "(3)" change the initial capital letter "***T***" on the word "***The***" to a lowercase "***t***"; and

On page 2, line 2, delete the period "." and insert "***; and***"; and

On page 2, between lines 2 and 3, insert:

"***(d) All persons, regardless of age, operating a motorcycle on any public highway other than a divided limited-access highway with four (4) or more lanes separated by a median.***

(4) A person operating a motorcycle in conjunction with a parade shall be exempt from the provisions of subsection (3) of this section requiring the use of protective headgear."; and

On page 2, line 3, by renumbering "***(4)***" as "***(5)***"; and

On page 2, line 5, by renumbering "***(5)***" as "***(6)***"; and

On page 2, line 11, by renumbering "***(6)***" as "***(7)***"; and

On page 2, line 16, by renumbering "***(7)***" as "***(8)***".

Floor Amendment No. 8 to the Committee Substitute No. 2 to **HB 315**, by Representative Crall:

On page 100, after line 14, by inserting:

"Section 58. KRS 216B.250 is amended to read as follows:

(1) For purposes of this section, "paying patient" means persons receiving health care services who pay directly for services rendered, patients with private health insurance or health maintenance organization coverage, persons receiving Medicaid or Medicaid benefits under Title XVIII and Title XIX of the Social Security Act and persons receiving veteran's health care benefits. "Paying patient" does not include medically indigent persons with no source of payment whatsoever.

(2) ***(a)*** When a copy of an itemized statement is requested by any paying patient, each health facility shall furnish to the patient within thirty (30) days of the patient's discharge or within fifteen (15) days of the patient's request, whichever is later, one (1) copy free of charge of the itemized statement of services rendered and charges incurred by the patient.

(b) An itemized statement of services rendered and charges incurred by the patient shall be included with the invoice sent by a health facility to the patient.

(c) The itemized statement shall be stamped "Kentucky Revised Statutes prohibit the use of this statement for insurance payment purposes where benefits have been assigned."

(3) Each health facility shall post in a publicly visible place in their admission, outpatient areas and, where applicable, emergency areas that an itemized statement is available to any paying patient upon request.

(4) The itemized statement rendered shall be the record maintained by the health facility that details the charges made for services rendered to patients and shall indicate whether an assignment of benefits has been obtained.

(5) Each health facility shall designate and make available appropriate staff to provide, upon patient request, an explanation of charges listed in the itemized statement.

(6) If a health facility knows of a discrepancy in the total charges as reported in an itemized statement and that which is reported to a third party payor, or at any time that a health facility becomes aware of such a discrepancy, the health facility shall provide the patient and third party payor with notification, an explanation and, if applicable, any reconciliation of the discrepancy in total charges."; and

On page 100, line 15, by deleting "58" and inserting "59"; and

On page 100, line 19, by deleting "59" and inserting "60"; and

On page 101, line 8, by deleting "60" and inserting "61"; and

On page 101, line 11, by deleting "61" and inserting "62".

Floor Amendment No. 9 Title to the Committee Substitute No. 2 to **HB 315**, by Representative Crall:

By amending the title to read as follows: AN ACT relating to health care reform.

Floor Amendment No. 10 to the Committee Substitute No. 2 to **HB 315**, by Representative Anderson:

On page 49, line 26, after "*(a)*" by deleting the remainder of the line and inserting in lieu thereof "*Assessments from each insurer, stop-loss carrier, and third-party administrator in an amount of one dollar ($1) per month per covered life insured by each insurer, stop-loss carrier, and third-party administrator. Stop-loss carriers may exclude from the calculation of their assessment covered lives who the stop-loss carrier demonstrates have been counted by the insurer or the third-party administrator;*"; and

On page 101, by deleting lines 8, 9, and 10 in their entirety; and

On page 101, line 11, by deleting "61" and inserting "60".

Floor Amendment No. 11 to the Committee Substitute No. 2 to **HB 315**, by Representative Damron:

On page 53, line 10, before "*Coverage*" by inserting "*(1)*"; and

On page 53, after line 12, by inserting:

"*(2) The state employee health insurance fund established under KRS 18A.2281 shall be deemed an insurer as defined in Section 1 of this Act only for the coverage it provides to individuals not state employees or to small groups and only until such time as this coverage terminates in accordance with subsection (1) of this section.*

(3) The state employee health insurance fund established under KRS 18A.2281 shall be subject to assessments and reimbursements under Sections 15 to 23 of this Act only for the premium collected and the claims paid for individuals who are not state employees and the small groups which are covered by the fund.

(4) Except as provided in this section, the state employee health insurance fund established under KRS 18A.2281 shall not be deemed an insurer for any other purpose in this chapter and, in no event, at any time more than twelve (12) months after the effective date of this Act shall it be deemed to be an insurer.".

Orders of the Day

HB 345 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 345** be passed.

On the roll call the vote was: Yeas 84, Nays 0 (See February 6 , 1998 roll call on **HB 345** - Appendix.) **HB 345** was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 345** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 341 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 341** be passed.

On the roll call the vote was: Yeas 79, Nays 1 (See February 6 , 1998 roll call on **HB 341** - Appendix.) **HB 341** was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 341** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 83 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 83** be passed.

On the roll call the vote was: Yeas 84, Nays 0 (See February 6, 1998 roll call on **HB 83** - Appendix.) **HB 83** was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 83** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 233 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative A. Arnold moved that **HB 233** be passed.

On the roll call the vote was: Yeas 81, Nays 3 (See February 6 , 1998 roll call on **HB 233** - Appendix.) **HB 233** was passed and the title agreed to. Representative A. Arnold moved that the vote by which **HB 233** was passed be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions, Report of Committees and Posting of Bills and Resolutions for Consideration. Agreed.

Introduction of Bills

HB 530, by Representative Treesh: AN ACT relating to revenue and taxation.

HB 531, by Representative L. Clark: AN ACT relating to guide dogs.

HB 532, by Representatives F. Curd, Murgatroyd, and D. Graham: AN ACT relating to teachers' retirement and declaring an emergency.

HB 533, by Representatives Heleringer, Kerr, Brandstetter, Cox, Miniard, Ford, Brown, Hogancamp, Haydon, Stine, Marcotte, Jenkins, D. D. Butler, Weaver, P. Clark, Maricle, Murgatroyd, Crall, Stewart, Worthington, Gee, Hoover, Scott, Polston, Anderson, Baugh, Nunn, Rader, Cave, Bruce, Treesh, Allen, Burch, Walton, Horlander, Crimm, D. Butler, Reinhardt, J. Arnold, A. Arnold, Napier, Long, and Hoffman: AN ACT relating to individual income tax.

HB 534, by Representative Gray: AN ACT relating to unemployment insurance.

HB 535, by Representative Moberly: AN ACT relating to school-based decision making.

HB 536, by Representative Moberly: AN ACT relating to professional development.

HB 537, by Representatives Wilkey, Vincent, Geveden, and Bowling: AN ACT relating to court reporters.

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Elections and Constitutional Amendments: **HB 474, HB 477**

Licensing and Occupations: **HB 452, HB 459**

Banking and Insurance: **HB 493**

Health and Welfare: **HB 476, HB 468, HB 406, HB 410**

Appropriations and Revenue: **HB 433, HB 280, HB 45, HB 328, HB 394, HB 32**

Floor Amendments (Continued)

Floor Amendment No. 6 to the Committee Substitute to **HB 226**, by Representative Crimm:

On page 2, line 8 by deleting "***or***" and by removing the "[" and strike through from ", mortgage loan company,"; and On page 2, line 9 by removing the strike through and "]" from "mortgage loan broker, or pawn broker".

Motions, Petitions and Communications (Continued)

Representative Crenshaw moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Crenshaw moved that he be recorded as voting "yea" on **HB 67, HB 340, HB 343, HB 354, HB 356, HB 357, HB 358, HB 362, HB 364, HB 365**, and **HB 383**. Agreed.

Representative D. Graham moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative D. Graham moved that he be recorded as voting "yea" on **HB 83**. Agreed.

Representative Stumbo moved that **HB 349** be withdrawn. Agreed.

The following members filed requests to have their names added as co-sponsors of Bills under rules previously suspended: **HB 74, HB 410**, Representative D. D. Butler; **HB 128**, Representative Nunn; **HB 379**, Representative Alexander; **HB 386**, Representative DeWeese; **HB 447**, Representative Colter.

The following members filed requests to have their names withdrawn as co-sponsors of Bills under rules previously suspended: **HB 448**, Representative Colter; **HB 455**, Representative Cave.

Adjournment

Representative Stumbo moved that the House adjourn until 4:00 p.m., February 9, 1998.

On the roll call the vote was **Yeas 71**--J. Adams, R. Adams, Adkins, Alexander, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Brown, Burch, D. Butler, D. D. Butler, Callahan, Cave, L. Clark, P. Clark, J. Clarke, Coleman, Colter, Cox, Crenshaw, Crimm, Curd, Damron, DeWeese, Ford, Geveden, D. Graham, G. Graham, Gray, Haydon, Hoffman, Hogancamp, Hoover, Horlander, Jenkins, Johns, Kerr, Lee, Lindsay, Lovell, Marcotte, Mason, Moberly, Murgatroyd, Napier, Nesler, Newsome, Palumbo, Polston, Rader, Rasche, Reinhardt, Richards, Riner, Scott, Siler, Simpson, Sims, Stacy, Stine, Stumbo, Thomas, Treesh, Vincent, Walton, Weaver, Wilkey, Worthington, Yonts. **Nays 8**--Bowling, Bratcher, Crall, Gooch, Maricle, McKee, Nunn, Stewart.

The motion to adjourn was adopted.

MONDAY, FEBRUARY 9, 1998

TWENTY-THIRD LEGISLATIVE DAY

The House was called to order by Speaker Richards.

Prayer by Reverend Jana Hall, First Presbyterian Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Stein and Nesler.

Representative Ballard moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative Ballard moved that the reading of the Journal of February 6, 1998, be dispensed with and the same approved. Agreed.

Representative Ballard moved that the Rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Ballard moved that all properly filed co-sponsor requests be approved. Agreed.

Representative Murgatroyd moved that the rules be suspended to grant floor privileges and to act upon a Legislative Citation. Agreed. Representative Murgatroyd moved the adoption of the following **Legislative Citation No. 61**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby pays tribute to The Honorable William Schmaedecke in recognition of twenty years of outstanding and meritorious service as Kenton County District Judge. He was one of 113 original district court judges of the Commonwealth instrumental in implementing the 1976 judicial article creating the unified court system of Kentucky. Credited with making the District Court System what it is today, he is one of 19 remaining members of that original group still serving in their respective districts and remains the last of the nine original district judges elected in 1977 from Boone, Campbell and Kenton Counties. Inasmuch as he is now serving his fifth term on the District Court and has determined that, having heard 130,000 cases, having tried more jury cases than any sitting judge in Northern Kentucky and having sat longer in Juvenile Court than any other judge in the area, he will not seek re-election; therefore, the members of the House of Representatives are indeed pleased to join with Representative Richard Murgatroyd in expressing high praise and recognition to him for his service to this great Commonwealth and in wishing him continued good fortune in his retirement. **Legislative Citation No. 61** was adopted without objection.

Floor Amendments

Floor Amendment No. 1 to the Committee Substitute to **HB 395**, by Representative Callahan:

On page 1, line 25, by deleting the word "***fifty (50)***" and inserting in lieu thereof the word "***sixty (60)***"; and
On page 2, line 2, by deleting the word "***seventy-five (75)***" and inserting in lieu thereof the word "***sixty (60)***".

Introduction of Bills and Resolutions

HB 538, by Representatives Kerr, Hogancamp, and Murgatroyd: AN ACT relating to criminal justice matters.

HB 539, by Representatives Weaver, Miller, and Haydon: AN ACT relating to liability insurance for members of the Kentucky National Guard.

HB 540, by Representative Collins: AN ACT relating to equine imports.

HB 541, by Representatives Johns and Coleman: AN ACT relating to Medicaid fraud and abuse.

HR 65, by Representative G. Graham: A RESOLUTION commending the Capital City Optimist Club of Frankfort for their support in child safety.

HR 66, by Representatives Hatcher and Wayne: A RESOLUTION commemorating the 200th anniversary of the University of Louisville.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills:

Agriculture and Small Business: **HB 531**

Appropriations and Revenue: **HB 530, HB 533**

Education: **HB 532, HB 535, HB 536**

Health and Welfare: **SB 68, SB 145**

Judiciary: **HB 529, HB 537, SB 171**

Labor and Industry: **HB 534**

State Government: **HB 528, SB 155, SB 162**

Tourism Development and Energy: **SB 123**

Transportation: **SB 38, SB 101, SB 102**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills and Resolution have been posted for Committee consideration:

Transportation: **SB 20, HB 431, HB 426**

Labor and Industry: **HB 487**

Agriculture and Small Business: **HB 480, HB 483, HB 505, HJR 63, SB 187**

Report of Committees

The Committee on Judiciary reported **HB 142,** with Committee Substitutes and Committee Amendment attached thereto, with the expression of opinion that the same should pass. Ordered referred to the Committee on Rules.

The Committee Substitute No. 2 to **HB 142** is as follows:

AN ACT relating to child protection.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 600.010 is amended to read as follows:

(1) KRS Chapters 600 to 645 shall be known as the Kentucky Unified Juvenile Code.

(2) KRS Chapters 600 to 645 shall be interpreted to effectuate the following express legislative purposes:

- (a) The Commonwealth shall direct its efforts to ***promoting protection of children; to*** the strengthening and encouragement of family life for the protection and care of children; to strengthen and maintain the biological family unit; and to offer all available resources to any family in need of them;
- (b) It also shall be declared to be the policy of this Commonwealth that all efforts shall be directed toward providing each child a safe and nurturing home;
- (c) The court shall show that other less restrictive alternatives have been attempted or are not feasible in order to insure that children are not removed from families except when absolutely necessary;
- (d) Any child brought before the court under KRS Chapters 600 to 645 shall have a right to treatment reasonably calculated to bring about an improvement of his condition; and
- (e) It shall further be the policy of this Commonwealth to provide judicial procedures in which rights and interests of all parties, including the parents, are recognized and all parties are assured prompt and fair hearings. Unless otherwise provided, such protections belong to the child individually and may not be waived by any other party.

Section 2. KRS 600.020 is amended to read as follows:

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

(1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian, or other person exercising custodial control or supervision of the child:

- ***(a)*** Inflicts or allows to be inflicted upon the child physical or emotional injury ***as defined in this section*** by other than accidental means;

(b) Creates or allows to be created a risk of physical or emotional injury ***as defined in this section*** to the child by other than accidental means;

(c) Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005(12);

(d) Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;

(e) Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;

(f) Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;

(g) Abandons or exploits ***the***[~~such~~] child; ***or***

(h) Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing ***the person's***[~~his~~] religious beliefs shall not be considered a negligent parent solely because ***of failure***[~~he fails~~] to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child;

(2) "Boarding home" means a privately owned and operated home for the boarding and lodging of individuals which is approved by the Department of Juvenile Justice or the cabinet for the placement of children committed to the department or the cabinet;

(3) "Cabinet" means the Cabinet for Human Resources;

(4) "Certified juvenile holding facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training developed and approved by, the Justice Cabinet after consultation with the Cabinet for Human Resources and other appropriate state agencies;

(5) "Child" means any person who has not reached his eighteenth birthday unless otherwise provided;

(6) "Child-caring facility" means any facility or group home other than a state facility, or one certified by an appropriate agency as operated primarily for educational or medical purposes, providing residential care on a twenty-four (24) hour basis to children not related by blood, adoption, or marriage to the person maintaining the facility;

(7) "Child-placing agency" means any agency, other than a state agency, which supervises the placement of children in foster family homes or child-caring facilities or which places children for adoption;

(8) "Clinical treatment facility" means a facility with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of mentally ill children. The treatment program of such facilities shall be supervised by a qualified mental health professional;

(9) "Commitment" means an order of the court which places a child under the custodial control or supervision of the Cabinet for Human Resources, Department of Juvenile Justice, or another facility or agency until the child attains the age of eighteen (18) unless the committing court terminates or extends the order;

(10) "Community-based facility" means any nonsecure, homelike facility licensed, operated, or permitted to operate by the Department of Juvenile Justice or the cabinet, which is located within a reasonable proximity of the child's family and home community, which affords the child the opportunity, if a Kentucky resident, to continue family and community contact;

(11) "Complaint" means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;

(12) "Court" means the juvenile session of District Court unless a statute specifies the adult session of District Court or the Circuit Court;

(13) "Court-designated worker" means that organization or individual delegated by the administrative office of the courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating, entering into, and supervising diversion agreements and performing such other functions as authorized by law or court order;

(14) "Deadly weapon" has the same meaning as it does in KRS 500.080;

(15) "Department" means the Department for Social Services;

(16) "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;

(17) "Detain" means, upon a valid court order, to confine a child pending further proceedings in an intermittent holding facility, a juvenile holding facility, or a secure juvenile detention facility;

(18) "Diversion agreement" means an agreement entered into between a court-designated worker and a child charged with the commission of offenses set forth in KRS Chapters 630 and 635, the purpose of which is to serve the best interest of the child and to provide redress for those offenses without court action and without the creation of a formal court record;

(19) "Emergency shelter" is a group home, private residence, foster home, or similar homelike facility which provides temporary or emergency care of children and adequate staff and services consistent with the needs of each child;

(20)[~~ "Emotional harm" means harm to the mental or psychological capacity or emotional stability of a child as testified to by a qualified mental health professional. The age and development of the child shall be considered together with the child's culture or environment in the diagnosis and determination of emotional harm;~~

~~(21)~~] "Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in ***the child's***[~~his~~] ability to function within a normal range of performance and behavior with due regard to his age, development, culture, and environment ***as testified to by a qualified mental health professional***;

(21)[~~(22)~~] "Family service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;

(22)[~~(23)~~] "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;

(23)[~~(24)~~] "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;

(24)[~~(25)~~] "Habitual runaway" means any child who has been found by the court to have been absent from his place of lawful residence without the permission of his custodian for at least three (3) days during a one (1) year period;

(25)[~~(26)~~] "Habitual truant" means any child who has been found by the court to have been absent from school without valid excuse for three (3) or more days during a one (1) year period or tardy for three (3) or more days on at least three (3) occasions during a one (1) year period;

(26)[~~(27)~~] "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;

(27)[~~(28)~~] "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;

(28)[~~(29)~~] "Informal adjustment" means an agreement reached among the parties, with consultation, but not the consent, of the victim of the crime or other persons specified in KRS 610.070 if the victim chooses not to or is unable to participate, after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition;

(29)[~~(30)~~] "Intentionally" means, with respect to a result or to conduct described by a statute ***to*** which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;

(30)[~~(31)~~] "Intermittent holding facility" means a physically secure setting, which is entirely separated from sight and sound from all other portions of a jail containing adult prisoners, in which children are supervised and observed on a regular basis;

(31)[~~(32)~~] "Juvenile holding facility" means a physically secure setting, approved by the Justice Cabinet, which is an entirely separate facility or portion or wing of a building containing an adult jail, which provides total separation between juvenile and adult facility spatial areas and which is staffed by sufficient certified juvenile holding facility staff to provide twenty-four (24) hours per day supervision. Employees of jails who meet the qualifications of the Justice Cabinet may supervise juvenile as well as adult prisoners;

(32)[~~(33)~~] "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that the program developed on the child's behalf is no more harsh, hazardous, or intrusive than necessary; or involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury; and is conducted at the suitable available facility closest to the child's place of residence;

(33)[~~(34)~~] "Motor vehicle offense" means any violation of the nonfelony provisions of KRS Chapters 186, 189 or 189A, KRS 177.300, 304.39-110, or 304.39-117;

(34) "Needs of the child" means necessary food, clothing, health, shelter, and education.

(35) "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;

(36) "Parent" means the biological or adoptive mother or father of a child;

(37) "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;

(38) "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court

involvement in the child's case;

(39) "Physical injury" means substantial physical pain or any impairment of physical condition;

(40) "Public offense action" means an action brought in the interest of a child who is accused of committing an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense;

(41) "Qualified mental health professional" means:

(a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;

(b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties, and who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

(c) A licensed psychologist at the doctoral level or certified at the master's level under the provisions of KRS Chapter 319 who has been designated by the Kentucky Board of Examiners of Psychology as competent to make examinations under KRS Chapters 600 to 645;

(d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse with a bachelor's degree in nursing from an accredited institution who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center; or

(e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;

(42) "Residential treatment facility" means a facility with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of children;

(43) "Retain in custody" means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court-designated worker for the purpose of making preliminary inquiries;

(44) "School personnel" means those certified persons under the supervision of the local public or private education agency;

(45) "Secretary" means the secretary of the Cabinet for Human Resources;

(46) "Secure juvenile detention facility" means any facility used for the secure detention of children other than a jail, police station, lockup, intermittent holding facility, or any building which is a part of, or attached to, any facility in which adult prisoners are confined or which shares staff with a facility in which adult prisoners are confined;

(47) "Secure facility for residential treatment" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;

(48) "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily ***member or*** organ;

(49) "Sexual abuse" includes, but is not necessarily limited to, any contacts or interactions ~~[between a child and an adult]~~in which the parent, guardian, or other person having custodial control or supervision of the child or responsibility for his welfare, uses or allows, permits, or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;

(50) "Sexual exploitation" includes, but is not limited to, a situation in which a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;

(51) "Status offense action" is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders. Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew or possession of alcoholic beverages;

(52) "Take into custody" means the procedure by which a peace officer or other authorized person initially assumes custody of

a child. A child may be taken into custody for a period of time not to exceed two (2) hours;

(53) "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed;

(54) "Youth alternative center" means a nonsecure facility, approved by the Department of Corrections, for the detention of juveniles, both prior to adjudication and after adjudication, which meets the criteria specified in KRS 610.267 and the administrative regulations promulgated thereunder; and

(55) "Youthful offender" means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 635 or 640 and who is subsequently convicted in Circuit Court.

Section 3. KRS 605.090 is amended to read as follows:

(1) Unless precluded by law, any child committed to the Department of Juvenile Justice or the cabinet may by the decision of the Department of Juvenile Justice or the cabinet or its designee, at any time during the period of his commitment, be:

(a) Upon fourteen (14) days' prior written notice to the court, discharged from commitment. Written notice of discharge shall be given to the committing court and to any other parties as may be required by law;

(b) Placed in the home of ***the child's***~~[his]~~ parents, ***in the home of a relative,*** a suitable foster home, or boarding home, upon such conditions as the Department of Juvenile Justice or the cabinet may prescribe and subject to visitation and supervision by a family service worker or juvenile probation and parole officer. At the time a committed child is placed in the home of his parents by the Department of Juvenile Justice or the cabinet, the parents shall be informed in writing of the conditions of the placement and the criteria that will be used to determine whether removal is necessary;

(c) Placed in one (1) of the facilities or programs operated by the Department of Juvenile Justice or the cabinet, except that no child committed under the provisions of KRS 610.010(1)(b), (c), or (d) or any child ten (10) years of age or under shall be placed in a facility operated by the Department of Juvenile Justice for children adjudicated as public offenders;

(d) Placed in a child-caring facility operated by a local governmental unit or by a private organization willing to receive the child, upon such conditions as the cabinet may prescribe;

(e) Treated as provided in KRS Chapter 645;

(f) Following the transfer or placement of a child pursuant to subsections (b), (c), (d), or (e) of this section, the Department of Juvenile Justice or the cabinet shall, within fourteen (14) days, excluding weekends and holidays, give written notice to the court of the transfer, the placement, and the reasons therefor.

(2) If a child committed to the cabinet as dependent, neglected, or abused is placed in the home of ***the child's***~~[his]~~ parents, the child shall not be removed except in accordance with the following standards and procedures:

(a) If the family service worker believes that the committed child continues to be dependent, neglected, or abused, but immediate removal is unnecessary to protect the child from imminent death or serious physical injury, the casework situation and evidence shall be reviewed with his supervisor to determine whether to continue work with the family intact or to remove the child. There shall be documentation that the family service worker, prior to the court hearing, made an effort to contact the parents to inform them of the specific problems that could lead to removal so they have an opportunity to take corrective action. If the parents are unavailable or do not respond to attempts to communicate, the specific circumstances shall be documented;

(b) If it appears that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm and there is not reasonably available an alternative less drastic than removal of the child from the home, the cabinet shall petition the District Court to review the commitment pursuant to KRS 610.120 in relation to the cabinet's intention to remove the child from the parent's home. The petition shall set forth the facts which constitute the need for removal of the child. The court shall serve notice of the petition and the time and place of the hearing on the parents; however, the family service worker shall also contact the parents to ensure that they received the notice and are aware of the right to be represented by counsel. If the parents' whereabouts are unknown, notice may be mailed to the last known address of an adult who is a near relative. If the court fails to find that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall not be removed from the parents' home;

(c) If a family service worker finds a committed, unattended child who is too young to take care of himself, the family service worker shall make reasonable efforts to arrange for an emergency caretaker in the child's home until the parents return or fail to return within a reasonable time. If no in-home caretaker is available for the child, the family service worker shall request any appropriate law enforcement officer to take the child into protective custody. If, after a reasonable time, it appears the child has been abandoned, the cabinet shall petition the District Court to review the case; or

(d) If there exist reasonable grounds to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents are unable or unwilling to protect the child, the family service worker shall, with the assistance of a law enforcement officer, immediately remove the child prior to filing a petition for review. Within seventy-two (72) hours after the removal, the cabinet shall file a petition for review in District Court pursuant to KRS 610.120 with a request for an expeditious hearing. If the court fails to find that the child's health or welfare or physical, mental or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall be returned to the parents' home.

(3) The cabinet or the Department of Juvenile Justice, as appropriate, shall notify the juvenile court of the county of placement with the conditions of supervised placement of each child placed in that county from one (1) of the residential treatment facilities operated by the Department of Juvenile Justice or the cabinet. Notice of the conditions of such placement may be made available by the court to any law enforcement agency.

(4) The person in charge of any home to which a child is probated, and the governing authority of any private facility or agency to which a child is committed, shall make such reports to the court as the court may require, and such reports as the Department of Juvenile Justice or the cabinet may require in the performance of its functions under the law. The Department of Juvenile Justice or the cabinet shall have the power to make such visitations and inspections of the homes, facilities, and agencies in which children who have committed public offenses have been placed as it deems necessary to carry out its functions under the law.

(5) The Department of Juvenile Justice may assist the courts in placing children who have committed public offenses in boarding homes, and, under agreements with the individual courts, may assume responsibility for making such placements. Counties may pay or contribute towards the expenses of maintaining such children and, to the extent authorized by the fiscal court, the Department of Juvenile Justice may incur obligations chargeable to the county for such expenses.

Section 4. KRS 620.060 is amended to read as follows:

(1) The court for the county where the child is present may issue an ex parte emergency custody order when it appears to the court ***that removal is in the best interest of the child and*** that there are reasonable grounds to believe, as supported by affidavit or by recorded sworn testimony, that ***one (1) or more of the following conditions exist***[~~the child is in danger of imminent death or serious physical injury or is being sexually abused~~] and that the parents or other person exercising custodial control or supervision are unable or unwilling to protect the child***:***

(a) The child is in danger of imminent death or serious physical injury or is being sexually abused;

(b) The parent has repeatedly inflicted or allowed to be inflicted by other than accidental means physical injury or emotional injury. This condition shall not include reasonable and ordinary discipline recognized in the community where the child lives, as long as reasonable and ordinary discipline does not result in abuse or neglect as defined in KRS 600.020(1); or

(c) The child is in immediate danger due to the parent's failure or refusal to provide for the safety or needs of the child.

(2) Custody may be placed with a relative taking into account the wishes of the custodial parent ***and child*** or any other appropriate person or agency including the cabinet.

(3)[~~(2)~~] An emergency custody order shall be effective no longer than seventy-two (72) hours, exclusive of weekends and holidays, unless there is a temporary removal hearing with oral or other notice to the county attorney and the parent or other person exercising custodial control or supervision of the child, to determine if the child should be held for a longer period. The seventy-two (72) hour period also may be extended or delayed upon the waiver or request of the child's parent or other person exercising custodial control or supervision.

(4)[~~(3)~~] Any person authorized to serve process shall serve the parent or other person exercising custodial control or supervision with a copy of the emergency custody order. If such person cannot be found, the sheriff shall make a good faith effort to notify the nearest known relative, neighbor, or other person familiar with the child.

(5)[~~(4)~~] Within seventy-two (72) hours of the taking of a child into custody without the consent of his parent or other person exercising custodial control or supervision, a petition shall be filed pursuant to this chapter.

(6)[~~(5)~~] Nothing herein shall preclude the issuance of arrest warrants pursuant to the Rules of Criminal Procedure.

Section 5. KRS 620.130 is amended to read as follows:

(1) In any proceeding under this chapter, when the court is petitioned to remove or continue the removal of a child from the custody of his parent or other person exercising custodial control or supervision, the court shall first consider whether the child may be reasonably protected against the alleged dependency, neglect or abuse, by alternatives less restrictive than removal. Such alternatives may include, but shall not be limited to, the provision of medical, educational, psychiatric, psychological, social work, counseling, day care, or homemaking services with monitoring wherever necessary by the cabinet or other appropriate agency. Where the court specifically finds that such alternatives are adequate to reasonably protect the child against the alleged dependency, neglect or abuse, the court shall not order the removal or continued removal of the child.

(2) If the court orders the removal or continues the removal of the child, services provided to the parent and the child shall be designed to promote the ***protection of the child and the*** return of the child ***safely*** to ***the child's***[~~his~~] home as soon as possible. The cabinet shall develop a treatment plan for each child designed to meet the needs of the child. The cabinet may change the child's placement or treatment plan as the cabinet may require. The cabinet shall notify the committing court of the change, in writing, within fourteen (14) days after the change has been implemented.

Section 6. KRS 620.155 is amended to read as follows:

Any ***interested*** party aggrieved by a proceeding under KRS 610.010(1)(e) ***including the parent, child, guardian ad litem, the cabinet, and the county attorney*** may appeal from the juvenile court to the Circuit Court as a matter of right in the manner provided in the Kentucky Rules of Civil Procedure. The Circuit Court may order that the child may be removed to a suitable place, pending the appeal, if it appears by affidavit or sworn testimony that the child would be in imminent danger if left with or returned to his parents, guardian, or other person party to the appeal.

SECTION 7. A NEW SECTION OF KRS CHAPTER 620 IS CREATED TO READ AS FOLLOWS:

(1) Any evidence of the following circumstances are relevant factors that shall be considered by the court in all proceedings conducted pursuant to KRS Chapter 620 in which the court is required to render decisions in the best interest of the child:

(a) Mental illness as defined in KRS 202A.011(9) or mental retardation as defined in KRS 202B.010(9) of the parent, as attested to by a qualified mental health professional, which renders the parent unable to care for the immediate and ongoing needs of the child;

(b) Acts of abuse or neglect as defined in KRS 600.020(1) toward any child;

(c) Alcohol and other drug abuse, as defined in KRS 222.005(12), that results in an incapacity by the parent or caretaker to provide essential care and protection for the child;

(d) A finding of domestic violence and abuse as defined in KRS 403.720, whether or not committed in the presence of the child;

(e) Any other crime committed by a parent which results in the death or permanent physical or mental disability of a member of that parent's family or household; and

(f) The existence of any guardianship or conservatorship of the parent pursuant to a determination of disability or partial disability as made under KRS 387.500 to 387.770 and 387.990.

(2) In determining the best interest of the child, the court may consider the effectiveness of rehabilitative efforts made by the parent or caretaker intended to address circumstances in this section.

Section 8. KRS 610.125 is amended to read as follows:

(1) If a child has been removed from the home and placed in the custody of the Department of Juvenile Justice or the cabinet, a judge of the District Court shall conduct a dispositional review hearing no later than ***twelve (12)***[~~eighteen (18)~~] months after ***the date the child is considered to have entered foster care***[~~custody is given to the cabinet~~], and annually thereafter if custody and out-of-home placement continues, to determine the future status of the child. ***For purposes of this section, a child shall be considered to have entered foster care on the earlier of the date of the first judicial finding that the child has been subjected to child abuse or neglect or the date that is sixty (60) days after the date on which the child is removed from the home.***

The court shall address the following areas:

(a) If parental rights have not been terminated, whether the child should be returned to the parent;

(b) Whether the child should continue in out-of-home care for a specified period of time;

(c) Whether the child should be placed for adoption; and

(d) Whether special circumstances indicate that the child's needs can best be met by continuation in out-of-home care on a permanent or long-term basis.

(2) ***If the cabinet or the Department of Juvenile Justice determines that reasonable efforts to reunify the child with the child's family will not be made, the cabinet or Department of Juvenile Justice shall file a case permanency plan as defined by KRS 620.230 or case progress report with the court that documents the reasons for not making reasonable efforts. The court shall hold a dispositional review hearing within thirty (30) days of the filing of the cabinet's or Department of Juvenile Justice's plan or report with the Court.***

(3) The Department of Juvenile Justice or the cabinet shall inform the court not less than sixty (60) days prior to the expiration of the time in which the hearing shall be held and within the time established in subsection (1) of this section***, and shall further inform the court of the name and address of the child's foster parents, preadoptive parents, or relatives providing care to the child; court-appointed special advocate; and foster care review board member assigned to the case. For the hearing to be held pursuant to subsection (2) of this section, the names and addresses of the persons identified in this subsection shall be provided in the case permanency plan or case progress report to***

be filed with the court. The court shall set a time for the hearing and notify the child's parent***, foster parents, preadoptive parents or relatives providing care to the child; court-appointed special advocate; and foster care review board member assigned to the case,*** and the Department of Juvenile Justice or the cabinet.

(4)[~~(3)~~] The Department of Juvenile Justice or the cabinet shall present evidence to the court concerning the care and progress of the child since the last dispositional hearing, including the following:

(a) The length of time the child has been committed to the Department of Juvenile Justice or the cabinet;

(b) The number, location, and date for each placement during the total period of the child's commitment;

(c) A description of the services and assistance provided to the parent or arranged by the Department of Juvenile Justice or the cabinet since the last case permanency plan or case progress report, and the results achieved;

(d) A description of the efforts and progress of the child's parent since the last case permanency plan and case progress report, including the number and dates of parental visits and the extent, quality, and frequency of the parent's communication with the child;

(e) The familial and institutional barriers to:

1. Returning the child to the home;

2. Ending the commitment of the child to the Department of Juvenile Justice or the cabinet; and

3. Delivery of appropriate services needed by the child;

(f) Recommendations of services needed to make the transition from out-of-home care to independent living for children who have reached the age of sixteen (16) years;

(g) An evaluation of the child's current placement and services provided to the child;

(h) Recommendations for necessary services required to terminate the commitment of the child to the cabinet, to return the child home, or to facilitate another permanent placement; and

(i) Recommendations as to the permanency goal for the child.

(5)[~~(4)~~] The child's parent***, foster parent, preadoptive parent, or relative providing care to the child,*** may present any evidence relevant to the determination of a permanency goal for the child.

(6)[~~(5)~~] Upon conclusion of the hearing the court shall make a written ***finding*** [~~determination~~] regarding ***the adequacy of the permanency plan, the extent to which the permanency plan complies with KRS 620.230(2), and the services intended to achieve permanency for the child***[~~a plan of transitional independent living services if the child has reached the age of sixteen (16) years, and the most appropriate permanency goal if the child has not reached the age of sixteen (16) years~~].

(7) If the court finds that the permanency plan is not adequate, it shall redocket the case within sixty (60) days for further review.

Section 9. KRS 625.0405 is amended to read as follows:

(1) A parent desiring the termination of his or her parental rights and a transfer of the parental rights to a person, persons, ***the cabinet,*** or ***a child-placing*** agency ***licensed by the cabinet*** for the purpose of adoption may prior to or upon the filing of the petition request the Circuit Court to appoint an attorney to represent the parent and provide legal representation in the termination action. If the court determines pursuant to KRS Chapter 31 that the requesting parent is indigent, the court shall appoint an attorney (within forty-eight (48) hours) to represent the indigent parent. The attorney for the indigent parent shall receive a fee to be fixed by the court, not to exceed five hundred dollars ($500) and assessed as costs, and ***the court*** may order the costs to be paid by the proposed adoptive parent, parents, or agency before the entry of a judgment of termination, except the attorney's fee shall be paid by the Finance and Administration Cabinet if termination is not granted***, or if custody of the child is placed with the cabinet***.

(2) (a) In every voluntary termination proceeding, the expenses paid, including but not limited to any fees for legal services, placement services, and expenses of the biological parent or parents, by the prospective adoptive parent for any purpose related to a termination of parental rights shall be submitted to the court, supported by an affidavit, setting forth in detail a listing of the expenses for the court's approval or modification.

(b) In the event the court modifies the expense request as it relates to legal fees and legal expenses only, the attorney for the prospective adoptive parents shall not have any claim against the prospective adoptive parents for the amount not approved.

(3) Any person who violates subsection (2) of this section shall be guilty of a Class A misdemeanor.

Section 10. KRS 625.042 is amended to read as follows:

(1) Within three (3) days after a petition for the voluntary termination of parental rights is filed, the Circuit Court shall set a date for a hearing ***which shall not be more than thirty (30) calendar days after the petition is filed. In any case in which the child's permanent custody is proposed to be transferred to an individual not excepted by KRS 199.470(4)***

or (5), a final order of termination shall be entered only if the proposed custodian has received the written approval of the secretary or the secretary's designee for the child's placement as required by KRS 199.473.

(2) The Circuit Court shall require notice to be served upon the local representative of the cabinet in any case in which a statement from the cabinet of willingness to accept custody of the child has not been filed with the petition, or custody of the child is to be placed with an individual unless the placement has been approved by the cabinet. It shall not be necessary to serve notice upon the cabinet if custody of the child is to be placed with the cabinet or with a child-placing agency.

(3) Proceedings under this chapter shall be completed as soon as practicable. All hearings shall be held before the Circuit Court privately for the purpose of determining the facts.

(4) An official stenographic or mechanical record shall be made of the proceedings and retained for a period of five (5) years.

(5) The best interests of the child shall be considered paramount***, including but not limited to matters relating to child support***.

(6) At the time of the hearing, the Circuit Court, after full and complete inquiry, shall determine whether each petitioner is fully aware of the purpose of the proceedings and the consequences of the provisions of this chapter.

Section 11. KRS 625.040 is amended to read as follows:

(1) A petition for the voluntary termination of parental rights shall be entitled "In the interest of ..., a child." The petition may be filed by a parent ***or counsel when the Appearance Waiver and Consent to Adopt forms are signed by the parent, counsel, and cabinet representative under the conditions described in subsections (3) and (4) of Section 12 of this Act***.

(2) The petition for the voluntary termination of parental rights shall be filed in the Circuit Court of the ***Judicial Circuit***[~~county~~] where the petitioner ***or child*** resides ***or in the Circuit Court in the county in which juvenile court actions, if any, concerning the child have commenced,***[~~or is found~~] and shall be verified and contain the following:

- (a) Name and place of residence of each petitioner;
- (b) Name, sex, date of birth, and place of residence of the child;
- (c) Name and relationship of each petitioner to the child;
- (d) A concise statement of the factual basis for the termination of parental rights;
- (e) Name and address of the person or of the cabinet or authorized agency to which parental rights are sought to be transferred; and
- (f) A statement that the person, cabinet, or authorized agency to whom custody is to be given has facilities available, is willing to receive the custody of the child, and the person, if not excepted by KRS 199.470(4) or (5), has applied for the written permission of the secretary or the secretary's designee for the child's placement. This provision shall not affect the right of a court to grant temporary custody under KRS 199.473.

(3) No petition may be filed under this chapter prior to three (3) days after the birth of the child.

Section 12. KRS 625.041 is amended to read as follows:

(1) The ***parties***[~~only party~~] to an action for voluntary termination of parental rights shall be the parent seeking termination, ***or counsel for the parent when an Appearance Waiver and Consent to Adopt form is filed with the petition,*** but the court shall appoint a guardian ad litem to represent the best interest of the child.

(2) The guardian ad litem shall be paid a fee to be fixed by the court, not to exceed five hundred dollars ($500), to be paid by the petitioner, except if the Cabinet for Human Resources receives custody of the child, the guardian ad litem shall be paid by the Finance and Administration Cabinet.

(3) The parent may sign an Appearance Waiver and Consent to Adopt form when the parent chooses not to attend a voluntary termination of parental rights proceedings. This form, prescribed by the Administrative Office of the Courts, shall:

- ***(a) Contain a statement of acknowledgment and agreement, regarding the appearance at the proceeding, signed by the parent, counsel for the parent, and the cabinet. If the parent is a minor, the form shall also be signed by the guardian of the minor parent;***
- ***(b) Contain the parent's notarized signature;***
- ***(c) Contain any address to which the parent requests the final judgment be served.***

(4) If a joint petition is filed, counsel shall be designated as attorney for both parties.

Section 13. KRS 625.060 is amended to read as follows:

(1) In addition to the child, the following shall be the parties in an action for involuntary termination of parental rights:

- (a) The petitioner;

(b) The cabinet, if not the petitioner; and

(c) The biological parents, if known and if their rights have not been previously terminated. It shall not be necessary to make the putative father a party if he is exempted by KRS 625.065.

(2) Any party ***other than the child*** who is not the petitioner shall be a respondent.

Section 14. KRS 625.070 is amended to read as follows:

(1) In any action for involuntary termination of parental rights, service upon the parties shall be accomplished by personal service where possible or constructive service where personal service is not possible, pursuant to the Kentucky Rules of Civil Procedure.

(2) No service shall be necessary if a disclaimer of paternity or a petition for voluntary termination of parental rights has been executed by a parent or alleged parent and filed in the record, or an order terminating parental rights has been entered by a Circuit Court of competent jurisdiction.

(3) Notwithstanding the provisions of the Kentucky Rules of Civil Procedure, ***appointment of a guardian ad litem for a child in an action for termination of parental rights, and service of the petition upon the guardian ad litem shall be sufficient for personal jurisdiction over the child in the action***~~[Service upon a child committed to the cabinet shall be made upon the cabinet]~~.

Section 15. KRS 625.080 is amended to read as follows:

In any involuntary action for termination of parental rights:

(1) The Circuit Court shall conduct a private hearing. An official stenographic or mechanical record shall be made of the proceedings and retained for a period of five (5) years. The court shall make findings of fact and conclusions of law***, which may be made on the record,*** to support its judgment;

(2) Any child to whom an involuntary action directly relates shall be made a party to the action and a guardian ad litem shall be appointed to represent the best interests of the child. The person appointed as a guardian ad litem shall be paid a fee not to exceed five hundred dollars ($500), to be paid by the Finance and Administration Cabinet ***when the cabinet is the proposed custodian. When the cabinet is not the proposed custodian, the court may order the cost to be paid by the proposed adoptive parent, parents, agency, or the petitioner***. Upon motion of any party, the child may be permitted to be present during the proceedings and to testify if the court finds such to be in the best interests of the child. In its discretion, the Circuit Court may interview the child in private, but a record of the interview shall be made, which, in the discretion of the court, may be sealed to be used only by an appellate court;

(3) The parents have the right to legal representation in involuntary termination actions. ~~[If the court finds that a parent who is a party in an action for involuntary termination of parental rights does not have legal representation,]~~ The Circuit Court shall determine if ***the***~~[said]~~ parent is indigent and, therefore, entitled to counsel pursuant to KRS Chapter 31. If the Circuit Court so finds, the Circuit Court shall inform the parent; and, upon request, if it appears reasonably necessary in the interest of justice, the Circuit Court shall appoint an attorney to represent the parent pursuant to KRS Chapter 31 to be provided or paid for by the Finance and Administration Cabinet a fee to be set by the court and not to exceed five hundred dollars ($500);

(4) ***If the parent is currently authorized to visit with the child, the court may continue to permit the parent to visit the child pending the final hearing unless it finds that visitation would not be in the best interest of the child.***

(5) The hearing~~[Proceedings]~~ under this chapter shall be ***held within sixty (60) days of the motion by a party or the guardian ad litem for a trial date***~~[, expedited, and completed as soon as practicable]~~.

Section 16. KRS 625.090 is amended to read as follows:

(1) The Circuit Court may involuntarily terminate all parental rights of a parent of a named child, if the Circuit Court finds from the pleadings and by clear and convincing evidence that***:***

(a) 1. The child has been adjudged to be an abused or neglected child***, as defined in KRS 600.020(1),*** by a court of competent jurisdiction***;***

2. The child~~[or]~~ is found to be an abused or neglected child***, as defined in KRS 600.020(1),*** by the Circuit Court in this proceeding***; or***

3. The parent has been convicted of a criminal charge relating to the physical or sexual abuse or neglect of any child and that physical or sexual abuse, neglect, or emotional injury to the child named in the present termination action is likely to occur if the parental rights are not terminated; and

(b) ~~[that]~~Termination would be in the best interest of the child.

(2) No termination of parental rights shall be ordered unless the Circuit Court also finds by clear and convincing evidence the existence of one (1) or more of the following grounds:

(a) That the parent has abandoned the child for a period of not less than ninety (90) days;

(b) That the parent has inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury;

(c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;

(d) ***That the parent has been convicted of a felony that involved the infliction of serious physical injury to any child;***

(e) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child;

(f)[~~(e)~~] That the parent has caused or allowed the child to be sexually abused or exploited;[~~ or~~]

(g)[~~(f)~~] That the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child***;***

(h) That:

1. The parent's parental rights to another child have been involuntarily terminated;

2. The child named in the present termination action was born subsequent to or during the pendency of the previous termination; and

3. The conditions or factors which were the basis for the previous termination finding have not been corrected;

(i) That the parent has been convicted in a criminal proceeding of having caused or contributed to the death of another child as a result of physical or sexual abuse or neglect; or

(j) That the child has been in foster care under the responsibility of the cabinet for fifteen (15) of the most recent twenty-two (22) months preceding the filing of the petition to terminate parental rights.

(3)[~~(2)~~] In determining the best interest of the child and the existence of a ground for termination, the Circuit Court shall consider the following factors:

(a) [~~Emotional illness,~~]Mental illness ***as defined by KRS 202A.011(9)***, or mental ***retardation as defined by KRS 202B.010(9)***[~~deficiency~~] of the parent as certified by a qualified mental health professional, which renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time;

(b) Acts of abuse or neglect ***as defined in KRS 600.020(1)*** toward any child in the family;

(c) If the child has been placed with the cabinet***, whether the cabinet has, prior to the filing of the petition made reasonable efforts as defined in KRS 620.020 to reunite the child with the parents***[~~or a child-placing agency or child-caring facility, whether the cabinet has rendered or attempted to render all reasonable services to the parent which reasonably might be expected to bring about a reunion of the family, including the parent's testimony concerning the services and whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent within a reasonable period of time, considering the age of the child~~];

(d) The efforts and adjustments the parent has made in his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home within a reasonable period of time, considering the age of the child;

(e) The physical, emotional, and mental health of the child and the prospects for the improvement of the child's welfare if termination is ordered; and

(f) The payment or the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so.

(4) If the child has been placed with the cabinet, the parent may present testimony concerning the reunification services offered by the cabinet and whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent.

(5)[~~(3)~~] If the parent proves ***by a preponderance of the evidence that the child will not continue to be an abused or neglected child as defined in KRS 600.020(1) if returned to the parent***[~~the following to the satisfaction of the court,~~] the court in its discretion may determine not to terminate parental rights[~~:~~

~~(a) That serious physical injury to the child will not occur in the future;~~

~~(b) That continuous or repeated physical injury or emotional harm to the child will not occur in the future; or~~

~~(c) That sexual abuse or exploitation will not occur in the future~~].

(6)[~~(4)~~] Upon the conclusion of proof and argument of counsel, the Circuit Court shall enter findings of fact, conclusions of law***,*** and a decision as to each parent-respondent ***within thirty (30) days*** either:

(a) Terminating the right of the parent; or

(b) Dismissing the petition and stating whether the child shall be returned to the parent or shall remain in the custody of the state.

SECTION 17. A NEW SECTION OF KRS CHAPTER 625 IS CREATED TO READ AS FOLLOWS:

In the case of a child who has become a ward of the Cabinet for Human Resources as a result of a termination of parental rights judgment entered against the child's parents, and who remains a ward of the cabinet upon attainment of his or her eighteenth birthday, the cabinet, in its discretion, upon request of the ward, may extend its wardship to age twenty-one (21) for the purpose of the child's participating in state or federal educational programs or to assist the child in establishing independent living arrangements.

Section 18. KRS 199.502 is amended to read as follows:

(1) Notwithstanding the provisions of KRS 199.500(1), an adoption may be granted without the consent of the biological living parents of a child if it is pleaded and proved as part of the adoption proceeding that any of the following conditions exist with respect to the child:

(a) That the parent has abandoned the child for a period of not less than ninety (90) days;

(b) That the parent had inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury;

(c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;

(d) ***That the parent has been convicted of a felony that involved the infliction of serious physical injury to a child named in the present adoption proceeding;***

(e) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child, and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child;

(f)[~~(e)~~] That the parent has caused or allowed the child to be sexually abused or exploited;[~~ or~~]

(g)[~~(f)~~] That the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child***;***

(h) That:

1. The parent's parental rights to another child have been involuntarily terminated;

2. The child named in the present adoption proceeding was born subsequent to or during the pendency of the previous termination; and

3. The condition or factor which was the basis for the previous termination finding has not been corrected; or

(i) That the parent has been convicted in a criminal proceeding of having caused or contributed to the death of another child as a result of physical or sexual abuse or neglect.

(2) Upon the conclusion of proof and argument of counsel, the Circuit Court shall enter findings of fact, conclusions of law, and a decision either:

(a) Granting the adoption without the biological parent's consent; or

(b) Dismissing the adoption petition, and stating whether the child shall be returned to the biological parent or the child's custody granted to the state, another agency, or the petitioner.

Section 19. Whereas it is critical to provide needed protective services to children of the Commonwealth as soon as possible, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Report On Enrolled Bills

HB 67 delivered to the Senate and signed by the President. Delivered to the Governor on February 9 at 4:15 p.m.

Orders of the Day

HB 172 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Brown moved that **HB 172** be passed.

On the roll call the vote was: Yeas 90, Nays 0 (See February 5, 1998 roll call on **HB 172** - Appendix.) **HB 172** was passed and the title agreed to. Representative Brown moved that the vote by which **HB 172** was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 2 to the Committee Substitute to **HB 299**, by Representative Marzian:

(Insert No. 3- Floor Amendment No. 2 to the Committee Substitute to **HB 299**)

On page 3, by deleting lines 13 through 15 in their entirety; and

On page 3, line 16, by deleting the "***(10)***" and inserting in lieu thereof "***(9)***"; and

On page 6, line 5, by deleting "***fifteen dollars ($15)***" and inserting in lieu thereof "***twenty dollars ($20)***"; and

On page 6, line 7, by deleting "***five dollars ($5)***" and inserting in lieu thereof "***ten dollars ($10)***"; and

On page 11, line 18, by deleting "***five dollars ($5)***" and inserting in lieu thereof "***ten dollars ($10)***"; and

On page 17, line 24, by deleting "***fifteen dollars ($15)***" and inserting in lieu thereof "***twenty dollars ($20)***".

Orders of the Day (Continued)

HB 315, with Committee Substitutes and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Damron moved the adoption of the Committee Substitute No. 2 to **HB 315**. Agreed.

Representative Damron moved the adoption of Floor Amendment No. 7 to the Committee Substitute No. 2 to **HB 315**. Agreed.

Representative Damron moved the adoption of Floor Amendment No. 11 to the Committee Substitute No. 2 to **HB 315**. Agreed.

Representative Damron moved that **HB 315**, by way of Committee Substitute as amended, be passed.

Representative Anderson moved that **HB 315** be laid on the table. The motion that **HB 315** be laid on the table was rejected. (See February 09, 1998 roll call on Motion to Table **HB 315** - Appendix)

Representative Anderson moved the adoption of Floor Amendment No. 3 to the Committee Substitute No. 2 to **HB 315**. Floor Amendment No. 3 to the Committee Substitute No. 2 to **HB 315** was rejected. (See February 09, 1998 roll call on Floor Amendment No. 3 to the Committee Substitute No. 2 to **HB 315** - Appendix)

Representative Anderson moved the adoption of Floor Amendment No. 6 to the Committee Substitute No. 2 to **HB 315**. Floor Amendment No. 6 to the Committee Substitute No. 2 to **HB 315** was rejected. (See February 09, 1998 roll call on Floor Amendment No. 6 to the Committee Substitute No. 2 to **HB 315** - Appendix)

Representative Anderson moved the adoption of Floor Amendment No. 10 to the Committee Substitute No. 2 to **HB 315**. Rejected.

Representative Anderson moved the adoption of Floor Amendment No. 4 to the Committee Substitute No. 2 to **HB 315**.Floor Amendment No. 4 to the Committee Substitute No. 2 to **HB 315** was rejected. (See February 09, 1998 roll call on Floor Amendment No. 4 to the Committee Substitute No. 2 to **HB 315** - Appendix)

Representative Damron moved that **HB 315**, by way of Committee Substitute as amended, be passed.

Representative Crall moved the adoption of Floor Amendment No. 8 to the Committee Substitute No. 2 to **HB 315**. Floor Amendment No. 8 to the Committee Substitute No. 2 to **HB 315** was adopted. (See February 09, 1998 roll call on Floor Amendment No. 8 to the Committee Substitute No. 2 to **HB 315** - Appendix)

Representative Crall moved that **HB 315** be laid on the Clerk's Desk. The motion that **HB 315** be laid on the Clerk's Desk was rejected. (See February 09, 1998 roll call to Lay **HB 315** on the Clerk's Desk - Appendix)

Representative Damron moved that **HB 315**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 68, Nays 30 (See February 9, 1998 roll call on **HB 315** - Appendix.) **HB 315**, by way of Committee Substitute as amended, was passed and the title agreed to. Representative Damron moved that the vote by which **HB 315**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 6 to **HB 106**, by Representative Heleringer:

On page 2, after line 22, by adding the following new section:

"SECTION 2. A NEW SECTION OF KRS CHAPTER 189 IS CREATED TO READ AS FOLLOWS:

All other provisions of law notwithstanding, the biennial budget enacted by the 1998 General Assembly shall not include any funding for the erection of highway guardrails, traffic signals, caution lights, warning signs, barrier cushions, or any other type of traffic safety device or signage on Kentucky's highways.".

Floor Amendment No. 7 to **HB 106**, by Representative Heleringer:

On page 2, after line 22, by adding a new section to read as follows:

"Section 2. This Act may be cited as the Organ Donor Acceleration and Funeral Home Business Enhancement Act of 1998.".

Floor Amendment No. 9 Title to **HB 142**, by Representative Bowling:

By amending the title to read as follows: "AN ACT relating to child protection and declaring an emergency.".

Floor Amendment No. 1 to **HB 336**, by Representative Anderson:

On page 2, below line 5, to insert the following:

"Section 2. In addition to any salary improvement specified in Section 1of this act, each probation and parole officer shall receive a ten percent (10%) increase in pay or two thousand five hundred dollars ($2,500) increase in pay, which ever is greater."

Floor Amendment No. 2 to **HB 336**, by Representative Anderson:

On page 2, below line 5 to insert the following:

"Section 2. In addition to any salary improvement specified in Section 1 of this act, each probation and parole officer shall receive a five thousand dollar ($5,000) increase in pay."

Motions, Petitions and Communications

Representative Stumbo moved that the three day posting requirement be waived on **HB 461**. Agreed.

Representative Stumbo moved that **HB 508** be reassigned to Labor and Industry. Agreed.

Representative Stumbo moved the adoption of the following **Legislative Citation No. 63**. Agreed.

It is the intent of the House of Representatives of the Commonwealth of Kentucky to hereby adjourn this legislative day in loving memory of Vivian Barker Wright. The House of Representatives joins Representative Gregory Stumbo in extending sincere and heartfelt condolences to all who share in the loss on the passing of this exceptional woman, loving wife of Erle C. Wright who preceded her in death and devoted mother of Representative Kathy Stein, Wayne Wright and Jack Wright. A lifetime resident of Wise, Virginia, Vivian Barker Wright was a graduate of Wise High School and Radford College and the recipient of a Masters Degree in Education from the University of Virginia. She was a retired primary school teacher and was active in both her church, Wise First Baptist, and her community as a member of the Town of Wise Planning Commission and as a dedicated volunteer. A lover of walking and cards and renowned for her canning abilities, the vitality and lightness of spirit that this tremendous woman brought to the lives of all who knew her was both significant and immense. The members of this body do hereby offer earnest sentiments of compassion and solace to Representative Kathy Stein and her family and are honored to pay tribute to the magnificent legacy left behind by Vivian Baker Wright by adjourning this legislative day in memory of this cherished woman. **Legislative Citation No. 63** was adopted without objection. (See February 09, 1998 roll call to co-sponsor **Legislative Citation No. 63** - Appendix)

Representative Ford moved the adoption of the following **Legislative Citation No. 64**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes and honors The Kentucky National Guard, the Red Cross and All Other Volunteers for the outstanding services rendered the citizens of this great Commonwealth during the devastating snowstorms of this past week. These dedicated citizens are to be commended for their ability to render rapid and life-saving attention to those sorely affected by these storms. The entire membership is pleased to join with Representative Danny Ford in commending each and every one of these people for exemplary service rendered on behalf of their fellow citizens under exceedingly difficult circumstances and in expressing our most sincere gratitude to them for their heroic efforts. **Legislative Citation No. 64** was adopted without objection. (See February 09, 1998 roll call to co-sponsor **Legislative Citation No. 64** - Appendix)

Representative Hatcher moved the adoption of the following **HR 66**:

HR 66, A RESOLUTION commemorating the 200th anniversary of the University of Louisville.

WHEREAS, April 3, 1798, has been proclaimed the University of Louisville's Founder's Day, the day when eight men of Louisville contributed funds to support higher education in Louisville, challenging others in the community to do likewise; and

WHEREAS, the University of Louisville has a rich history of providing opportunities and a quality education to the people of Louisville, the Commonwealth, and beyond; and

WHEREAS, this proud history encompasses the school's origins as the Jefferson Seminary and then the Louisville College; through its early 20th century period when it was known as the "streetcar university" and a streetcar literally ran through its campus; to the university we know today -- with not one, but three Louisville campuses, and extension degree programs in Fort Knox, Hong Kong, Athens, Cairo, and San Salvador; and

WHEREAS, the university's proud legacy continues today, with its enrollment of 21,000 students from across the nation and over 100 foreign countries, and more than 80,000 living alumni; and

WHEREAS, the Bicentennial Celebration is a time for reaffirming the university's visions for the future -- such as its goal to become a preeminent metropolitan research university, nationally recognized for advancing the intellectual, social, and economic development of the community and the Commonwealth; and

WHEREAS, the Bicentennial Celebration is also a time for acknowledging the accomplishments already achieved, such as the University of Louisville's ranking in the top nine percent of four-year institutions designated as Research II by the Carnegie Institute; its rank of 31st in the nation for endowments among four-year public institutions; and its rating among Kentucky alumni as the best state school for preparing graduates for jobs, according to a Council of Higher Education survey;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. This honorable body heartily congratulates the University of Louisville for its upcoming bicentennial celebration marking two hundred years of contributions to our Commonwealth, its people, and its economy.

Section 2. When the House of Representatives adjourns this day, it does so in honor of the University of Louisville.

Section 3. The Clerk of the House of Representatives is hereby directed to transmit a copy of this Resolution to University of Louisville President John Shumaker, Office of the President, University of Louisville, Louisville, Kentucky 40292.

There being no objection **HR 66** was adopted. (See February 09, 1998 roll call to co-sponsor **HR 66** - Appendix)

Representative Bruce moved that the rules be suspended to introduce and act upon a Resolution. Agreed.

HR 68, by Representatives Bruce and Richards: A RESOLUTION adjourning the House of Representatives in honor of the employees of the Transportation Cabinet for their superior service during the recent winter storm.

Representative Bruce moved the adoption of the following **HR 68**:

HR 68, A RESOLUTION adjourning the House of Representatives in honor of the employees of the Transportation Cabinet for their superior service during the recent winter storm.

WHEREAS, the devastating winter storm that brought at least 22 inches of snow across Kentucky produced extremely hazardous conditions for road traffic throughout the Commonwealth; and

WHEREAS, during this crisis, employees of the Transportation Cabinet worked diligently and persistently to clear the snow-covered roads for passage, many times with their lives in peril; and

WHEREAS, the employees of the Transportation Cabinet are to be commended for their excellent work in clearing the roads throughout the Commonwealth during the recent winter storm, and particularly the road between Frankfort and Hopkinsville, which allowed Representative Jim Bruce a safe drive home;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. This honorable body is proud to commend the employees of the Transportation Cabinet for the superior service they rendered to the citizens of our great Commonwealth in clearing roadways for safe passage throughout Kentucky.

Section 2. When the House of Representatives adjourns this day, it does so in honor of the employees of the Transportation Cabinet.

Section 3. The Clerk of the House of Representatives is hereby directed to transmit a copy of this Resolution to the Honorable James C. Codell, Secretary, Transportation Cabinet, State Office Building, Frankfort, Kentucky 40601.

There being no objection **HR 68** was adopted.

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions, Report of Committees and Posting of Bills and Resolutions for Consideration. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 542, by Representative Rasche: AN ACT relating to motor vehicles.

HB 543, by Representatives Crenshaw, Bowling, Hatcher, Jordan, Marzian, Mason, Jenkins, Stumbo and Burch: AN ACT relating to the fair and reliable imposition of capital sentences.

HB 544, by Representatives Bowling, Geveden, Mason, Nunn, Coleman, Hogancamp, G. Graham, Thomas, Ford, Rasche, Reinhardt, Barrows, Gray, Deskins, Scott, Hoover, Walton: AN ACT relating to the judicial branch and making an appropriation therefor.

HB 545, by Representatives Thomas and Richards: AN ACT relating to utilities.

HB 546, by Representatives Jenkins, Anderson, Alexander, Scott, Vincent, Baugh, Gray, Hoffman, Pope, and Stacy: AN ACT relating to the operation of railroads.

HCR 67, by Representative Adkins: A CONCURRENT RESOLUTION creating a Task Force on Funding for Tourism Development.

HR 69, by Representative Cave: A RESOLUTION adjourning the House of Representatives in honor of the Kentucky State Police and declaring February 11, 1998, as State Police Day.

HR 70, by Representatives Crenshaw, Damron, Adkins, L. Clark, Hoffman, Jordan, Jenkins, Marzian, Johns, Mason, Nunn, Horlander, P. Clark, Hatcher, Wayne, Burch, Callahan, Moberly, Lee, Simpson, Bowling, Geveden, Vincent, A. Arnold, Cave, Palumbo, Lovell, D. Graham, Brandstetter, Barrows, and Stumbo: A RESOLUTION adjourning the House of Representatives in loving memory and honor of Vivian Barker Wright.

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Counties and Special Districts: **HB 84, HB 279**

Banking and Insurance: **HB 448, HB 457, HB 491, HB 514, HB 515, HB 516, HB 527, HB 475, HB 507, SB 55, SB 105**

Tourism Development and Energy: **HB 517**

Judiciary: **HB 90, HB 312, HB 461**

Motions, Petitions and Communications (Continued)

Representative Deskins moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Deskins moved that he be recorded as voting "yea" on **HB 197, HB 15, HB 284, HB 4, HB 304, HB 37, HB 354, HB 343, HB**

340, HCR 46, HCR 45, HCR 32, HCR 10, HCR 9, HB 67, HB 383, HB 364, HB 365, HB 362, HB 350, HB 356, HB 357, HB 233, HB 345, HB 341, HB 83, HB 314, HB 208, HB 313, HB 259, HB 212, HB 388, HB 382, and **HB 389**. Agreed.

The following members filed requests to have their names added as co-sponsors of Bills under rules previously suspended: **HB 36**, Representatives D. D. Butler, Collins; **HB 74**, Representative Brandstetter; **HB 212, HB 257, HB 290, HB 379, HB 442, HB 434**, Representative Colter; **HB 312**, Representative Riggs; **HB 291, HB 381**, Representative Crenshaw; **HB 398**, Representatives Hoover, Kerr; **HB 469**, Representative Yonts; **HB 506**, Representative R. Adams.

The following member filed a request to have his name withdrawn as co-sponsor of a Bill: **HB 289**, Representative Simpson.

Announcements

The following meetings were announced:

Transportation, February 11, 1998, upon adjournment.

Natural Resources and Environment, Noon, February 10, 1998.

Personal Service Contracts, February 10, 1998, 10:00 a.m.

Economic Development, Room 129, upon adjournment.

Agriculture and Small Business, February 12, 1998, 9:30 a.m.

Budget Review Subcommittee on Human Resources, February 12, 1998, Room 129, 12:30 p.m.

Judiciary, February 10, 1998, 8:00 a.m., Room 149, and February 12, 1998, 10:00 a.m.

Budget Review Subcommittee on Transportation, February 10, 1998, 8:00 a.m.

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., February 10, 1998.

On the roll call the vote was **Yeas 76**--J. Adams, R. Adams, Adkins, Alexander, Allen, Anderson, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Bowling, Brandstetter, Bratcher, Brown, Bruce, D. Butler, D. D. Butler, Callahan, L. Clark, P. Clark, Coleman, Collins, Colter, Cox, Crimm, Damron, Ford, Gee, Geveden, Gooch, D. Graham, G. Graham, Hatcher, Haydon, Hoffman, Hoover, Horlander, Johns, Kerr, Lee, Lovell, Mason, McKee, Miller, Miniard, Moberly, Murgatroyd, Napier, Newsome, Nunn, Palumbo, Polston, Pope, Rader, Rasche, Reinhardt, Richards, Riggs, Riner, Scott, Siler, Simpson, Sims, Stine, Stumbo, Thomas, Treesh, Turner, Vincent, Walton, Weaver, Wilkey, Worthington, Yonts, Zimmerman. **Nays 2**--Crall, Stewart.

The motion to adjourn was adopted.

TUESDAY, FEBRUARY 10, 1998

TWENTY-FOURTH LEGISLATIVE DAY

The House was called to order by Speaker Richards.

Prayer by Reverend Chuck Ellestad, Church of the Ascension, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Hatcher and Nesler.

Representative Ballard moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative Ballard moved that the reading of the Journal of February 9, 1998, be dispensed with and the same approved. Agreed.

Representative Ballard moved that the Rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Ballard moved that all properly filed co-sponsor requests be approved. Agreed.

Introduction of Bills

HB 547, by Representative Clarke: AN ACT relating to property tax administration.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolution:

Agriculture and Small Business: **HB 540**

Health and Welfare: **HB 541**

Judiciary: **HB 538, HB 543, HB 544**

State Government: **HB 539**

Tourism Development and Energy: **HB 545, HCR 67**

Transportation: **HB 542, HB 546**

The Clerk reported that the Committee on Committees has referred the following Resolutions:

House Floor: **HR 65, HR 69, HR 70**

Report of Committees

The Committee on Health and Welfare reported **HB 129**, with Committee Amendment attached thereto, **HB 130**, with Committee Substitute attached thereto, **HB 380**, with Committee Substitute attached thereto, **HB 412**, with Committee Substitute attached thereto, and **HB 476** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 129, AN ACT relating to public assistance under Title IV-A of the federal Social Security Act.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 205.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Cabinet" means the Cabinet for Human Resources;

(2) "Secretary" means the secretary for human resources or his authorized representative;

(3) "Public assistance" means money grants, assistance in kind, or services to or for the benefit of needy aged, needy blind, needy permanently and totally disabled persons, needy children, or persons with whom a needy child lives or a family containing a combination of these categories, except that the term shall not be construed to permit the granting of financial aid where the purpose of such aid is to obtain an abortion. For purposes of this section and KRS 205.560,

"abortion" means an act, procedure, device, or prescription administered or prescribed for a pregnant woman by any person, including the pregnant woman herself producing premature expulsion of the fetus. Abortion does not include an induced premature birth intended to produce a live viable child;

(4) "Needy child" means a child who has been deprived of parental support by reasons prescribed by regulations within the scope of Title IV of the Social Security Act, its amendments, and federal regulations and who does not have otherwise provided for him a subsistence compatible with decency and health;

(5) "Parent", in addition to biological or adoptive parent, shall include stepparent;

(6) "Needy aged" means a person who has attained the age of sixty-five (65) and who is unable to provide for himself and who does not have otherwise provided for him a subsistence compatible with decency and health;

(7) "Needy blind" means a person who has no vision or whose vision is so defective as to prevent the performance of ordinary activities for which eyesight is essential and who is unable to provide for himself and who does not have otherwise provided for him a subsistence compatible with decency and health;

(8) "Person with whom a needy child lives" means the individual prescribed by regulation, with whom such child is living in a place of residence maintained by such individual by himself or together with one (1) or more other persons;

(9) "Needy permanently and totally disabled" means a person eighteen (18) years of age or older and who has a permanent physical or mental impairment, disease, or loss that substantially precludes him from engaging in useful occupations within his competence and who is unable to provide for himself and who does not have otherwise provided for him a subsistence compatible with decency and health;

(10) "Private institution" means any establishment or place other than a public institution operated or maintained by any individual, association, corporation, or other organization which provides a group living arrangement for four (4) or more individuals, who are cared for and maintained in residence for compensation or otherwise;

(11) "Public institution" means any establishment or place which is the responsibility of and administered by the state or any political subdivision thereof providing a group living arrangement in which one (1) or more individuals are cared for and maintained in residence;

(12) "Public medical institution" means any public institution the primary purpose of which is to furnish hospital care and medical treatment;

(13) "Person determined to be potentially responsible" means any person who:

(a) Is not aged, blind, disabled, incapacitated, or needed in the home:

1. Because of the illness or incapacity of a member of the family; or

2. Because of children in the home under the age of six; or

(b) Volunteers for such determination;

(14)[~~As used in KRS 205.650 to 205.700, unless the context otherwise requires:~~

~~(a) "Community work experience program" shall mean a program to provide work experience and training for recipients of public assistance who are not otherwise able to obtain employment or who are not actively participating in training or education programs;~~

~~(b) "Designated geographic area" shall mean one (1) county or a portion of one (1) county selected by the secretary as the site of a community work experience program; and~~

~~(c) "Recipient" shall mean a person who currently receives benefits from public assistance;~~

~~(15)~~] Nothing in this section shall be deemed to deprive a woman of all appropriate medical care necessary to prevent her physical death.

(15)[~~(16)~~] "Adult day-care center" means any adult care facility which provides part-time care, day or night, but less than twenty-four (24) hours, to at least four (4) adults not related to the operator of the adult care facility by blood, marriage, or adoption.

Section 2. KRS 205.200 is amended to read as follows:

(1) A needy aged person, a needy blind person, a needy child, a needy permanently and totally disabled person, or a person with whom a needy child lives shall be eligible to receive a public assistance grant only if he has made a proper application or an application has been made on his behalf in the manner and form prescribed by administrative regulation. No individual shall be eligible to receive public assistance under more than one (1) category of public assistance for the same period of time.

(2) The secretary shall, by administrative regulations, prescribe the conditions of eligibility for public assistance in conformity with the public assistance titles of the Social Security Act, its amendments, and other federal acts and regulations. The secretary shall also promulgate administrative regulations to allow for between a forty percent (40%) and a forty-five percent (45%) ratable reduction in the method of calculating eligibility and benefits for ***public assistance under Title IV-A of the federal Social Security Act***[~~aid to families with dependent children~~]. In no instance shall grants

to families with no income be less than the appropriate[~~ aid to families with dependent children~~] grant maximum ***used for public assistance under Title IV-A of the federal Social Security Act***. As used in this section, "ratable reduction" means the percentage reduction applied to the deficit between the family's countable income and the standard of need for the appropriate family size.

(3) The secretary may by administrative regulation prescribe as a condition of eligibility that a needy child regularly attend school, and may further by administrative regulation prescribe the degree of relationship of the person or persons in whose home such needy child must reside.

(4) The secretary may by administrative regulation prescribe conditions for bringing paternity proceedings or actions for support in cases of out of wedlock birth or nonsupport by a parent in the ***public assistance under Title IV-A of the federal Social Security Act***[~~aid to families with dependent children~~] program.

(5) Public assistance shall not be payable to or in behalf of any individual who has taken any legal action in his own behalf or in the behalf of others with the intent and purpose of creating eligibility for ***the***[~~such~~] assistance.

(6) The cabinet shall promptly notify the appropriate law enforcement officials of the furnishing of ***public assistance under Title IV-A of the federal Social Security Act***[~~aid to families with dependent children~~] in respect to a child who has been deserted or abandoned by a parent.

(7) No person shall be eligible for public assistance payments if, after having been determined to be potentially responsible, and afforded notice and opportunity for hearing, he refuses without good cause:

(a) To register for employment with the state employment service,

(b) To accept suitable training, or

(c) To accept suitable employment.

The secretary may prescribe by administrative regulation ***subject to the provisions of KRS Chapter 13A*** standards of suitability for training and employment.

(8) To the extent permitted by federal law, scholarships, grants or other types of financial assistance for education shall not be considered as income for the purpose of determining eligibility for public assistance.

(9) To the extent permitted by federal law, any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to "Agent Orange" by a member or veteran of the Armed Forces of the United States or any dependent of such person who served in Vietnam shall not be considered as income for the purpose of determining eligibility or continuing eligibility for public assistance and shall not be subject to a lien or be available for repayment to the Commonwealth for public assistance received by the recipient.

[~~(10) The cabinet shall include a special needs allowance to recipients of aid to families with dependent children for costs associated with education and training, limited to transportation to and from training or educational programs and child care costs necessary for participation in education and training programs. The cabinet shall promulgate administrative regulations setting forth the special needs which will be recognized and the circumstances under which they will be included, the amount of special needs allowances and the length of time recipients may receive such allowances. Such administrative regulations shall provide that work expenses and child care costs resulting from employment in an employment search program or a community work experience program shall not be special needs.~~]

Section 3. KRS 205.2001 is amended to read as follows:

For purposes of eligibility for ***public assistance under Title IV-A of the federal Social Security Act, "public assistance under Title IV-A of the federal Social Security Act***[~~aid to families with dependent children, "aid to families with dependent children~~] standard of need" means ***an amount no less than*** the poverty income level by size of family unit, as annually issued by the U.S. Department of Health and Human Services, minus the combined value of the state's average Medicaid utilization for a given family size plus the value of U.S. food stamps for a given family size.

SECTION 4. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) The secretary shall by administrative regulations subject to the provisions of KRS Chapter 13 develop a work program for recipients of public assistance under Title IV-A of the federal Social Security Act to provide for immediate employment or preparation for employment.

(2) Self-sufficiency of participants shall be the primary goal of the work program. Participants shall bear the ultimate responsibility in pursuit of this goal.

(3) In partnership with participants, the cabinet shall assess their strengths and needs and provide supportive services to assist in the pursuit of work and self-sufficiency.

Section 5. KRS 116.048 is amended to read as follows:

(1) The following agencies are designated as voter registration agencies in accordance with the National Voter Registration Act of 1993:

(a) Agencies that provide benefits under ***public assistance under Title IV-A of the federal Social Security Act,*** the[~~Aid to Families with Dependent Children,~~] Special Supplemental Food Program for Women, Infants, and Children, ***the Kentucky Medical Assistance Program***[~~Medicaid~~], or ***the*** Food Stamps ***Program***[~~Programs~~];

(b) Armed Forces recruitment offices;

(c) Other agencies as the Secretary of State shall determine to be providing public assistance; and

(d) Other agencies as the Secretary of State shall determine to be state-funded programs primarily engaged in providing services to persons with disabilities.

(2) A voter registration agency that provides service or assistance in conducting voter registration shall:

(a) Distribute with each application for its service or assistance, and with each recertification, renewal, or change of address form, the office's own voter registration application form that complies with the requirements of Section 7 of Public Law 103-31, the National Voter Registration Act of 1993;

(b) Provide a form that includes:

1. The question, "If you are not registered to vote where you live now, would you like to apply to register to vote here today?";

2. If the agency provides public assistance, the statement, "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.";

3. Boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote (failure to check either box being deemed to constitute a declination to register for purposes of paragraph (c) of this subsection), together with the statement in close proximity to the boxes and in prominent type, "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.";

4. The statement, "If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private."; and

5. The statement, "If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with ____________________.", the blank being filled by the name, address, and telephone number of the appropriate official to whom a complaint should be addressed; and

(c) Provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the registration application form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses assistance.

(3) (a) At each voter registration agency, the following services shall be made available:

1. Distribution of mail voter registration forms;

2. Assistance to applicants in completing voter registration application forms, unless the applicant refuses assistance; and

3. Acceptance of completed voter registration application forms for transmittal to the county clerk of the county of the applicant's voting residence.

(b) If a voter registration agency designated under subsection (1)(d) of this section provides services to a person with a disability at the person's home, the agency shall provide the services described in paragraph (a) of this subsection at the person's home.

(4) A person who provides services described in subsection (3) of this section shall not:

(a) Seek to influence an applicant's political preference or party registration;

(b) Display any material indicating the person's political preference or party allegiance;

(c) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(d) Make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register to vote has any bearing on the availability of services or benefits.

(5) The State Board of Elections may designate requirements for record keeping and document retention it deems necessary to comply with the National Voter Registration Act of 1993 and the provisions of this chapter.

(6) (a) A completed registration application accepted at a voter registration agency shall be transmitted to the county clerk of the county of the applicant's voting residence or the State Board of Elections not later than ten (10) days after the date of acceptance.

(b) If a registration application is accepted within five (5) days before the last day for registration to vote in an election, the application shall be transmitted to the county clerk of the county of the applicant's voting residence or the State Board of Elections not later than five (5) days after the date of acceptance.

Section 6. KRS 205.710 is amended to read as follows:

As used in KRS 205.712 to 205.800, unless the context clearly dictates otherwise:

(1) "Cabinet" shall mean the Cabinet for Human Resources;

(2) "Secretary" shall mean the secretary of the Cabinet for Human Resources;

(3) "Court order" shall mean any judgment, decree, or order of the courts of this state or any other state. For the purposes of KRS 205.715 to 205.800, 403.215, 405.405 to 405.520, and 530.050, it shall also include an order of an authorized administrative body;

(4) "Dependent child" or "needy dependent child" shall mean any person under the age of eighteen (18), or under the age of nineteen (19) if in high school, who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States and is a recipient of or applicant for services under Part D of Title IV of the Social Security Act;

(5) "Duty of support" shall mean any duty of support imposed or imposable by law or by court order, decree, or judgment, whether interlocutory or final, and includes the duty to pay maintenance when included in the child support order or when assigned to the cabinet and arrearages of support past due and unpaid in addition to medical support whenever health care coverage is available at a reasonable cost;

(6) "Recipient" shall mean a relative or payee within the meaning of the Social Security Act and federal and state regulations who is receiving public assistance on behalf of a needy dependent child;

(7) "Consumer reporting agency" means any person or organization which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports;

(8) "Obligor" means a parent who has an obligation to provide support;

(9) "Employer" means any individual, sole proprietorship, partnership, association, or private or public corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a political subdivision of another state, or any other legal entity which hires and pays an individual for his services;

(10) "Income" means but is not limited to any of the following:

(a) Commissions, earnings, salaries, wages, and other income due or to be due in the future from a person's employer and successor employers;

(b) Any payment due or to be due in the future from a profit-sharing plan, pension plan, insurance contract, annuity, social security, proceeds derived from state lottery winnings, unemployment compensation, supplemental unemployment benefits, and workers' compensation; and

(c) Any amount of money which is due to the obligor under a support order as a debt of any other individual, partnership, association, or private or public corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a political subdivision of another state, or any other legal entity which is indebted to the obligor;

(11) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and notwithstanding any other provision of law exempting such payments from garnishment, attachment, or other process to satisfy support obligations and specifically includes periodic payments from pension and retirement programs and insurance policies of any kind. Earnings shall include all gain derived from capital, from labor, or both, including profit gained through sale or conversion of capital assets and unemployment compensation benefits, or any other form of monetary gain. The term "disposable earnings" means that part of earnings remaining after deductions of any amounts required by law to be withheld;

(12) "Enforce" means to employ any judicial or administrative remedy under KRS 405.405 to 405.420 and KRS 405.991(2) or under any other Kentucky law;

(13) "Need" includes, but is not limited to, the necessary cost of food, clothing, shelter, and medical care. The amount determined under the suggested minimum support obligation scale shall be rebuttably presumed to correspond to the parent's ability to pay and the need of the child. A parent shall be presumed to be unable to pay child support from any income received from[~~ aid to families with dependent children, or other continuing~~] public assistance ***under Title IV-A of the federal Social Security Act***;

(14) "Parent" means a biological or adoptive mother or father of a child born in wedlock or a father of a child born out of wedlock if paternity has been established in a judicial proceeding or in any manner consistent with the laws of this or any other state, whose child is entitled to support, pursuant to court order, statute, or administrative determination; and

(15) "Real and personal property" includes all property of all kinds, including but not limited to, all gain derived from capital, labor, or both; compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise; periodic payments from pension and retirement programs; and unemployment compensation and insurance policies.

Section 7. KRS 205.721 is amended to read as follows:

(1) All services available to individuals receiving ***public assistance under Title IV-A of the federal Social Security Act***~~[aid to families with dependent children (AFDC)]~~ benefits shall also be available to individuals not receiving ***public assistance***~~[AFDC]~~ benefits, upon application by the individual with the cabinet.

(2) The cabinet shall continue to provide IV-D services when a family ceases to receive public assistance without requiring a formal application and without payment of the application fee specified in subsection (3) of this section. IV-D services shall be discontinued upon the request of the recipient.

(3) Except as provided in subsection (2) of this section, the cabinet may charge an application fee for the services based on a fee schedule, which shall take into account the applicant's net income. No application fee shall be required from individuals receiving public assistance.

Section 8. KRS 403.212 is amended to read as follows:

(1) The following provisions and child support table shall be the child support guidelines established for the Commonwealth of Kentucky.

(2) For the purposes of the child support guidelines:

(a) "Income" means actual gross income of the parent if employed to full capacity or potential income if unemployed or underemployed.

(b) "Gross income" includes income from any source, except as excluded in this subsection, and includes but is not limited to income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, Social Security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, Supplemental Security Income (SSI), gifts, prizes, and alimony or maintenance received. Specifically excluded are benefits received from means-tested public assistance programs, including but not limited to~~[Aid to Families with Dependent Children (AFDC), and]~~ food stamps.

(c) For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, "gross income" means gross receipts minus ordinary and necessary expenses required for self-employment or business operation. Straight line depreciation, using Internal Revenue Service (IRS) guidelines, shall be the only allowable method of calculating depreciation expense in determining gross income. Specifically excluded from ordinary and necessary expenses for purposes of this guideline shall be investment tax credits or any other business expenses inappropriate for determining gross income for purposes of calculating child support. Income and expenses from self-employment or operation of a business shall be carefully reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support obligation. In most cases, this amount will differ from a determination of business income for tax purposes. Expense reimbursement or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business or personal use of business property or payments of expenses by a business, shall be counted as income if they are significant and reduce personal living expenses such as a company or business car, free housing, reimbursed meals, or club dues.

(d) If a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income, except that a determination of potential income shall not be made for a parent who is physically or mentally incapacitated or is caring for a very young child, age three (3) or younger, for whom the parents owe a joint legal responsibility. Potential income shall be determined based upon employment potential and probable earnings level based on the obligor's or obligee's recent work history, occupational qualifications, and prevailing job opportunities and earnings levels in the community. A court may find a parent to be voluntarily unemployed or underemployed without finding that the parent intended to avoid or reduce the child support obligation.

(e) "Imputed child support obligation" means the amount of child support the parent would be required to pay from application of the child support guidelines.

(f) Income statements of the parents shall be verified by documentation of both current and past income. Suitable documentation shall include but shall not be limited to, income tax returns, paystubs, employer statements, or receipts and expenses if self-employed.

(g) "Combined adjusted parental gross income" means the combined gross incomes of both parents, less any of the following payments made by the parent:

1. The cost of health insurance coverage for the child;

2. The amount of pre-existing orders for current maintenance for prior spouses to the extent payment is

actually made and the amount of current maintenance, if any, ordered paid in the proceeding before the court;

3. The amount of pre-existing orders of current child support for prior-born children to the extent payment is actually made under those orders; and

4. A deduction for the support to the extent payment is made, if a parent is legally responsible for and is actually providing support for other prior-born children who are not the subject of a particular proceeding. If the prior-born children reside with that parent, an "imputed child support obligation" shall be allowed in the amount which would result from application of the guidelines for the support of the prior-born children.

(3) The child support obligation set forth in the child support guidelines table shall be divided between the parents in proportion to their adjusted gross income.

(4) The child support obligation shall be the appropriate amount for the number of children in the table for whom the parents share a joint legal responsibility. The minimum amount of child support shall be sixty dollars ($60) per month.

(5) The court may use its judicial discretion in determining child support in circumstances where combined adjusted parental gross income exceeds the uppermost levels of the guideline table.

(6) The child support guidelines table is as follows:

COMBINED MONTHLY ADJUSTED PARENTAL GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE	FOUR	FIVE	SIX OR MORE
$ 0	$ 60	$ 60	$ 60	$ 60	$ 60	$ 60
100	60	60	60	60	60	60
200	70	70	70	70	70	70
300	80	80	80	80	80	80
400	90	90	90	90	90	90
500	100	105	110	115	120	125
600	120	125	130	135	140	145
700	140	156	161	166	171	176
800	160	203	208	213	218	223
900	180	261	266	271	276	281
1,000	195	303	325	330	335	340
1,100	212	324	384	389	394	399
1,200	229	346	433	446	451	456
1,300	246	367	460	504	510	515
1,400	262	392	491	554	576	582
1,500	277	417	522	588	642	650
1,600	293	437	548	618	674	717
1,700	308	458	574	647	706	755
1,800	322	478	599	675	736	788
1,900	336	495	620	699	763	816
2,000	350	512	642	723	789	844
2,100	364	529	663	747	815	872
2,200	376	546	684	771	841	900
2,300	389	563	706	795	868	928
2,400	401	580	727	819	894	956
2,500	413	597	749	843	920	984
2,600	424	614	770	867	946	1,012
2,700	435	630	790	889	970	1,038
2,800	445	646	809	911	994	1,064
2,900	455	662	829	934	1,019	1,090

3,000	465	677	849	956	1,043	1,116
3,100	475	693	868	978	1,067	1,142
3,200	485	709	888	1,001	1,092	1,168
3,300	495	725	908	1,023	1,116	1,194
3,400	506	741	928	1,045	1,140	1,220
3,500	516	757	947	1,067	1,164	1,246
3,600	526	773	967	1,090	1,189	1,272
3,700	536	790	988	1,113	1,215	1,299
3,800	548	808	1,011	1,139	1,243	1,329
3,900	559	826	1,033	1,164	1,270	1,359
4,000	571	844	1,056	1,190	1,298	1,388
4,100	580	862	1,078	1,215	1,326	1,418
4,200	592	880	1,101	1,240	1,353	1,448
4,300	603	898	1,123	1,266	1,381	1,477
4,400	615	916	1,146	1,291	1,409	1,507
4,500	626	933	1,161	1,316	1,435	1,535
4,600	636	949	1,181	1,338	1,459	1,561
4,700	647	964	1,200	1,360	1,483	1,586
4,800	657	980	1,220	1,381	1,507	1,612
4,900	667	995	1,239	1,403	1,531	1,637
5,000	676	1,010	1,257	1,424	1,554	1,661
5,100	686	1,025	1,275	1,444	1,576	1,685
5,200	695	1,039	1,294	1,465	1,599	1,709
5,300	705	1,054	1,312	1,486	1,621	1,733
5,400	714	1,069	1,330	1,506	1,644	1,757
5,500	724	1,083	1,348	1,527	1,666	1,781
5,600	733	1,098	1,367	1,548	1,689	1,805
5,700	743	1,113	1,385	1,568	1,712	1,829
5,800	753	1,127	1,403	1,589	1,734	1,853
5,900	762	1,142	1,421	1,610	1,757	1,877
6,000	772	1,157	1,440	1,630	1,779	1,901
6,100	781	1,171	1,458	1,651	1,802	1,926
6,200	791	1,186	1,476	1,672	1,824	1,950
6,300	800	1,198	1,498	1,690	1,844	1,970
6,400	808	1,209	1,511	1,705	1,860	1,988
6,500	816	1,219	1,524	1,720	1,876	2,005
6,600	823	1,230	1,538	1,735	1,893	2,023
6,700	830	1,240	1,551	1,750	1,909	2,040
6,800	837	1,251	1,564	1,764	1,925	2,058
6,900	844	1,261	1,577	1,779	1,942	2,075
7,000	851	1,272	1,591	1,794	1,958	2,093
7,100	858	1,282	1,604	1,809	1,975	2,110
7,200	865	1,293	1,617	1,824	1,991	2,127
7,300	872	1,303	1,630	1,839	2,007	2,145
7,400	879	1,313	1,644	1,854	2,024	2,162
7,500	885	1,324	1,657	1,869	2,040	2,179
7,600	891	1,333	1,668	1,881	2,053	2,194

7,700	896	1,342	1,679	1,893	2,066	2,208
7,800	901	1,350	1,691	1,905	2,079	2,223
7,900	907	1,359	1,702	1,917	2,093	2,238
8,000	912	1,368	1,713	1,929	2,106	2,252
8,100	917	1,377	1,724	1,941	2,119	2,267
8,200	922	1,386	1,736	1,953	2,133	2,281
8,300	928	1,395	1,747	1,965	2,146	2,296
8,400	933	1,404	1,758	1,977	2,159	2,311
8,500	938	1,413	1,769	1,989	2,173	2,325
8,600	944	1,421	1,780	2,002	2,186	2,340
8,700	949	1,430	1,792	2,014	2,199	2,354
8,800	954	1,437	1,800	2,024	2,210	2,366
8,900	958	1,444	1,809	2,033	2,220	2,376
9,000	962	1,450	1,817	2,042	2,230	2,387
9,100	966	1,457	1,825	2,052	2,241	2,398
9,200	971	1,463	1,833	2,061	2,251	2,408
9,300	975	1,470	1,842	2,070	2,261	2,419
9,400	979	1,476	1,850	2,079	2,271	2,430
9,500	983	1,483	1,858	2,089	2,281	2,440
9,600	988	1,489	1,866	2,098	2,291	2,451
9,700	992	1,496	1,874	2,107	2,301	2,461
9,800	996	1,502	1,883	2,117	2,311	2,472
9,900	1,000	1,508	1,891	2,126	2,321	2,483
10,000	1,005	1,515	1,899	2,165	2,331	2,493
10,400	1,022	1,541	1,932	2,202	2,372	2,536
10,500	1,027	1,548	1,940	2,212	2,382	2,546
10,600	1,032	1,554	1,948	2,221	2,392	2,557
10,700	1,036	1,561	1,956	2,230	2,402	2,567
10,800	1,040	1,567	1,965	2,240	2,412	2,578
10,900	1,044	1,573	1,973	2,249	2,422	2,589
11,000	1,049	1,580	1,981	2,258	2,432	2,599
11,100	1,053	1,587	1,989	2,268	2,443	2,610
11,200	1,058	1,593	1,997	2,277	2,453	2,620
11,300	1,062	1,600	2,005	2,286	2,463	2,631
11,400	1,066	1,606	2,013	2,295	2,473	2,642
11,500	1,070	1,613	2,021	2,305	2,483	2,652
11,600	1,075	1,619	2,029	2,314	2,493	2,663
11,700	1,079	1,626	2,037	2,323	2,503	2,673
11,800	1,084	1,633	2,046	2,333	2,513	2,684
11,900	1,088	1,639	2,054	2,342	2,523	2,695
12,000	1,093	1,646	2,062	2,351	2,533	2,705
12,100	1,097	1,653	2,070	2,361	2,544	2,716
12,200	1,102	1,659	2,078	2,370	2,554	2,726
12,300	1,106	1,666	2,086	2,379	2,564	2,737
12,400	1,110	1,672	2,094	2,388	2,574	2,748
12,500	1,114	1,679	2,102	2,398	2,584	2,758
12,600	1,119	1,685	2,110	2,407	2,594	2,769

12,700	1,123	1,692	2,118	2,416	2,604	2,779
12,800	1,128	1,699	2,127	2,426	2,614	2,790
12,900	1,132	1,705	2,135	2,435	2,624	2,801
13,000	1,137	1,712	2,143	2,444	2,634	2,811
13,100	1,141	1,719	2,151	2,454	2,645	2,822
13,200	1,146	1,725	2,159	2,463	2,665	2,832
13,300	1,150	1,732	2,167	2,472	2,665	2,843
13,400	1,154	1,738	2,175	2,481	2,675	2,854
13,500	1,158	1,745	2,183	2,491	2,685	2,864
13,600	1,163	1,751	2,191	2,500	2,695	2,875
13,700	1,167	1,758	2,199	2,509	2,705	2,885
13,800	1,172	1,765	2,208	2,519	2,715	2,896
13,900	1,176	1,771	2,216	2,528	2,725	2,907
14,000	1,181	1,778	2,224	2,537	2,735	2,917
14,100	1,185	1,785	2,232	2,547	2,746	2,928
14,200	1,190	1,791	2,240	2,556	2,756	2,938
14,300	1,194	1,798	2,248	2,565	2,766	2,949
14,400	1,198	1,804	2,256	2,574	2,776	2,960
14,500	1,202	1,811	2,264	2,584	2,786	2,970
14,600	1,207	1,817	2,272	2,593	2,796	2,981
14,700	1,211	1,824	2,280	2,602	2,806	2,991
14,800	1,216	1,831	2,289	2,612	2,816	3,002
14,900	1,220	1,837	2,297	2,621	2,826	3,013
15,000	1,225	1,844	2,305	2,630	2,836	3,023

Section 9. The following KRS sections are repealed:

195.120 Purpose of KRS 195.130 and 195.140.

195.130 Definition for KRS 195.120 to 195.140.

195.140 Programs for displaced homemakers.

205.2002 Education or training or employment of adults in families with dependent children -- Goals for cabinet -- Sanctions for noncompliance -- Report to General Assembly.

205.215 Short-term assistance to families with children.

205.650 Development of programs.

205.660 Participation as a condition of receiving public assistance -- Exceptions.

205.670 Specifications of types of programs -- Hours -- Transportation.

205.680 Conditions for types of employment.

205.690 Reports to General Assembly.

205.700 Participation by food stamp recipients.

205.810 Money payment in crisis situation -- Eligibility -- Limitations -- Reimbursement -- Registration for employment -- Prompt payment.

The Committee Amendment No. 1 to **HB 129** is as follows:

On page 13, line 7, by inserting after "limited to" the following:

"***public assistance under Title IV-A of the federal Social Security Act and***".

HB 130, AN ACT relating to child support.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS 205.710 TO 205.800 IS CREATED TO READ AS FOLLOWS:

If any check tendered to the cabinet is not paid when presented to the drawee bank for payment, there shall be paid as a penalty by the payor who tendered the check, or the payor for whom the check was tendered, upon notice and demand of the cabinet, an amount equal to ten percent (10%) of the check. The penalty under this section shall not be less than ten dollars ($10) or more than one hundred dollars ($100). If the payor who tendered the check shows to the cabinet's satisfaction that the failure to honor payment of the check resulted from error by parties other than the payor, the cabinet shall waive the penalty.

SECTION 2. A NEW SECTION OF KRS 205.710 TO 205.800 IS CREATED TO READ AS FOLLOWS:

For purposes of KRS 205.710 to 205.800, KRS Chapter 403, and KRS Chapter 407, the Circuit Court and the District Court shall have concurrent jurisdiction to establish, modify, and enforce obligations of child support in cases where the determination of paternity is not an issue, except that the jurisdiction of the District Court in cases not involving the determination of paternity shall be limited to those cases where there is no Circuit Court order of this state previously setting child support.

Section 3. KRS 205.750 is amended to read as follows:

(1) Child support payments made pursuant to a court order shall be made through ***the state agency or an***~~[a domestic relations clerk of the county or other person or]~~ agency designated by the ***state agency***~~[court]~~ to receive payments and paid to the cabinet upon notice by the cabinet to the court and the obligor that the child is a recipient of services pursuant to Title IV-D of the Social Security Act.

(2) Payment of support payments by the obligor directly to a child who is receiving public assistance after the obligor has been notified pursuant to subsection (1) of this section does not abate the obligor's support obligation to the cabinet.

(3) In any support collected in good faith by the cabinet under a court or administrative order, the cabinet shall not be liable for any claims of repayment.

The Committee Substitute to **HB 130** is as follows:

AN ACT relating to child support.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 237.110 is amended to read as follows:

(1) The Department of State Police is authorized to issue licenses to carry concealed firearms or other deadly weapons to persons qualified as provided in this section. Licenses shall be valid throughout the state for a period of three (3) years from the date of issuance. Any person in compliance with the terms of the license may carry a concealed firearm or other deadly weapon or combination of firearms and other deadly weapons on or about his person. The licensee shall carry the license at all times the licensee is carrying a concealed firearm or other deadly weapon and shall display the license upon request of a law enforcement officer. Violation of the provisions of this subsection shall constitute a noncriminal violation with a penalty of twenty-five dollars ($25), payable to the clerk of the District Court.

(2) The Department of State Police shall issue a license if the applicant:

(a) Is a resident of the state and has been a resident for six (6) months or longer immediately preceding the filing of the application;

(b) Is twenty-one (21) years of age or older;

(c) Is not ineligible to possess a firearm pursuant to 18 U.S.C. sec. 922(g) or KRS 527.040;

(d) Has not been committed to a state or federal facility for the abuse of a controlled substance or been convicted of a misdemeanor violation of KRS Chapter 218A or similar laws of any other state relating to controlled substances within a three (3) year period immediately preceding the date on which the application is submitted;

(e) Does not chronically and habitually use alcoholic beverages as evidenced by the applicant having two (2) or more convictions for violating KRS 189A.010 within the three (3) years immediately preceding his application or if the applicant has been committed as an alcoholic pursuant to KRS Chapter 222, or similar laws of any other state, within the three (3) year period immediately preceding the date on which the application is submitted;

(f) Demonstrates competence with a firearm by any one (1) of the following:

1. Completion, prior to, on, or after October 1, 1996, of any hunter education and firearms safety course approved by the Department of Fish and Wildlife or a similar agency of another state. The Department of Fish and Wildlife may impose additional qualifications by promulgation of administrative regulations to meet the requirements of this section and may establish fees as may be required, so as to avoid a diversion of Fish and Game funds as specified in 50 C.F.R. Part 80. Any fee assessed shall be reasonable and shall not exceed the actual cost of administering the program;

2. Completion, prior to, on, or after October 1, 1996, of any law enforcement firearms safety or training course or class offered for special local peace officers or special law enforcement officers conducted or

approved by the Department of Criminal Justice Training;

3. Completion, prior to, on, or after October 1, 1996, of any firearm safety or training course or class available to the general public offered by law enforcement, junior college, college, or private or public institution or organization or firearms training school, utilizing instructors certified by the Department of Criminal Justice Training; or

4. Completion, prior to, on, or after October 1, 1996, of any firearms training or safety course or class conducted by a state-certified firearms instructor or an instructor holding a certification as a firearms instructor issued by a state or federal agency.

Classes presented pursuant to this paragraph shall include instruction on handguns, the safe use of handguns, the care and cleaning of handguns, handgun marksmanship principles, and actual range firing of a handgun in a safe manner. Classes presented pursuant to this paragraph shall include information on laws relating to firearms as described in KRS Chapters 237 and 527 and the law of the use of force as described in KRS Chapter 503. The Department of Criminal Justice Training, Department of State Police, and any other state agency with the authority to certify firearms instructors, shall promulgate uniform administrative regulations concerning the certification and de-certification of all firearms instructors practicing in the Commonwealth of Kentucky. Notwithstanding any other provision of the Kentucky Revised Statutes, no person shall qualify as having demonstrated competence with a firearm pursuant to this subsection, unless certified by a governmental agency of the Commonwealth of Kentucky, or of the federal government. The Administrative Office of the Courts shall publish and make available, at no cost, information in a manner suitable for distribution to class participants. A legible photocopy of a certificate of completion of any of the courses or classes or a notarized affidavit from the instructor, school, club, organization, or group that conducts or teaches the course or class attesting to the completion of the course or class by the applicant shall constitute evidence of qualification under this paragraph. Peace officers who are retired and are members of the Kentucky Employees Retirement System, State Police Retirement System, or County Employees Retirement System shall be deemed to have met the training requirement;

(g) Has not been adjudicated an incompetent under KRS Chapter 202B or has waited three (3) years from the date his competency was restored by the court order under KRS Chapter 202B; and

(h) Has not been involuntarily committed to a mental institution pursuant to KRS Chapter 202A, unless he possesses a certificate from a psychiatrist licensed in this state that he has not suffered from disability for a period of three (3) years.

(3) The Department of State Police may deny a license if the applicant has been found guilty of a violation of KRS 508.030 or 508.080 within the three (3) year period prior to the date on which the application is submitted or may revoke a license if the licensee has been found guilty of a violation of KRS 508.030 or 508.080 within the preceding three (3) years.

(4) ***The Department of State Police shall deny, suspend, or revoke a license to carry a concealed deadly weapon upon written notice by the Cabinet for Human Resources that the person has a child support arrearage which equals or exceeds the cumulative amount which would be owed after one (1) year of nonpayment, or for failure, after receiving appropriate notice, to comply with a subpoena or warrant relating to paternity or child support proceedings.***

(5) The application for a permit, or renewal of a permit, to carry a concealed deadly weapon shall be obtained from the office of the sheriff in the county in which the person resides. The completed application and all accompanying material plus an application fee or renewal fee, as appropriate, of sixty dollars ($60) shall be presented to the office of the sheriff of the county in which the applicant resides. A retired peace officer who is a member of the Kentucky Employees Retirement System, State Police Retirement System, or County Employees Retirement System shall be exempt from paying the application or renewal fees following the date of his retirement. The sheriff shall transmit the application and accompanying material to the Department of State Police within five (5) working days. Twenty dollars ($20) of the application fee shall be retained by the office of the sheriff for official expenses of the office. Twenty dollars ($20) shall be sent to the Department of State Police with the application. Ten dollars ($10) shall be transmitted by the sheriff to the Administrative Office of the Courts to fund background checks for youth leaders, and ten dollars ($10) shall be transmitted to the Administrative Office of the Courts to fund background checks for applicants for concealed weapons. The application shall be completed, under oath, on a form promulgated by the Department of State Police by administrative regulation which shall only include:

(a) The name, address, place and date of birth, gender, and Social Security number of the applicant;

(b) A statement that, to the best of his knowledge, the applicant is in compliance with criteria contained within subsections (2) and (3) of this section;

(c) A statement that the applicant has been furnished a copy of this section and is knowledgeable about its provisions;

(d) A statement that the applicant has been furnished a copy of, has read, and understands KRS Chapter 503 as it pertains to the use of deadly force for self-defense in Kentucky; and

(e) A conspicuous warning that the application is executed under oath and that a materially false answer to any question, or the submission of any materially false document by the applicant, subjects the applicant to criminal prosecution under KRS 523.030.

(6)[~~(5)~~] The applicant, if a resident of the Commonwealth, shall submit to the sheriff of the applicant's county of residence:

(a) A completed application as described in subsection *(5)*[~~(4)~~] of this section;

(b) A recent color photograph of the applicant, as prescribed by administrative regulation; and

(c) A photocopy of a certificate or an affidavit or document as described in subsection (2)(f) of this section.

(7)[~~(6)~~] The Department of State Police shall, within ninety (90) days after the date of receipt of the items listed in subsection *(6)*[~~(5)~~] of this section, either:

(a) Issue the license; or

(b) Deny the application based solely on the grounds that the applicant fails to qualify under the criteria listed in subsection (2) or (3) of this section. If the Department of State Police denies the application, it shall notify the applicant in writing, stating the grounds for denial and informing the applicant of a right to submit, within thirty (30) days, any additional documentation relating to the grounds of denial. Upon receiving any additional documentation, the Department of State Police shall reconsider its decision and inform the applicant within twenty (20) days of the result of the reconsideration. The applicant shall further be informed of the right to seek de novo review of the denial in the District Court of his place of residence.

(8)[~~(7)~~] The Department of State Police shall maintain an automated listing of licenseholders and pertinent information, and this information shall be available on-line, upon request, at all times to all Kentucky law enforcement agencies. Except as provided in this subsection, information on applications for licenses, names and addresses, or other identifying information relating to license holders shall be confidential and shall not be made available except to law enforcement agencies. Requests for information to be provided to any requester other than a bona fide law enforcement agency which has direct access to the Law Enforcement Information Network of Kentucky shall be made, in writing, directly to the commissioner of the Department of State Police, together with the fee required for the providing of the information. The Department of State Police shall, upon proper application and the payment of the required fee, provide to the requester in hard copy form only, a list of names of all holders in the Commonwealth of a license to carry a concealed deadly weapon. No identifying information other than the name shall be provided, and information for geographic areas or other subdivisions of any type from the list shall not be provided and shall be confidential. The fee to be charged shall be the same as for other public records provided by the Department of State Police. No request for lists of local or statewide permit holders shall be made to any state or local law enforcement agency, peace officer, or other agency of government other than the Department of State Police, and no state or local law enforcement agency, peace officer, or agency of government, other than the Department of State Police, shall provide any information not entitled to it by law. The names of all persons, other than law enforcement agencies and peace officers, requesting information under this section shall be a public record.

(9)[~~(8)~~] Within thirty (30) days after the changing of a permanent address, or within thirty (30) days after the loss or destruction of a license, the licensee shall notify the Department of State Police of the loss or destruction. Failure to notify the Department of State Police shall constitute a noncriminal violation with a penalty of twenty-five dollars ($25) payable to the clerk of the district court.

(10)[~~(9)~~] If a license is lost or destroyed, the license shall be automatically invalid, and the person to whom the same was issued may, upon payment of fifteen dollars ($15) to the Department of State Police, obtain a duplicate, upon furnishing a notarized statement to the Department of State Police that the license has been lost or destroyed.

(11)[~~(10)~~] A license issued under this section shall be suspended or revoked if the licensee becomes ineligible to be issued a license under the criteria set forth in subsection (2)(a), (c), (d), (e), (f), or (h) of this section. When a domestic violence order or emergency protective order is issued pursuant to the provisions of KRS Chapter 403 against a person holding a license issued under this section, the holder of the permit shall surrender the license to the court or to the officer serving the order. The officer to whom the license is surrendered shall forthwith transmit the license to the court issuing the order. The license shall be suspended until the order is terminated, or until the judge who issued the order terminates the suspension prior to the termination of the underlying domestic violence order or emergency protective order, in writing and by return of the license, upon proper motion by the license holder. Subject to the same conditions as above, a peace officer against whom an emergency protective order or domestic violence order has been issued shall not be permitted to carry a concealed deadly weapon when not on duty, the provisions of KRS 527.020 to the contrary notwithstanding.

(12)[~~(11)~~] Not less than ninety (90) days prior to the expiration date of the license, the Department of State Police shall mail to each licensee a written notice of the expiration and a renewal form prescribed by the Department of State Police. The

licensee may renew his license on or before the expiration date by filing with the sheriff of his county of residence the renewal form, a notarized affidavit stating that the licensee remains qualified pursuant to the criteria specified in subsections (2) and (3) of this section, and the required renewal fee. The license shall be renewed to a qualified applicant upon receipt of the completed renewal application and appropriate payment of fees. A licensee who fails to file a renewal application on or before its expiration date may renew his license by paying, in addition to the license fees, a late fee of fifteen dollars ($15). No license shall be renewed six (6) months or more after its expiration date, and the license shall be deemed to be permanently expired six (6) months after its expiration date. A person whose license has permanently expired may reapply for licensure pursuant to subsections [~~(4), ~~](5), ***(6),*** and ***(7)***[~~(6)~~] of this section.

(13)[~~(12)~~] No license issued pursuant to this section shall authorize any person to carry a concealed firearm into:

(a) Any police station or sheriff's office;

(b) Any detention facility, prison, or jail;

(c) Any courthouse, solely occupied by the Court of Justice courtroom, or court proceeding, except that nothing in this section shall preclude a judge from carrying a concealed weapon;

(d) Any meeting of the governing body of a county, municipality, or special district; or any meeting of the General Assembly or a committee of the General Assembly, except that nothing in this section shall preclude a member of the body, holding a concealed deadly weapon license, from carrying a concealed deadly weapon at a meeting of the body of which he is a member;

(e) Any portion of an establishment licensed to dispense beer or alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to that purpose;

(f) Any elementary or secondary school facility without the consent of school authorities as provided in KRS 527.070, any child-caring facility as defined in KRS 199.011, any day-care center as defined in KRS 199.894, or any certified family child-care home as defined in KRS 199.8982, except however, any owner of a certified child-care home may carry a concealed firearm into the owner's residence used as a certified child-care home;

(g) An area of an airport to which access is controlled by the inspection of persons and property;

(h) Any church, synagogue, house of worship, or other property owned, leased, or otherwise used and operated by a religious organization in the furtherance of a religious purpose; or

(i) Any place where the carrying of firearms is prohibited by federal law.

(14)[~~(13)~~] The owner, business or commercial lessee, or manager of a private business enterprise, day-care center as defined in KRS 199.894 or certified or licensed family child-care home as defined in KRS 199.8982, or a health-care facility licensed under KRS Chapter 216B, except facilities renting or leasing housing, may prohibit persons holding concealed deadly weapon licenses from carrying concealed deadly weapons on the premises and may prohibit employees, not authorized by the employer, holding concealed deadly weapons licenses from carrying concealed deadly weapons on the property of the employer. If the building or the premises are open to the public, the employer or business enterprise shall post signs on or about the premises if carrying concealed weapons is prohibited. Possession of weapons in a vehicle on the premises shall not be a criminal offense so long as the weapons are not removed from the vehicle or brandished while the vehicle is on the premises. An employer may prohibit employees or other persons holding a concealed deadly weapons license from carrying concealed deadly weapons in vehicles owned by the employer, but may not prohibit employees or other persons holding a concealed deadly weapons license from carrying concealed deadly weapons in vehicles owned by the employee. Carrying of a concealed weapon in a location specified in this subsection by a license holder shall not be a criminal act but may subject the person to denial from the premises or removal from the premises, and, if an employee of an employer, disciplinary measures by the employer.

(15)[~~(14)~~] All moneys collected by the Department of State Police pursuant to this section shall be used to administer the provisions of this section. By March 1 of each year, the Department of State Police and the Administrative Office of the Courts shall submit reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives, indicating the amounts of money collected and the expenditures related to this section and KRS 237.115, 244.125, 527.020, and 527.070, and the administration of the provisions of this section and KRS 237.115, 244.125, 527.020, and 527.070.

(16)[~~(15)~~] The General Assembly finds as a matter of public policy that it is necessary to provide statewide uniform standards for issuing licenses to carry concealed firearms and to occupy the field of regulation of the bearing of concealed firearms to ensure that no person who qualifies under the provisions of this section is denied his rights. The General Assembly does not delegate to the Department of State Police the authority to regulate or restrict the issuing of licenses provided for in this section beyond those provisions contained in this section. This section shall be liberally construed to carry out the constitutional right to bear arms for self-defense.

(17)[~~(16)~~] (a) A person who has a valid license issued by another state of the United States to carry a concealed deadly weapon in that state and whose state grants to Kentucky residents the right to carry a concealed deadly weapon in the state of the licensee without requiring a separate license to carry a concealed deadly weapon issued by that state, may, subject to provisions of Kentucky law, carry a concealed deadly weapon in Kentucky, and his license shall be considered as valid in Kentucky.

(b) A person who holds a valid license issued by another state of the United States whose home state permits Kentucky residents to obtain a license to carry a concealed deadly weapon in that state may apply directly to the Department of State Police for a license to carry concealed deadly weapons in Kentucky. The Department of State Police shall take whatever steps are necessary to verify that the person applying has a valid license to carry a concealed deadly weapon issued by his home state.

(18)[~~(17)~~] By March 1 of each year, the Department of State Police shall submit a statistical report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, indicating the number of licenses issued, revoked, suspended, and denied since the previous report and in total and also the number of licenses currently valid. The report shall also include the number of arrests, convictions, and types of crimes committed since the previous report by individuals licensed to carry concealed weapons.

SECTION 2. A NEW SECTION OF KRS 205.710 TO 205.800 IS CREATED TO READ AS FOLLOWS:

If any check tendered to the cabinet is not paid when presented to the drawee bank for payment, there shall be paid as a penalty by the payor who tendered the check, or the payor for whom the check was tendered, upon notice and demand of the cabinet, an amount equal to ten percent (10%) of the check. The penalty under this section shall not be less than ten dollars ($10) or more than twenty-five dollars ($25). If the payor who tendered the check shows to the cabinet's satisfaction that the failure to honor payment of the check resulted from error by parties other than the payor, the cabinet shall waive the penalty.

SECTION 3. A NEW SECTION OF KRS 205.710 TO 205.800 IS CREATED TO READ AS FOLLOWS:

For purposes of KRS 205.710 to 205.800, KRS Chapter 403, and KRS Chapter 407, the Circuit Court and the District Court shall have concurrent jurisdiction to establish, modify, and enforce obligations of child support in cases where the determination of paternity is not an issue, except that the jurisdiction of the District Court in cases not involving the determination of paternity shall be limited to those cases where there is no Circuit Court order of this state previously setting child support.

Section 4. KRS 205.750 is amended to read as follows:

(1) Child support payments made pursuant to a court order shall be made through ***the state agency or an***[~~a domestic relations clerk of the county or other person or~~] agency designated by the ***state agency***[~~court~~] to receive payments and paid to the cabinet upon notice by the cabinet to the court and the obligor that the child is a recipient of services pursuant to Title IV-D of the Social Security Act.

(2) Payment of support payments by the obligor directly to a child who is receiving public assistance after the obligor has been notified pursuant to subsection (1) of this section does not abate the obligor's support obligation to the cabinet.

HB 380, AN ACT relating to health insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) All health benefit plans issued or renewed on or after the effective date of this Act shall provide coverage for equipment, supplies, outpatient self-management training and education, including medical nutrition therapy, and all medications necessary for the treatment of insulin-dependent diabetes, insulin-using diabetes, gestational diabetes, and noninsulin-using diabetes if prescribed by a health care provider legally authorized to prescribe the items.

(2) Diabetes outpatient self-management training and education shall be provided by a certified, registered, or licensed health care provider with expertise in diabetes, as deemed necessary by the commissioner by administrative regulation.

(3) (a) The benefits provided in this section shall be subject to the same annual deductibles or coinsurance established for all other covered benefits within a given health benefit plan.

(b) Private third-party payors may not reduce or eliminate coverage due to the requirements of this section.

(c) Diabetes shall not be considered to be a pre-existing condition.

The Committee Substitute to **HB 380** is as follows:

AN ACT relating to health insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) All health benefit plans issued or renewed on or after the effective date of this Act shall provide coverage for equipment, supplies, outpatient self-management training and education, including medical nutrition therapy, and all medications necessary for the treatment of insulin-dependent diabetes, insulin-using diabetes, gestational diabetes, and noninsulin-using diabetes if prescribed by a health care provider legally authorized to prescribe the items.

(2) Diabetes outpatient self-management training and education shall be provided by a certified, registered, or licensed health care professional with expertise in diabetes, as deemed necessary by a health care provider.

(3) (a) The benefits provided in this section shall be subject to the same annual deductibles or coinsurance established for all other covered benefits within a given health benefit plan.

(b) Private third-party payors may not reduce or eliminate coverage due to the requirements of this section.

(c) Enforcement of the provisions of this section shall be performed by the Attorney General.

HB 412, AN ACT relating to embalmers and funeral directors.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 316.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Apprentice" means a person engaged in learning the practice of embalming or funeral directing who is under the instruction and personal supervision of a Kentucky-licensed embalmer or a Kentucky-licensed funeral director;

(2) "Board" means the Kentucky Board of Embalmers and Funeral Directors;

(3) "Embalmer" means a person who preserves, restores, and disinfects dead human bodies by the application of chemical substances either externally or internally, or both;

(4) "Funeral director" means a person who, for profit, engages in or represents himself as engaged in the supervision, direction, and arrangement of funeral services, transportation, burials, and disposals of dead human bodies;

(5) "Funeral establishment" means a place of business where dead human bodies are embalmed or otherwise prepared or held for burial or where funerals are provided;

(6) "Person" as used in this chapter includes, but is not limited to, an individual, partnership, firm, association, or corporation*;*

(7) "In use" means that funeral directing or embalming is taking place in a funeral establishment;

(8) "Courtesy card" means a card that is issued by the board to a funeral director or an embalmer from another state that gives the director or embalmer permission to receive and transport a dead human body from Kentucky for a funeral in another state; and

(9) "Supervision" means responsibility for the professional activities of the funeral establishment that requires a Kentucky-licensed funeral director or a Kentucky-licensed embalmer, as appropriate, to be on the premises when the funeral establishment is in use. If the Kentucky-licensed funeral director or the Kentucky-licensed embalmer is unable to be on the premises due to a reasonable circumstance, then the Kentucky-licensed funeral director or the Kentucky-licensed embalmer shall be within a reasonable proximity to the funeral establishment so that upon contact the funeral director or embalmer is able to immediately return to the funeral establishment.

Section 2. KRS 316.125 is amended to read as follows:

(1) No person shall operate a funeral establishment in the Commonwealth of Kentucky without first obtaining a funeral establishment license issued by the board.

(2) The board shall issue a funeral establishment license to an applicant who:

(a) Has paid to the board an establishment license fee, not to exceed two hundred dollars ($200), as set out in administrative regulations promulgated by the board; and

(b) Has filed with the board a sworn statement that sets out the following:

1. Name of the funeral establishment;
2. Address of the funeral establishment;
3. Owners of the funeral establishment, indicating which owners are licensed by the board; and
4. Name and address of the Kentucky-licensed embalmer and the Kentucky-licensed funeral director who will supervise the funeral establishment pursuant to subsection (4) of this section.

(3) Each funeral establishment shall be licensed separately from any other funeral establishment.

(4) Each funeral establishment, when in use, shall be under the[~~ direct and constant~~] supervision of a Kentucky-licensed embalmer ***or***[~~and~~] a Kentucky-licensed funeral director.

(5) A Kentucky-licensed embalmer and a Kentucky-licensed funeral director shall not supervise more than one (1) funeral establishment at the same time.

(6) The funeral establishment shall display in a public place in the establishment its establishment license and the licenses of the embalmer and funeral director who supervise the establishment pursuant to subsection (4) of this section.

Section 3. KRS 316.140 is amended to read as follows:

(1) Any person holding an embalmer's or a funeral director's license issued in another state or federal district may obtain a Kentucky embalmer's or a Kentucky funeral director's license if the board finds that the person, before or after obtaining a license in another state or federal district, has met the same or similar requirements for a license as set out in KRS 316.030 and pays to the board a fee equal to the license renewal fee.

(2) The board may issue an annual courtesy card to a licensed funeral director or licensed embalmer from another state that has reciprocal laws with Kentucky upon application and payment by the funeral director or embalmer of a fee prescribed by the board in administrative regulations promulgated under KRS Chapter 13A. The application shall be approved by the board, at its discretion. A holder of a courtesy card shall not be permitted to open or operate a place of business for the purpose of conducting funerals or embalming bodies in Kentucky nor shall he or she be permitted to maintain an office in this state. A violation of this section or any other section of this chapter shall be sufficient cause for the board to revoke or cancel the courtesy card of the violator and to pursue other remedies provided by this chapter.

Section 4. KRS 316.150 is amended to read as follows:

(1) The board may refuse to issue or renew, may revoke, or suspend and impose probationary conditions on the license of any Kentucky-licensed embalmer or Kentucky-licensed funeral director, and may issue a written reprimand and impose a fine, for:

   (a) Violating any provision of this chapter, any lawful order of the board, or any administrative regulation promulgated by the board pursuant to this chapter;

   (b) Being convicted of any felony, or any misdemeanor if the misdemeanor relates to the practice of embalming or funeral directing. For purposes of this subsection, a conviction includes a finding or verdict of guilt or an entry of a guilty plea or a plea of no contest;

   (c) Paying or offering to pay, directly or indirectly, any consideration of value to secure a funeral, prior to or after an individual's death, or allowing the applicant's or licensee's employee or immediate family member to pay anything of value to secure a funeral;

   (d) Soliciting business in any way by offering or giving any service which is not a normal function of a licensed embalmer or a licensed funeral director in a regular service;

   (e) Permitting any person who is not a Kentucky-licensed embalmer or Kentucky-licensed funeral director to perform any service pertaining to embalming or funeral directing required by law of a licensed embalmer or a licensed funeral director, from the time of death until interment;

   (f) Misrepresenting or concealing a material fact in obtaining a license or an apprentice registration;

   (g) Assisting any applicant for an embalmer's or a funeral director's license in obtaining the license by misrepresentation or concealment of a material fact in registering for an apprenticeship, or during the period of serving an apprenticeship, or in taking or passing the examination for an embalmer's or a funeral director's license;

   (h) Being sanctioned for a violation of any state or federal statute or administrative regulation governing the funeral industry or its practice for which a plan of correction or remedial action was not accepted by the state or federal authority; or

   (i) Committing any act which constitutes unprofessional, fraudulent, misleading, corrupt, deceptive, or dishonest conduct. If the act constitutes a crime, conviction in a criminal proceeding shall not be a condition precedent to a disciplinary action.

(2) The board may refuse to issue, may revoke, or suspend and impose probationary conditions on the registration of an apprentice, and may issue a written reprimand and impose a fine, for:

   (a) Violating any of the provisions set out in paragraphs (a) to (i) of subsection (1) of this section; or

   (b) Disobeying the proper orders or instructions of a superior.

(3) The board may refuse to issue or renew, may revoke, or suspend and impose probationary conditions on the license of any funeral establishment, and may issue a written reprimand and impose a fine, for:

(a) Misrepresenting or concealing a material fact in obtaining a funeral establishment license;

(b) Operating a funeral establishment in violation of any lawful order of the board or any state or federal statute or administrative regulation governing the operation of a funeral establishment; or

(c) Operating a funeral establishment without the[~~ direct and constant~~] supervision of a Kentucky-licensed embalmer ***or***[~~and~~] a Kentucky-licensed funeral director.

The Committee Substitute to **HB 412** is as follows:

AN ACT relating to embalmers and funeral directors.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 316.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Apprentice" means a person engaged in learning the practice of embalming or funeral directing who is under the instruction and personal supervision of a Kentucky-licensed embalmer or a Kentucky-licensed funeral director;

(2) "Board" means the Kentucky Board of Embalmers and Funeral Directors;

(3) "Embalmer" means a person who preserves, restores, and disinfects dead human bodies by the application of chemical substances either externally or internally, or both;

(4) "Funeral director" means a person who, for profit, engages in or represents himself as engaged in the supervision, direction, and arrangement of funeral services, transportation, burials, and disposals of dead human bodies;

(5) "Funeral establishment" means a place of business where dead human bodies are embalmed or otherwise prepared or held for burial or where funerals are provided;

(6) "Person" as used in this chapter includes, but is not limited to, an individual, partnership, firm, association, or corporation***;***

(7) "In use" means that funeral directing or embalming is taking place in a funeral establishment;

(8) "Courtesy card" means a card that is issued by the board to a funeral director or an embalmer from another state that gives the director or embalmer permission to receive and transport a dead human body to and from Kentucky for a funeral and to conduct funeral services and burials in Kentucky; and

(9) "Supervision" means responsibility for the professional activities of the funeral establishment that requires a Kentucky-licensed funeral director or a Kentucky-licensed embalmer, as appropriate, to be on the premises when the funeral establishment is in use. If the Kentucky-licensed funeral director or the Kentucky-licensed embalmer is unable to be on the premises due to a reasonable circumstance, then the Kentucky-licensed funeral director or the Kentucky-licensed embalmer shall be within a reasonable proximity to the funeral establishment so that upon contact the funeral director or embalmer is able to immediately return to the funeral establishment.

Section 2. KRS 316.125 is amended to read as follows:

(1) No person shall operate a funeral establishment in the Commonwealth of Kentucky without first obtaining a funeral establishment license issued by the board.

(2) The board shall issue a funeral establishment license to an applicant who:

(a) Has paid to the board an establishment license fee, not to exceed two hundred dollars ($200), as set out in administrative regulations promulgated by the board; and

(b) Has filed with the board a sworn statement that sets out the following:

1. Name of the funeral establishment;

2. Address of the funeral establishment;

3. Owners of the funeral establishment, indicating which owners are licensed by the board; and

4. Name and address of the Kentucky-licensed embalmer and the Kentucky-licensed funeral director who will supervise the funeral establishment pursuant to subsection (4) of this section.

(3) Each funeral establishment shall be licensed separately from any other funeral establishment.

(4) Each funeral establishment, when in use, shall be under the[~~ direct and constant~~] supervision of a Kentucky-licensed embalmer ***or***[~~and~~] a Kentucky-licensed funeral director.

(5) A Kentucky-licensed embalmer and a Kentucky-licensed funeral director shall not supervise more than one (1) funeral establishment at the same time.

(6) The funeral establishment shall display in a public place in the establishment its establishment license and the licenses of the embalmer and funeral director who supervise the establishment pursuant to subsection (4) of this section.

Section 3. KRS 316.140 is amended to read as follows:

(1) Any person holding an embalmer's or a funeral director's license issued in another state or federal district may obtain a Kentucky embalmer's or a Kentucky funeral director's license if the board finds that the person, before or after obtaining a license in another state or federal district, has met the same or similar requirements for a license as set out in KRS 316.030 and pays to the board a fee equal to the license renewal fee.

(2) The board may issue an annual courtesy card to a licensed funeral director or licensed embalmer from another state that has reciprocal laws with Kentucky upon application and payment by the funeral director or embalmer of a fee prescribed by the board in administrative regulations promulgated under KRS Chapter 13A. The application shall be approved by the board, at its discretion. A holder of a courtesy card shall not be permitted to open or operate a place of business for the purpose of conducting funerals or embalming bodies in Kentucky nor shall he or she be permitted to maintain an office in this state. A violation of this section or any other section of this chapter shall be sufficient cause for the board to revoke or cancel the courtesy card of the violator and to pursue other remedies provided by this chapter.

Section 4. KRS 316.150 is amended to read as follows:

(1) The board may refuse to issue or renew, may revoke, or suspend and impose probationary conditions on the license of any Kentucky-licensed embalmer or Kentucky-licensed funeral director, and may issue a written reprimand and impose a fine, for:

(a) Violating any provision of this chapter, any lawful order of the board, or any administrative regulation promulgated by the board pursuant to this chapter;

(b) Being convicted of any felony, or any misdemeanor if the misdemeanor relates to the practice of embalming or funeral directing. For purposes of this subsection, a conviction includes a finding or verdict of guilt or an entry of a guilty plea or a plea of no contest;

(c) Paying or offering to pay, directly or indirectly, any consideration of value to secure a funeral, prior to or after an individual's death, or allowing the applicant's or licensee's employee or immediate family member to pay anything of value to secure a funeral;

(d) Soliciting business in any way by offering or giving any service which is not a normal function of a licensed embalmer or a licensed funeral director in a regular service;

(e) Permitting any person who is not a Kentucky-licensed embalmer or Kentucky-licensed funeral director to perform any service pertaining to embalming or funeral directing required by law of a licensed embalmer or a licensed funeral director, from the time of death until interment;

(f) Misrepresenting or concealing a material fact in obtaining a license or an apprentice registration;

(g) Assisting any applicant for an embalmer's or a funeral director's license in obtaining the license by misrepresentation or concealment of a material fact in registering for an apprenticeship, or during the period of serving an apprenticeship, or in taking or passing the examination for an embalmer's or a funeral director's license;

(h) Being sanctioned for a violation of any state or federal statute or administrative regulation governing the funeral industry or its practice for which a plan of correction or remedial action was not accepted by the state or federal authority; or

(i) Committing any act which constitutes unprofessional, fraudulent, misleading, corrupt, deceptive, or dishonest conduct. If the act constitutes a crime, conviction in a criminal proceeding shall not be a condition precedent to a disciplinary action.

(2) The board may refuse to issue, may revoke, or suspend and impose probationary conditions on the registration of an apprentice, and may issue a written reprimand and impose a fine, for:

(a) Violating any of the provisions set out in paragraphs (a) to (i) of subsection (1) of this section; or

(b) Disobeying the proper orders or instructions of a superior.

(3) The board may refuse to issue or renew, may revoke, or suspend and impose probationary conditions on the license of any funeral establishment, and may issue a written reprimand and impose a fine, for:

(a) Misrepresenting or concealing a material fact in obtaining a funeral establishment license;

(b) Operating a funeral establishment in violation of any lawful order of the board or any state or federal statute or administrative regulation governing the operation of a funeral establishment; or

(c) Operating a funeral establishment without the[~~direct and constant~~] supervision of a Kentucky-licensed embalmer ***or***[~~and~~] a Kentucky-licensed funeral director.

HB 476, AN ACT relating to the Breast Cancer Advisory Committee

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 214.554 is amended to read as follows:

(1) There is hereby established within the department a Breast Cancer Screening Program for the purposes of:

(a) Reducing morbidity and mortality from breast cancer in women through early detection and treatment; and

(b) Making breast cancer screening services of high quality and reasonable cost available to women of all income levels throughout the Commonwealth and to women whose economic circumstances or geographic location limits access to breast cancer screening facilities.

(2) Services provided under the Breast Cancer Screening Program may be undertaken by private contract for services or operated by the department and may include the purchase, maintenance, and staffing of a truck, a van, or any other vehicle suitably equipped to perform breast cancer screening. The program may also provide referral services for the benefit of women for whom further examination or treatment is indicated by the breast cancer screening.

(3) The department may adopt a schedule of income-based fees to be charged for the breast cancer screening. The schedule shall be determined to make screening available to the largest possible number of women throughout the Commonwealth. The department shall, where practical, collect any available insurance proceeds or other reimbursement payable on behalf of any recipient of a breast cancer screening under KRS 214.552 to 214.556 and may adjust the schedule of fees to reflect insurance contributions. All fees collected shall be credited to the fund.

(4) The department may accept any grant or award of funds from the federal government or private sources for carrying out the provisions of KRS 214.552 to 214.556.

(5) For the purpose of developing and monitoring the implementation of guidelines for access to and the quality of the services of the Breast Cancer Screening Program, there is hereby created a Breast Cancer Advisory Committee to the commissioner of the Department for Health Services which shall include the directors of the James Graham Brown Cancer Center and the Lucille Parker Markey Cancer Center, the director of the Kentucky Cancer Registry, ***one (1) radiologist with preference given to one who has been fellowship-trained in breast diagnostics and who shall be appointed by the Governor,*** one (1) representative of the Kentucky Office of Rural Health appointed by the Governor, one (1) representative of the Kentucky Commission on Women appointed by the Governor, and at least three (3) women who have had breast cancer and who shall be appointed by the Governor.

(6) The commissioner of the Department for Health Services, in consultation with the Breast Cancer Advisory Committee, shall annually, but no later than ***November***[~~July~~] 1 of each year, make a report to the Governor, the Legislative Research Commission, and the Interim Joint Committees on Appropriations and Revenue and on Health and Welfare on the:

(a) Implementation and outcome from the Breast Cancer Screening Program including, by geographic region, numbers of persons screened, numbers of cancers detected, referrals for treatment, and reductions in breast cancer morbidity and mortality;

(b) Development of quality assurance guidelines, including timetables, for breast cancer screening under this section, and monitoring of the manner and effect of implementation of those guidelines; and

(c) Funds appropriated, received, and spent for breast cancer control by fiscal year.

The Committee on Judiciary reported **HB 121,** with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 121, AN ACT relating to the release of liens.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 382.365 is amended to read as follows:

(1) A holder of a lien on real property, including a lien provided for in KRS 376.010, shall release the lien in the county clerk's office where the lien is recorded within thirty (30) days from the date of satisfaction.

(2) A proceeding may be filed in ***District or*** Circuit Court against a lienholder that ***fails to release a satisfied lien within thirty (30) days from the date of satisfaction***[~~violates subsection (1) of this section~~]. A proceeding filed under this section shall be given precedence over other matters pending before the court.

(3) Upon proof of satisfaction of the lien being introduced, the court may enter a judgment releasing the lien. ***The judgment shall be with costs including a reasonable attorney's fee. The lienholder shall be liable to the owner of the real property in the amount of one hundred dollars ($100) per day, for each day that the lienholder fails to release a lien after the entry of a judgment by the court, which amount is due in addition to any other damages, charges, or fees imposed by this or any other statute due to failure to release a satisfied lien.***

(4) A lienholder that ***fails to release a satisfied lien within thirty (30) days from the date of satisfaction***[~~violates~~

~~subsection (1) of this section~~] shall[~~ also~~] be liable to the owner of the real property for ***one hundred dollars ($100). A lienholder that fails to release a satisfied lien within forty-five (45) days from the date of satisfaction shall be liable to the owner of the real property for an additional four hundred dollars ($400), for a total of five hundred dollars ($500). The lienholder shall also be liable for***[~~fifty dollars ($50) and~~] any actual expense including a reasonable attorney's fee incurred by the owner in securing the release of ***the satisfied lien. These amounts due are in addition to any other damages, charges, or fees imposed by this or any other statute due to failure to release a lien***[~~real property by such violation. The judgment shall be with costs including reasonable attorneys' fees~~].

(5)[~~(4)~~] The former holder of a lien on real property shall send by regular mail a copy of the lien release to the property owner at his last known address within seven (7) days of the release. A former lienholder that violates this subsection shall be liable to the owner of the real property for fifty dollars ($50) and any actual expense incurred by the owner in obtaining documentation of the lien release.

The Committee Substitute to **HB 121** is as follows:

AN ACT relating to the release of liens.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 382.365 is amended to read as follows:

(1) A holder of a lien on real property, including a lien provided for in KRS 376.010, shall release the lien in the county clerk's office where the lien is recorded within thirty (30) days from the date of satisfaction.

(2) A proceeding may be filed ***by any owner of real property or any party acquiring an interest in the real property*** in ***District or*** Circuit Court against a lienholder that violates subsection (1) of this section. A proceeding filed under this section shall be given precedence over other matters pending before the court.

(3) Upon proof of satisfaction of the lien being introduced, the court may enter a judgment releasing the lien. ***The judgment may be with costs including a reasonable attorney's fee. The lienholder may be liable to the owner of the real property in the amount of one hundred dollars ($100) per day, for each day that the lienholder fails to release a lien after the entry of a judgment by the court.***

(4) A lienholder that violates subsection (1) of this section ***may***[~~shall also~~] be liable to the owner of the real property for ***one hundred dollars ($100). A lienholder that fails to release a satisfied real estate lien within forty-five (45) days from the date of satisfaction may be liable to the owner of the real property for an additional four hundred dollars ($400), for a total of five hundred dollars ($500). The lienholder may also be liable for***[~~fifty dollars ($50) and~~] any actual expense including a reasonable attorney's fee incurred by the owner in securing the release of real property by such violation.[~~ The judgment shall be with costs including reasonable attorneys' fees.~~]

(5)[~~(4)~~] The former holder of a lien on real property shall send by regular mail a copy of the lien release to the property owner at his last known address within seven (7) days of the release. A former lienholder that violates this subsection shall be liable to the owner of the real property for fifty dollars ($50) and any actual expense incurred by the owner in obtaining documentation of the lien release.

(6) For the purposes of this section, "date of satisfaction" means that date of receipt by a holder of a lien on real property of a sum of money in the form of a certified check, cashier's check, wired transferred funds, or other form of payment satisfactory to the lienholder that is sufficient to pay the principal, interest, and other costs owing on the obligation that is secured by the lien on the property.

The Committee on Appropriations and Revenue reported **HB 280**, **HB 387**, with Committee Amendment attached thereto, and **HB 433** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 280, AN ACT relating to skills training investment credits for workforce training.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 4 of this Act, unless the context requires otherwise:

(1) "Approved company" means any qualified company seeking to sponsor an occupational upgrade training program or skills upgrade training program for the benefit of one (1) or more of its employees, which is approved by the authority to receive skills training investment credits in accordance with Sections 1 to 4 of this Act.

(2) "Approved costs" means:

(a) Fees or salaries required to be paid to instructors who are employees of the approved company, instructors who are full-time, part-time, or adjunct instructors with an educational institution, and instructors who are consultants on contract with an approved company in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company;

(b) Administrative fees charged by educational institutions in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company and specifically approved by the Bluegrass State Skills Corporation;

(c) The cost of supplies, materials, and equipment used exclusively in an occupational upgrade training program or skills upgrade training program sponsored by an approved company;

(d) The cost of leasing a training facility where space is unavailable at an educational institution or at the premises of an approved company in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company;

(e) Employee wages to be paid in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company; and

(f) All other costs of a nature comparable to those described in this subsection.

(3) "Bluegrass State Skills Corporation" means the Bluegrass State Skills Corporation created by KRS 154.12-205.

(4) "Commonwealth" means the Commonwealth of Kentucky.

(5) "Educational institution" means a public or nonpublic secondary or postsecondary institution or an independent institution within the Commonwealth authorized by law to provide a program of skills training or education beyond the secondary school level.

(6) "Employee" means any person:

(a) Who is currently a permanent full-time employee of the qualified company; and

(b) Who has been employed by the qualified company for the last twelve (12) calendar months immediately preceding the filing of the application for skills training investment credits by the qualified company.

For purposes of this subsection, a "full-time employee" means an employee who has been employed by the qualified company for a minimum of thirty-five (35) hours per week for more than two hundred fifty (250) work days during the most recently ended calendar year and is subject to the tax imposed by KRS 141.020.

(7) "Occupational upgrade training" means employee training sponsored by a qualified company that is designed to qualify the employee for a promotional opportunity with the qualified company.

(8) "Preliminarily approved company" means a qualified company seeking to sponsor an occupational upgrade training program or skills upgrade training program, which has received preliminarily approval from the authority under Section 3 of this Act to receive a certain maximum amount of skills training investment credits.

(9) "Qualified company" means any person, corporation, limited liability company, partnership, limited partnership, registered limited liability partnership, sole proprietorship, firm, enterprise, franchise, association, organization, holding company, joint stock company, professional service corporation, or any other legal entity through which business is conducted that has been actively engaged in any of the following qualified activities within the Commonwealth for not less than three (3) consecutive years: manufacturing, including the processing, assembling, production or warehousing of any property; processing of agricultural and forestry products; telecommunications; health care; product research and engineering; tool and die and machine technology; mining; tourism and operation of facilities to be used in the entertainment, recreation and convention industry; and transportation in support of manufacturing. Notwithstanding the provisions of this subsection, any company whose primary purpose is the sale of goods at retail shall not constitute a qualified company.

(10) "Skills upgrade training" means employee training sponsored by a qualified company that is designed to provide the employee with new skills necessary to enhance productivity, improve performance, or retain employment, including, but not limited to, technical and interpersonal skills training, and training that is designed to enhance the computer skills, communication skills, problem solving, reading, writing, or math skills of employees who are unable to function effectively on the job due to deficiencies in these areas or who risk displacement because their skill deficiencies inhibit their training potential for new technology.

(11) "Skills training investment credit" means the credit against Kentucky income tax imposed by KRS 141.020 or 141.040, as provided in subsection (1) of Section 2 of this Act.

SECTION 2. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

(1) The Bluegrass State Skills Corporation may, in accordance with Sections 1 to 4 of this Act, award a credit against the Kentucky income tax imposed by KRS 141.020 or 141.040 to an approved company. The amount of the skills

training investment credit awarded by the Bluegrass State Skills Corporation shall be an amount equal to fifty percent (50%) of the amount of approved costs incurred by the approved company in connection with its program of occupational upgrade training or skills upgrade training, the credit amount not to exceed five hundred dollars ($500) per employee and, in the aggregate, not to exceed one hundred thousand dollars ($100,000) for each approved company per biennium. The Bluegrass State Skills Corporation shall only approve one (1) application per biennium for each qualified company.

(2) The skills training investment credit shall be credited for the fiscal year for which the tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed in KRS 141.042. The skill training investment credits allowed under Sections 1 to 4 of this Act shall only be used by the approved company that has been awarded the credits in accordance with Sections 1 to 4 of this Act. The skills training investment credits provided for in this section shall be in addition to all other tax credits granted under the laws of the Commonwealth.

(3) The skills training investment credits may be carried forward for three (3) successive fiscal years of the approved company if the amount allowable as credits exceeds the income tax liability of the approved company; in that tax year; however, thereafter, if the amount allowable as credits exceeds the income tax liability of the approved company, the excess credits shall not be refundable or carried forward to any other fiscal year of the approved company for which a tax return of the approved company is to be filed.

(4) A qualified company shall not be entitled to receive the skills training investment credits if the qualified company requires that the employee reimburse the employer or otherwise pay for any costs or expenses incurred in connection with the occupational upgrade training or skills upgrade training.

(5) To the extent that any expenditures of a qualified company constitute approved costs and are the basis for the skills training investment credits under Sections 1 to 4 of this Act, these expenditures shall not be eligible as the basis for grants-in-aid under Bluegrass State Skills Corporation provisions in KRS 154.12-204 to 154.12-208 or the Local Government Economic Development Program under the provisions of KRS 42.4588 to 42.4595.

(6) Priority consideration for preliminary approval under Section 3 of this Act shall be given to qualified companies that the Bluegrass State Skills Corporation determines to be high performance companies. A minimum of thirty percent (30%) of the total skills training investment credits authorized by the Bluegrass State Skills Corporation during any fiscal year shall be awarded to qualified companies that have been designated as high performance companies by the Bluegrass State Skills Corporation. The Bluegrass State Skills Corporation shall establish guidelines and standards for the designation of high performance companies.

(7) Ninety (90) days after the filing of the tax return of the approved company, the Revenue Cabinet shall certify to the Bluegrass State Skills Corporation the Kentucky income tax liability for the preceding fiscal year of the approved company for which the return was filed, and the amount of any skills training investment credits taken pursuant to Sections 1 to 4 of this Act.

SECTION 3. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

(1) The Bluegrass State Skills Corporation shall establish guidelines and standards, for approving skills training investment credits for occupational upgrade training and skills upgrade training. The guidelines and standards may include, but are not limited to: required hours of classroom instruction; required courses; certification of teachers or instructors, whether independent contractors or employees of a qualified company; certification of providers; progressive levels of instruction; and standardized measures of employee evaluation to determine successful completion of a course of study.

(2) To apply for skills training investment credits under Sections 1 to 4 of this Act, a qualified company shall submit an application to the Bluegrass State Skills Corporation before commencing its program of occupational upgrade training or skills upgrade training. The application submitted by the qualified company shall contain information the Bluegrass State Skills Corporation requires, including, but not limited to:

(a) A proposal for a program of occupational upgrade training or skills upgrade training;

(b) A description of each component of the proposed training program and the number of employee training hours requested;

(c) An itemized statement of all anticipated costs and expenses of the training program, including a breakdown of the costs and expenses associated with employee wages, equipment, personnel, facilities, and materials; and

(d) Auditing procedures and reporting methods for the submission of information and data to the Bluegrass State Skills Corporation.

(3) After a review of applications for skills training investment credits, the Bluegrass State Skills Corporation may

designate the qualified company as a preliminarily approved company and preliminarily approve the amount of skills training investment credits that the qualified company shall be eligible to receive. The maximum amount of skills training investment credits preliminarily approved for all qualified companies by the Bluegrass State Skills Corporation during any fiscal year shall not exceed two million five hundred thousand dollars ($2,500,000). Skills training investment credits shall be allocated to qualified companies in the same order preliminary approval is granted by the Bluegrass State Skills Corporation. Skills training investment credits that remain unallocated by the Bluegrass State Skills Corporation at the end of its fiscal year shall lapse and shall not be carried forward to a new fiscal year.

(4) The preliminarily approved company shall complete all programs of occupational upgrade training or skills upgrade training within one (1) year from the date of the preliminary approval of the skills training investment credits by the Bluegrass State Skills Corporation and shall certify the completion of these programs to the Bluegrass State Skills Corporation.

(5) The preliminarily approved company shall maintain in its employment the employees receiving occupational upgrade or skills upgrade training for a minimum of ninety (90) days following the completion of the program of occupational upgrade training or skills upgrade training and shall certify to the Bluegrass State Skills Corporation the number of employees who remained in the employment of the preliminarily approved company for the full ninety (90) day period.

(6) If a qualified company concludes its training program within the prescribed one (1) year and receives the required certifications described in subsections (4) and (5) of this section, then the Bluegrass State Skills Corporation shall adopt a final authorizing resolution, approving the amount of skills training investment credits awarded to the preliminarily approved company in accordance with Sections 1 to 4 of this Act. The adoption of a final authorizing resolution shall be contingent upon the Bluegrass State Skills Corporation's approval of documentation submitted by the preliminarily approved company supporting all incurred approved costs. If one (1) or more of the employees of the preliminarily approved company failed to continue in the employment of the company for ninety (90) days following the completion of the prescribed one (1) year, then the amount of the skills training investment credits preliminarily approved for a qualified company shall be reduced on a pro rata basis for each employee who failed to continue employment with the preliminarily approved company through the ninety (90) day period. The final amount of the skills training investment credits awarded to the approved company shall not exceed the amount of skills training investment credits that the approved company was preliminarily approved for by the Bluegrass State Skills Corporation prior to commencement of the training program.

SECTION 4. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 4 of this Act may be cited as the "Skills Training Investment Credit Act."

SECTION 5. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, unless the context requires otherwise:

(a) "Approved company" has the same meaning as set forth in Section 1 of this Act; and

(b) "Skills training investment credit" has the same meaning as set forth in Section 1 of this Act.

(2) An approved company shall determine the income tax credit as provided in this section.

(3) (a) An approved company which is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation subject to tax under KRS 141.040(1) shall compute the income tax due at the applicable tax rates as provided by KRS 141.020 or 141.040, on net income as defined by KRS 141.010(11), or taxable net income as defined by KRS 141.010(14);

(b) The amount of the skills training investment credit that the Bluegrass State Skills Corporation has given final approval for under subsection (6) of Section 3 of this Act shall be applied against the amount of the tax computed under paragraph (a) of this subsection; and

(c) The skills training investment credit payment shall not exceed the amount of the final approval awarded by the Bluegrass State Skills Corporation under subsection (6) of Section 3 of this Act.

(4) (a) Notwithstanding any other provisions of this chapter, an approved company which is an S-corporation, partnership, limited liability partnership, or trust shall be subject to income tax on the net income attributable to the approved company's operations at the rates provided in KRS 141.020(2);

(b) The amount of the skills training investment credit shall be the same as the amount of the tax computed in this section or, upon the annual election of the approved company, in lieu of the skills training investment credit, an amount shall be applied as an estimated tax payment equal to the tax computed in this section. Any estimated tax payment made pursuant to this subsection shall be in satisfaction of the tax liability of the shareholders, partners, or beneficiaries of the S-corporation, partnership, limited liability partnership, or

trust, and shall be paid on behalf of the shareholders, partners, or beneficiaries;

(c) The skills training investment credit or estimated payment shall not exceed the amount of the final approval awarded by the Bluegrass State Skills Corporation under subsection (6) of Section 3 of this Act;

(d) If the tax computed in this section exceeds the credit, the excess shall be paid by the S-corporation, partnership, limited liability partnership, or trust at the times provided by KRS 141.160 for filing the returns; and

(e) Any estimated tax payment made by the S-corporation, partnership, limited liability partnership, or trust in satisfaction of the tax liability of shareholders, partners, or beneficiaries shall not be treated as taxable income subject to Kentucky income tax by the shareholder, partner, or beneficiary.

(5) Notwithstanding any other provisions of this chapter, the net income subject to tax, the skills training investment credit, and the estimated tax payment determined under subsection (4) of this section shall be excluded in determining each shareholder's, partner's, or beneficiary's distributive share of net income or credit of an S-corporation, partnership, limited liability partnership, or trust.

(6) Any limited liability company that is treated as a corporation for federal tax purposes shall determine the skills training investment credit as provided in subsection (3) of this section.

(7) Any limited liability company which is treated as a partnership for federal tax purposes shall determine the skills training investment credit as provided in subsection (4) of this section.

(8) The Revenue Cabinet may promulgate administrative regulations in accordance with KRS Chapter 13A and require the filing of forms designed by the Revenue Cabinet to reflect the intent of Sections 1 to 4 of this Act and the allowable skills training investment credits that an approved company may retain under Sections 1 to 4 of this Act.

Section 6. KRS 141.0205 is amended to read as follows:

If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax imposed by KRS 141.020 or 141.040, the priority of application and use of the credits shall be determined as follows:

(1) The nonrefundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:
  (a) The individual credits permitted by KRS 141.020(3);
  (b) The economic development credits computed under KRS 141.347, 141.400, 141.403,[~~ and~~] 141.407***, and Section 3 of this Act***;
  (c) The health insurance credit permitted by KRS 141.062;
  (d) The tax paid to other states credit permitted by KRS 141.070;
  (e) The credit for hiring the unemployed permitted by KRS 141.065;
  (f) The recycling or composting equipment credit permitted by KRS 141.390;
  (g) The Commonwealth Venture Fund credit permitted by KRS 154.20-340;
  (h) The low income credit permitted by KRS 141.066; and
  (i) The household and dependent care credit permitted by KRS 141.067.

(2) After the application of the nonrefundable credits in subsection (1) of this section, the refundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:
  (a) The individual withholding tax credit permitted by KRS 141.350; and
  (b) The individual estimated tax payment credit permitted by KRS 141.305.

(3) The nonrefundable credits against the tax imposed by KRS 141.040 shall be taken in the following order:
  (a) The economic development credits computed under KRS 141.347, 141.400, 141.403,[~~ and~~] 141.407***, and Section 3 of this Act***;
  (b) The health insurance credit permitted by KRS 141.062;
  (c) The unemployment credit permitted by KRS 141.065;
  (d) The recycling or composting equipment credit permitted by KRS 141.390;
  (e) The coal conversion credit permitted by KRS 141.041;
  (f) The enterprise zone credit permitted by KRS 154.45-090; and
  (g) The Commonwealth Venture Fund credit permitted by KRS 154.20-340.

(4) After the application of the nonrefundable credits in subsection (3) of this section, the refundable corporation estimated tax payment credit permitted by KRS 141.044 shall be allowed as a credit against the tax imposed by KRS 141.040.

HB 387, AN ACT relating to tax administration.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 131.020 is amended to read as follows:

(1) The Revenue Cabinet shall be organized into the following functional units:

(a) Office of the Secretary. The Office of the Secretary shall include principal assistants and personnel appointed by the secretary pursuant to KRS Chapter 12 as are necessary to enable the secretary to perform functions of the office;

(b) Office of General Counsel. The Office of General Counsel shall be headed by an executive director. The functions and duties of the office shall include establishing Revenue Cabinet tax policies, conducting tax research, conducting conferences, administering taxpayer protests, issuing final rulings, and representing the cabinet in legal and administrative actions. For administrative and budgetary purposes, the Office of General Counsel shall be attached to the Office of the Secretary of Revenue. The Office of General Counsel shall consist of the divisions of legal services, protest resolution, and tax policy and research;

(c) Department of Property Taxation. The Department of Property Taxation shall be headed by a commissioner. The functions and duties of the department shall include mapping, providing assistance to property valuation administrators, supervising the property valuation process throughout the Commonwealth, valuing the property of public service companies, valuing unmined coal and other mineral resources, and administering tangible and intangible personal property taxes. The Department of Property Taxation shall consist of the Divisions of Local Valuation, State Valuation, and Technical Support;

(d) Department of Compliance and Taxpayer Assistance. The Department of Compliance and Taxpayer Assistance shall be headed by a commissioner. The functions and duties of the department shall include conducting audits, reviewing audits, rendering taxpayer assistance, collecting delinquent taxes, administering all activities relating to assessments issued pursuant to KRS 139.185, 139.680, 141.340, and 143.085, enforcing the criminal laws of the state involving revenue and taxation, and representing the cabinet in legal and administrative actions involving the collection of delinquent taxes. The Department of Compliance and Taxpayer Assistance shall consist of the Divisions of Collections, Field Operations, and Tax Administration; and

(e) Department of Administrative Services. The Department of Administrative Services shall be headed by a commissioner. The functions and duties of the department shall include recordkeeping, providing data services, providing liaison with federal and state agencies, preparing publications, and providing personnel, fiscal and financial management services. The Department of Administrative Services shall consist of the Divisions of Financial and Administrative Services, Information Systems Resources, and Revenue Operations.

(2) The functions and duties of the Cabinet shall include conducting conferences, administering taxpayer protests, and settling tax controversies on a fair and equitable basis, taking into consideration the hazards of litigation to the Commonwealth of Kentucky and the taxpayer. The mission of the Cabinet shall be to afford an opportunity for taxpayers to have an independent informal review of the determinations of the audit functions of the Department of Compliance and Taxpayer Assistance and the Department of Administrative Services, and to attempt to fairly and equitably resolve tax controversies at the administrative level.

(3) ***Except as provided in subsection (4) of Section 3 of this Act,*** the Cabinet shall fully cooperate with and make tax information available ***as prescribed under subsection (2) of Section 3 of this Act*** to the Finance and Administration Cabinet's Office of Financial Management and Economic Analysis as necessary for the office to perform the tax administration function established in KRS 42.410.

Section 2. KRS 131.081 is amended to read as follows:

The following rules, principles, or requirements shall apply in the administration of all taxes subject to the jurisdiction of the Revenue Cabinet.

(1) The cabinet shall develop and implement a Kentucky tax education and information program directed at new taxpayers, taxpayer and industry groups, and cabinet employees to enhance the understanding of and compliance with Kentucky tax laws, including the application of new tax legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

(2) The cabinet shall publish brief statements in simple and nontechnical language which explain procedures, remedies, and the rights and obligations of taxpayers and the cabinet. ***These***[~~Such~~] statements shall be provided to taxpayers with the initial notice of audit; each original notice of tax due; each denial or reduction of a refund or credit claimed by a taxpayer; each denial, cancellation, or revocation of any license, permit, or other required authorization applied for or held by a taxpayer; and, if practical and appropriate, in informational publications by the cabinet distributed to the public.

(3) Taxpayers shall have the right to be assisted or represented by an attorney, accountant, or other person in any conference, hearing, or other matter before the cabinet. The taxpayer shall be informed of ***this***[~~such~~] right prior to conduct of any

conference or hearing.

(4) The cabinet shall perform audits and conduct conferences and hearings only at reasonable times and places.

(5) Taxpayers shall have the right to make audio recordings of any conference with or hearing by the cabinet. The cabinet may make similar audio recordings only if prior written notice is given to the taxpayer. The taxpayer shall be entitled to a copy of ***this***[~~such~~] cabinet recording or a transcript[~~ thereof~~] as provided in KRS 61.874.

(6) If any taxpayer's failure to submit a timely return or payment to the cabinet is due to the taxpayer's reasonable reliance on written advice from the cabinet, the taxpayer shall be relieved of any penalty or interest with respect thereto provided the taxpayer requested ***the***[~~such~~] advice in writing from the cabinet and the specific facts and circumstances of the activity or transaction were fully described in the taxpayer's request, the cabinet did not subsequently rescind or modify the advice in writing and there were no subsequent changes in applicable laws or regulations or a final decision of a court which rendered the cabinet's earlier written advice no longer valid.

(7) Taxpayers shall have the right to receive a copy of any audit of the cabinet by the Auditor of Public Accounts relating to the cabinet's compliance with the provisions of KRS 131.041 to 131.081.

(8) The cabinet shall include with each notice of tax due a clear and concise description of the basis and amount of any tax, penalty, and interest assessed against the taxpayer, and copies of the agent's audit workpapers and the agent's written narrative setting forth the grounds upon which the assessment is made. Taxpayers shall be similarly notified regarding the denial or reduction of any refund or credit claim filed by a taxpayer.

(9) Taxpayers shall have the right to an installment payment agreement for the payment of delinquent taxes, penalties, and interest owed provided the taxpayer requests the agreement in writing clearly demonstrating his inability to pay in full and that the agreement will facilitate collection by the cabinet of the amounts owed. The cabinet may modify or terminate an installment payment agreement if it determines the taxpayer has not complied with the terms of the agreement; the taxpayers' financial condition has sufficiently changed; the taxpayer fails to provide any requested financial condition update information; the taxpayer gave false or misleading information in securing the agreement; or the taxpayer fails to timely report and pay any other tax due the Commonwealth. The cabinet shall give written notice to the taxpayer at least thirty (30) days prior to modifying or terminating an installment payment agreement unless the cabinet has reason to believe that collection of the amounts owed will be jeopardized in whole or in part by delay.

(10) The cabinet shall not knowingly authorize, require, or conduct any investigation or surveillance of any person for nontax administration related purposes, except internal security related investigations involving Revenue Cabinet personnel.

(11) In addition to the circumstances under which an extension of time for filing reports or returns may be granted pursuant to KRS 131.170, taxpayers shall be entitled to the same extension of the due date of any comparable Kentucky tax report or return for which the taxpayer has secured a written extension from the Internal Revenue Service provided the taxpayer notifies the cabinet[~~ thereof~~] in writing and provides a copy of ***the***[~~such~~] extension at the time and in the manner which the cabinet may require.

(12) The cabinet shall bear the cost or, if paid by the taxpayer, reimburse the taxpayer for recording or bank charges as the direct result of any erroneous lien or levy by the cabinet, provided the erroneous lien or levy was caused by cabinet error and, prior to issuance of the erroneous lien or levy, the taxpayer timely responded to all contacts by the cabinet and provided information or documentation sufficient to establish his or her position. When the cabinet releases any[~~ such~~] erroneous lien or levy, notice of the fact shall be mailed to the taxpayer and, if requested by the taxpayer, a copy of the release, together with an explanation[~~ thereof~~], shall be mailed to the major credit reporting companies located in the county where it was filed.

(13) The cabinet shall not evaluate individual officers or employees on the basis of taxes assessed or collected or impose or suggest tax assessment or collection quotas or goals.

(14) Taxpayers shall have the right to bring an action for damages against the Commonwealth to the Board of Claims for actual and direct monetary damages sustained by the taxpayer as a result of willful, reckless, and intentional disregard by cabinet employees of the rights of taxpayers as set out in KRS 131.041 to 131.081 or in the tax laws administered by the cabinet. In the awarding of damages pursuant to this subsection, the board shall take into consideration the negligence or omissions, if any, on the part of the taxpayer which contributed to the damages. If any[~~ such~~] proceeding brought by a taxpayer is ruled frivolous by the board, the cabinet shall be reimbursed by the taxpayer for its costs in defending the action.

(15) Taxpayers shall have the right to privacy with regard to the information provided on their Kentucky tax returns and reports, including any ***attached*** information or documents[~~ attached thereto~~]. Except as provided by KRS 131.190, no information pertaining to ***the***[~~such~~] returns, reports, or the affairs of a person's business shall be divulged by the cabinet[~~ or the Finance and Administration Cabinet's Office of Financial Management and Economic Analysis~~] to any person.

Section 3. KRS 131.190 is amended to read as follows:

(1) No present or former secretary or employee of the Revenue Cabinet,[~~ or employee in the Finance and Administration Cabinet's Office of Financial Management and Economic Analysis,~~] member of a county board of assessment appeals,

property valuation administrator or employee[~~ thereof~~], or any other person, shall divulge any information acquired by him of the affairs of any person, or information regarding the tax schedules, returns or reports required to be filed with the cabinet or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business. This prohibition does not extend to information required in prosecutions for making false reports or returns of property for taxation, or any other infraction of the tax laws, nor does it extend to any matter properly entered upon any assessment record, or in any way made a matter of public record, nor does it preclude furnishing any taxpayer or his properly authorized agent with information respecting his own return. Further, this prohibition does not preclude the secretary or any employee of the Revenue Cabinet[~~, or any employee of the Finance and Administration Cabinet's Office of Financial Management and Economic Analysis,~~] from testifying in any court, or from introducing as evidence returns or reports filed with the cabinet, in an action for violation of state or federal tax laws or in any action challenging state or federal tax laws. ***The secretary or his or her designee may disclose to a taxpayer tax information reported by a third party and used by the cabinet to compute or arrive at the taxpayer's liability or assessment.***

(2) The secretary shall make available any information for official use only and on a confidential basis to the proper officer, ***agency,*** board or commission of this state, any Kentucky county, any Kentucky city, any other state, or the federal government, under reciprocal ***agreements***[~~arrangements~~] whereby the cabinet shall receive similar or useful information in return.

(3) Statistics of tax-paid gasoline gallonage reported monthly to the Revenue Cabinet[~~ by any licensee~~] under the gasoline excise tax law may be made public by the cabinet.

(4) Notwithstanding the ***provisions of this section to the contrary***[~~above~~], information received from the Internal Revenue Service shall not be made available to any other agency[~~ or office within any agency~~] of state government***, or***[~~that does not perform a tax administrative function,~~] any county,[~~ any~~] city, or[~~ any~~] other state.

(5) Statistics of crude oil as reported to the Revenue Cabinet under the crude oil excise tax requirements of KRS Chapter 137 and statistics of natural gas production as reported to the Revenue Cabinet under the natural resources severance tax requirements of KRS Chapter 143A may be made public by the cabinet by release to the Department of Mines and Minerals.

The Committee Amendment No. 1 to **HB 387** is as follows:

On page 7, by deleting the new language on lines 7 through 9 in its entirety and replacing it with the following:

"***The secretary or the secretary's designee may provide an owner of unmined coal, oil or gas reserves, and other mineral or energy resources assessed under KRS 132.820(1), or owners of surface land under which the unmined minerals lie, factual information about the owner's property derived from third-party returns filed for that owner's property, under the provisions of KRS 132.820(2), that is used to determine the owner's assessment. This information shall be provided to the owner on a confidential basis, and the owner shall be subject to the penalties provided in KRS 131.990(2). The third-party filer shall be given prior notice of any disclosure of information to the owner that was provided by the third-party filer.***".

HB 433, AN ACT relating to sales and use tax.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 139.480 is amended to read as follows:

Any other provision of this chapter to the contrary notwithstanding, the terms "sale at retail," "retail sale," "use," "storage," and "consumption," as used in this chapter, shall not include the sale, use, storage, or other consumption of:

(1) Locomotives or rolling stock, including materials for the construction, repair, or modification thereof, or fuel or supplies for the direct operation of locomotives and trains, used or to be used in interstate commerce;

(2) Coal for the manufacture of electricity;

(3) All energy or energy-producing fuels used in the course of manufacturing, processing, mining, or refining to the extent that the cost of the energy or energy-producing fuels used exceeds three percent (3%) of the cost of production. Cost of production shall be computed on the basis of plant facilities which shall mean all permanent structures affixed to real property at one (1) location;

(4) Livestock of a kind the products of which ordinarily constitute food for human consumption, provided the sales are made for breeding or dairy purposes and by or to a person regularly engaged in the business of farming;

(5) Poultry for use in breeding or egg production;

(6) Farm work stock for use in farming operations;

(7) Seeds, the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of

business, and commercial fertilizer to be applied on land, the products from which are to be used for food for human consumption or are to be sold in the regular course of business; provided such sales are made to farmers who are regularly engaged in the occupation of tilling and cultivating the soil for the production of crops as a business, or who are regularly engaged in the occupation of raising and feeding livestock or poultry or producing milk for sale; and provided further that tangible personal property so sold is to be used only by those persons designated above who are so purchasing;

(8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be used in the production of crops as a business, or in the raising and feeding of livestock or poultry, the products of which ordinarily constitute food for human consumption;

(9) Feed, including pre-mixes and feed additives, for livestock or poultry of a kind the products of which ordinarily constitute food for human consumption;

(10) Machinery for new and expanded industry;

(11) Farm machinery. As used in this section, the term "farm machinery" means machinery used exclusively and directly in the occupation of tilling the soil for the production of crops as a business, or in the occupation of raising and feeding livestock or poultry or of producing milk for sale. The term "farm machinery," as used in this section includes machinery, attachments, and replacements therefor, repair parts, and replacement parts which are used or manufactured for use on, or in the operation of farm machinery and which are necessary to the operation of the machinery, and are customarily so used; but this exemption shall not include automobiles, trucks, trailers, and truck-trailer combinations;

(12) Property which has been certified as a pollution control facility as defined in KRS 224.01-300, and all materials, supplies, and repair and replacement parts purchased for use in the operation or maintenance of the facilities used specifically in the steel-making process. The exemption provided in this subsection for materials, supplies, and repair and replacement parts purchased for use in the operation of pollution control facilities shall be effective for sales made through June 30, 1994;

(13) Tombstones and other memorial grave markers;

(14) On-farm facilities used exclusively for grain or soybean storing, drying, processing, or handling. The exemption applies to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;

(15) On-farm facilities used exclusively for raising chickens or livestock. The exemption shall apply to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply, but not be limited to, vent board equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities.

(16) Gasoline, special fuels, and liquefied petroleum gas used to operate or propel stationary engines or tractors for agricultural purposes. As used in this subsection:

(a) "Gasoline" is defined as in KRS 138.210(4);

(b) "Special fuels" is defined as in KRS 138.560(3);

(c) "Liquefied petroleum gas" is defined as in KRS 234.100(1); and

(d) "Agricultural purposes" is defined as in KRS 138.343(4);

(17) Textbooks, including related workbooks and other course materials, purchased for use in a course of study conducted by an institution which qualifies as a nonprofit educational institution under KRS 139.495. The term "course materials" means only those items specifically required of all students for a particular course but shall not include notebooks, paper, pencils, calculators, tape recorders, or similar student aids;

(18) Any property which has been certified as an alcohol production facility as defined in KRS 247.910;

(19) Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property or passengers for hire. Nominal intrastate use shall not subject the property to the taxes imposed by this chapter;

(20) Any property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;

(21) Any property to be incorporated into the construction, rebuilding, modification, or expansion of a blast furnace or any of its components or appurtenant equipment or structures. The exemption provided in this subsection shall be effective for sales made through June 30, 1994;

(22) Beginning on October 1, 1986, food or food products purchased for human consumption with food coupons issued by the United States Department of Agriculture pursuant to the Food Stamp Act of 1977, as amended, and required to be exempted by the Food Security Act of 1985 in order for the Commonwealth to continue participation in the federal food

stamp program;

(23) Machinery or equipment purchased or leased by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes;

(24) Ratite birds and eggs to be used in an agricultural pursuit for the breeding and production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-products, and the following items used in this agricultural pursuit:

(a) Feed and feed additives;

(b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;

(c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to incubation systems, egg processing equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;

(25) Embryos and semen that are used in the reproduction of livestock, if the products of these embryos and semen ordinarily constitute food for human consumption, and if the sale is made to a person engaged in the business of farming. The exemption provided in this subsection shall be effective for sales made through July 31, 2000;[~~ and~~]

(26) Llamas and alpacas to be used as beasts of burden or in an agricultural pursuit for the breeding and production of hides, breeding stock, fiber and wool products, meat, and llama and alpaca by-products, and the following items used in this pursuit:

(a) Feed and feed additives;

(b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;

(c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to waterer and feeding systems, ventilation systems, and alarm systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities.

The exemption provided in this subsection shall be effective for sales made through July 31, 2000***; and***

(27) Water sold to a person regularly engaged in the business of farming and used in the:

(a) Production of crops;

(b) Production of milk for sale; or

(c) Raising and feeding of:

1. Livestock or poultry, the products of which ordinarily constitute food for human consumption; or

2. Ratites, llamas, alpacas, buffalo, or aquatic organisms.

Recess

Representative Stumbo moved to suspend the rules to allow the House to recess for a Committee on Rules meeting in the Speaker's Office. Agreed. At the appointed hour, the Speaker resumed the Chair and called the House to order.

Floor Amendments

Floor Amendment No. 8 to **HB 106**, by Representative Geveden:

On page 1, line 24, after the semicolon "*;*" by deleting the word "***and***"; and

On page 2, line 2, by deleting the period "*.*" and inserting in lieu thereof "***; and***"; and

On page 2, between lines 2 and 3, by inserting the following:

"***(d) Any person who does not provide proof of health insurance to the county clerk when registering a motorcycle in accordance with Section 2 of this Act.***"; and

On page 2, after line 22, by inserting the following new sections:

"SECTION 2. A NEW SECTION OF KRS CHAPTER 186 IS CREATED TO READ AS FOLLOWS:

(1) A person over the age of twenty-one (21) years who wishes to operate a motorcycle without wearing protective

headgear shall provide proof of health insurance coverage to the county clerk when obtaining or renewing the registration on any motorcycle registered in the person's name. The Transportation Cabinet shall develop, and the county clerk shall provide to the applicant, a decal to affix to the applicant's license plate signifying that the applicant has health insurance and may operate a motorcycle without wearing protective headgear. The applicant shall pay a fee of three dollars ($3) to the county clerk for the decal.

(2) The county clerk shall notify the insurer that upon nonrenewal or cancellation of a health insurance policy for a person under subsection (1) of this section, the insurer shall immediately notify the Department of Vehicle Regulation.

(3) Upon notification to the Department of Vehicle Regulation from an insurance company of the cancellation or nonrenewal of a policy under subsection (2) of this section, the department shall immediately notify the insured. Notification to the insured shall state that the insured's policy is no longer valid and that the insured shall have thirty (30) days to show proof of health insurance to the department or the county clerk. The department shall further inform the insured that if evidence of health insurance coverage is not received within thirty (30) days the department shall suspend the operator's license of the insured for ninety (90) days, or until the person presents proof of health insurance to the department or the county clerk and pays the reinstatement fee required by KRS 186.440 and the relicensing fee required by KRS 186.450.

Section 3. KRS 189.990 is amended to read as follows:

(1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456 and 189.960, shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense. Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars ($20) nor more than two thousand dollars ($2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars ($11) nor more than thirty dollars ($30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.

(2) (a) Any person who violates the weight provisions of KRS 189.221, 189.222, 189.226, 189.230, 189.270, or 189.271 shall be fined two cents (2¢) per pound for each pound of excess load when the excess is two thousand (2,000) pounds or less, three cents (3¢) per pound when the excess exceeds two thousand (2,000) pounds and is three thousand (3,000) pounds or less, five cents (5¢) per pound when the excess exceeds three thousand (3,000) pounds and is four thousand (4,000) pounds or less, seven cents (7¢) per pound when the excess exceeds four thousand (4,000) pounds and is five thousand (5,000) pounds or less, and nine cents (9¢) per pound when the excess exceeds five thousand (5,000) pounds but in no case shall the fine be less than sixty dollars ($60) nor more than five hundred dollars ($500).

(b) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, or 189.490, for which another penalty is not specifically provided, shall be guilty of a misdemeanor and shall be fined not less than ten dollars ($10) nor more than five hundred dollars ($500).

(c) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.

(3) (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars ($15).

(b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars ($35) nor more than two hundred dollars ($200).

(4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.

(5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars ($100) nor more than two hundred dollars ($200) or imprisoned not less than thirty (30) days nor more than sixty (60) days or both. For each subsequent offense occurring within three (3) years, such person shall be fined not less than three hundred dollars ($300) nor more than five hundred dollars ($500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points

shall be assessed against the driving record of any person convicted.

(6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars ($15) in excess of the cost of the repair of the road.

(7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars ($20) nor more than fifty dollars ($50).

(8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100).

(9) Any person who violates KRS 189.530 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.

(10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.

(11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars ($30) nor more than one hundred dollars ($100) for each offense.

(12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and in case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.

(13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars ($20) nor more than twenty-five dollars ($25).

(15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars ($100), and upon subsequent convictions, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or imprisoned for thirty (30) days, or both.

(17) (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.

(b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name such vehicle used in the transportation of inflammable liquids or explosives is licensed, such person shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500). Each violation shall constitute a separate offense.

(18) Any person who abandons a vehicle upon the right-of-way of a state highway for seven (7) consecutive days shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.

(19) Every person violating KRS 189.393 shall be punished upon a first conviction by imprisonment for a period of not less than five (5) days nor more than ninety (90) days, or by fine of not less than thirty-five dollars ($35) nor more than five hundred dollars ($500), or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than ten (10) days nor more than six (6) months, or by a fine of not less than sixty dollars ($60) nor more than one thousand dollars ($1,000), or by both such fine and imprisonment.

(20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.

(21) A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of such a regulation shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.

(22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars ($500) or imprisoned for not more than six (6) months, or both.

(23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars ($25) nor more than three hundred dollars ($300).

(24) Any person who violates the provisions of KRS 189.125(3) shall be fined fifty dollars ($50).

(25) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars ($25).

(26) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.

(27) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of

a motor vehicle, may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:

(a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and

(b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.

(28) Any person who violates the provisions of Section 1 of this Act shall have his or her operator's license suspended for a period of ninety (90) days and be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500).".

Floor Amendment No. 1 to the Committee Substitute to **HB 422**, by Representative Colter:

On page 14, after line 7, by adding the following:

"SECTION 2. A NEW SECTION OF KRS 161.230 TO 161.716 IS CREATED TO READ AS FOLLOWS:

On or after August 1, 1998, any member of the Teachers' Retirement System who has at least two hundred and forty (240) months of service credit may purchase a combined maximum total of five (5) years of retirement service credit that is not otherwise purchasable under any of the provisions of KRS 161.230 to 161.716 and that meets the definition of nonqualified service as provided in Section 1526 of the Federal Taxpayer Relief Act of 1997. The purchase price for the retirement service credit shall be calculated and paid for based on the full actuarial cost as determined by the system. The payment shall not be picked up by the employer as described in KRS 161.540(2), and the employee's payment shall be paid into the individual member's contribution account and shall be considered accumulated contributions of the member. Payment by the member may be by lump sum or by increments."

Representative Stumbo moved that the rules be suspended for a Committee on Rules Report. Agreed.

Report of Committees (Continued)

The Committee on Rules reported that **HB 187, HB 254, HB 282, HB 309, HB 392, HB 422, HB 92, HB 193, HB 218, HB 399, HB 405, HB 101, HB 286, HB 346, HB 409** and **HB 429** have been posted for passage in the Orders of the Day for February 11, 1998.

Orders of the Day

HB 299, with Committee Substitute and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Marzian moved the adoption of the Committee Substitute to **HB 299**. Agreed.

Representative Marzian moved the adoption of Floor Amendment No. 2 to the Committee Substitute to **HB 299**. Agreed.

Representative Marzian moved that **HB 299**, by way of Committee Substitute as amended, be passed. On the roll call the vote was: Yeas 48, Nays 44 (See February 10, 1998 roll call on **HB 299** - Appendix.) **HB 299**, by way of Committee Substitute as amended, was passed and the title agreed to.

Representative Marzian moved that the vote by which **HB 299**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 10 to the Committee Substitute No. 2 to **HB 142**, by Representative Vincent:

On page 31, between lines 14 and 15, by inserting

"Section 19. KRS 620.050 is amended to read as follows:

(1) Anyone acting upon reasonable cause in the making of a report or acting under KRS 620.030 to 620.050 in good faith shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report or action. ***However, any person who knowingly makes a false report and does so with malice or in***

an attempt to gain advantage in a civil or criminal action shall be guilty of a Class A misdemeanor.

(2) Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for refusing to report under this section or for excluding evidence regarding a dependent, neglected, or abused child or the cause thereof, in any judicial proceedings resulting from a report pursuant to this section. This subsection shall also apply in any criminal proceeding in District or Circuit Court regarding a dependent, neglected, or abused child.

(3) Upon receipt of a report of an abused, neglected, or dependent child pursuant to this chapter, the cabinet as the designated agency or its delegated representative shall initiate a prompt investigation, take necessary action, and shall offer protective services toward safeguarding the welfare of the child. The cabinet shall work toward preventing further dependency, neglect, or abuse of the child or any other child under the same care, and preserve and strengthen family life, where possible, by enhancing parental capacity for adequate child care.

(4) All information obtained by the cabinet or its delegated representative, as a result of an investigation made pursuant to this chapter, shall not be divulged to anyone except:

(a) Persons suspected of causing dependency, neglect, or abuse, provided that in such cases names of informants shall be withheld unless ordered by the court;

(b) The custodial parent or legal guardian of the child alleged to be dependent, neglected, or abused;

(c) Persons within the cabinet with a legitimate interest or responsibility related to the case;

(d) Other medical, psychological, educational, or social service agencies, corrections personnel, or law enforcement agencies, including the county attorney's office, the coroner, and the local child fatality response team, that have a legitimate interest in the case;

(e) A noncustodial parent when the dependency, neglect, or abuse is substantiated;

(f) Members of multidisciplinary teams as defined by KRS 620.020 and which operate pursuant to KRS 431.600; or

(g) Those persons so authorized by court order.

(5) As a result of any report of suspected child abuse or neglect, photographs and X-rays or other appropriate medical diagnostic procedures may be taken or caused to be taken, without the consent of the parent or other person exercising custodial control or supervision of the child, as a part of the medical evaluation or investigation of such reports. Such photographs and X-rays or results of other medical diagnostic procedures may be introduced into evidence in any subsequent judicial proceedings. The person performing the diagnostic procedures or taking such photographs or X-rays shall be immune from criminal or civil liability for having performed the act. Nothing herein shall limit liability for negligence."; and

On page 31, line 15, by deleting "19" and inserting in lieu thereof "20".

Floor Amendment No. 1 to **HB 429**, by Representative Bruce:

On page 1, line 13 after "***of***" by deleting "***non-credited related***".

Orders of the Day (Continued)

HB 106, with Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative P. Clark moved that **HB 106** be passed.

Representative Marzian moved the adoption of Floor Amendment No. 2 to **HB 106**. Representative Mason inquired if Floor Amendment No. 2 to **HB 106** must specify a source of funds to support anticipated increased expenditure in accordance with House Rules 61. The Speaker ruled that the revenue source required under House Rules 61 is for amendment to a amendment to a branch budget bill only and that Floor Amendment No. 2 to **HB 106** does comply.

Representative Cave inquired if Floor Amendment No. 2 was germane to **HB 106**. The Speaker ruled that Floor Amendment No. 2 was germane to **HB 106**. Floor Amendment No. 2 to **HB 106** was rejected. (See February 10, 1998 roll call on Floor Amendment No. 2 to **HB 106** - Appendix.)

Representative Geveden moved that the rules be suspended to act upon Floor Amendment No. 8 to **HB 106**. The motion to suspend the rules to act upon Floor Amendment No. 8 to **HB 106** was adopted. (See February 10, 1998 roll call on Motion to Suspend Rules to Act on Floor Amendment No. 8 to **HB 106** - Appendix.)

Representative Geveden moved the adoption of Floor Amendment No. 8 to **HB 106**. Representative D. D. Butler inquired if Floor Amendment No. 8 was germane to **HB 106**. The Speaker ruled that Floor Amendment No. 8 was germane to **HB 106**. Floor Amendment No. 8 to **HB 106** was adopted. (See February 10, 1998 roll call on Floor Amendment No. 8 to **HB 106** - Appendix.)

Representative Gray moved the adoption of Floor Amendment No. 5 to **HB 106**. Floor Amendment No. 5 to **HB 106** was rejected. (See February 10, 1998 roll call on Floor Amendment No. 5 to **HB 106** - Appendix.)

Representative P. Clark moved that **HB 106**, as amended, be passed.

On the roll call the vote was: Yeas 57, Nays 40 (See February 10, 1998 roll call on **HB 106** - Appendix.) **HB 106**, as amended, was passed and the title agreed to. Representative P. Clark moved that the vote by which **HB 106**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 263, with Committee Substitute and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Coleman moved the adoption of the Committee Substitute to **HB 263**. Agreed.

Representative Coleman moved the adoption of Floor Amendment No. 1 to the Committee Substitute to **HB 263**. Floor Amendment No. 1 to the Committee Substitute to **HB 263** was adopted. (See February 10, 1998 roll call on Floor Amendment No. 1 to the Committee Substitute to **HB 263** - Appendix.)

Representative Coleman moved that **HB 263**, by way of Committee Substitute as amended, be passed.

Representative Yonts moved the adoption of Floor Amendment No. 2 to the Committee Substitute to **HB 263**. Speaker Pro Tempore L. Clark presiding. The Speaker resumed the Chair. Floor Amendment No. 2 to the Committee Substitute to **HB 263** was rejected. (See February 10, 1998 roll call on Floor Amendment No. 2 to the Committee Substitute to **HB 263** - Appendix.)

Representative Maricle moved the adoption of Floor Amendment No. 4 to the Committee Substitute to **HB 263**. Agreed.

Representative Coleman moved that **HB 263**, by way of Committee Substitute as amended, be passed.

Representative Heleringer moved the adoption of Floor Amendment No. 3 to the Committee Substitute to **HB 263**. Agreed.

On the roll call on the passage of **HB 263** the vote was: Yeas 92, Nays 2 (See February 10, 1998 roll call on **HB 263** - Appendix.) **HB 263**, by way of Committee Substitute as amended, was passed and the title agreed to. Representative Coleman moved that the vote by which **HB 263**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Stumbo moved that **HB 545** be reassigned to Counties and Special Districts. Agreed.

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions, Report of Committees and Posting of Bills and Resolutions for Consideration. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 548, by Representative Crall: AN ACT relating to joint sewer agencies.

HB 549, by Representative L. Clark: AN ACT relating to appointments to boards and commissions.

HB 550, by Representative L. Clark: AN ACT relating to alcoholic beverages.

HB 551, by Representative Moberly: AN ACT authorizing the payment of certain claims against the state which have been duly audited and approved according to law, and have not been paid because of the lapsing or insufficiency of former appropriations against which claims were chargeable and declaring an emergency.

HB 552, by Representative Lindsay: AN ACT relating to commerce.

HB 553, by Representatives Jordan, Anderson, Jenkins, and Gray: AN ACT relating to construction.

HB 554, by Representatives Jordan, Anderson, Jenkins, Hoffman and Gray: AN ACT relating to the awarding of public contracts.

HB 555, by Representatives Crall, Treesh, and Gooch: AN ACT relating to health insurance.

HB 556, by Representatives D. Graham, Lovell, and Wilkey: AN ACT relating to District Courts.

HB 557, by Representatives Ford, Hogancamp, Cave, Colter, Crall, Nunn, Reinhardt, Cox, Turner, Gee, DeWeese, Zimmerman, Anderson, Bratcher, Brandstetter, Polston, Murgatroyd, Maricle, Walton, Stewart, Miniard, Rader, Allen, Vincent, D. D. Butler, Crimm and Treesh: AN ACT relating to crimes and punishments.

HB 558, by Representative Simpson: AN ACT relating to funeral homes.

HB 559, by Representative Colter: AN ACT relating to district boundaries for justices of the peace.

HB 560, by Representative Barrows: AN ACT relating to telecommunications.

HB 561, by Representatives Nunn and Stumbo: AN ACT relating to the usage of tobacco by minors.

HB 562, by Representative Deskins: AN ACT relating to retirement.

HB 563, by Representatives Jenkins, Heleringer, Yonts, Bowling, Stumbo, Pope, Alexander, Vincent, Lovell, Miller, Brandstetter, Marzian, L. Clark, Jordan, Stein, Johns, Gooch, and Bratcher: AN ACT relating to sexual offenses.

HB 564, by Representatives Miller, Weaver, D. Butler, Jenkins, Horlander and L. Clark: AN ACT relating to real estate.

HR 71, by Representatives Damron, Baugh, Pope, and Alexander: A RESOLUTION adjourning the House of Representatives in honor of the Masons.

HJR 72, by Representatives Richards, D. Graham, Thomas, Wilkey, and Sims: A JOINT RESOLUTION authorizing and directing a comprehensive study of the aquacultural industry in Kentucky, and making an appropriation therefor.

HCR 73, by Representatives Ford, Hogancamp, Ratliff, Brandstetter, Maricle, Cave, Hoover, Walton, Colter, Reinhardt, Heleringer, Cox, Anderson, Zimmerman, Baugh, Treesh, Allen, Polston, Stewart, Miniard, Rader, Turner, Gee, Napier, DeWeese: A CONCURRENT RESOLUTION directing the Legislative Research Commission to conduct a study of salaries paid to alcoholic beverage control agents.

Report of Committees (Continued)

The Committee on State Government reported **HB 36,** with Committee Substitute and Committee Amendment attached thereto, **HB 271, HB 272, HB 273,** with Committee Substitute attached thereto, **HB 274, HB 275,** with Committee Substitute attached thereto, **HB 300, HB 347, HB 348,** with Committee Substitute attached thereto, **HB 351, HB 360, HB 428, HB 430,** with Committee Substitute attached thereto, **HB 492, HCR 59, SB 93, SB 148,** and **SB 154** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 36, AN ACT relating to retirement.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 78.615 is amended to read as follows:

(1) Employee contributions shall be deducted each payroll period from the creditable compensation of each employee of an agency participating in the system while he is classified as regular full-time as defined in KRS 78.510 unless the person did not elect to become a member as provided by KRS 61.545(3) or by KRS 78.540(2). After August 1, 1982, employee contributions shall be picked up by the employer pursuant to KRS 78.610(4).

(a) For employees who are not employed by a school board, service credit shall be allowed for each month contributions are deducted or picked up during a fiscal or calendar year, if the employee receives creditable compensation for an average of one hundred (100) hours or more of work per month based on the actual hours worked in a calendar or fiscal year. If the average number of hours of work is less than one hundred (100) hours per month, the employee shall be allowed credit only for those months he receives creditable compensation for one hundred (100) hours of work.

(b) *1.* For noncertified employees of school boards*:*

a. Except as provided in subdivision d. of this subparagraph, service credit shall be allowed for each month contributions are deducted or picked up under the employee's employment contract during a school year determined by dividing the actual number of contracted days worked by twenty (20) and rounded to the nearest whole month if the employee receives creditable compensation for an average of eighty (80) or more hours of work per month based on the employee's employment contract. The school board shall certify the number of days worked, the rate of pay, and the hours in a work day for each employee.

b.~~[1.]~~ If the employee works fewer than the number of contracted days, the employee shall receive service credit determined by dividing the actual number of contracted days worked by twenty (20) and rounded to the nearest whole month, provided that the number of hours worked during the period averages eighty (80) or more hours.

c.~~[2.]~~ If the employee works fewer than the number of contracted days and the average number of hours worked is less than eighty (80) per month, then the employee shall receive service credit for each calendar month in which he worked eighty (80) or more hours.

d. ***If the employee is designated as a ten (10) month employee by the school board and the employee receives creditable compensation for an average of eighty (80) or more hours of work per month based on the terms of the employee's employment contract, the employee shall be entitled to ten (10) months of service credit if the employee works at least thirty (30) hours in the tenth month.***

2.~~[3.]~~ The retirement system shall refund contributions and service credit for any period for which the employee is not given credit under this subsection.

(2) Employee contributions shall not be deducted from the creditable compensation of any employee or picked up by the employer while he is seasonal, emergency, temporary, or part-time. No service credit shall be earned.

(3) Contributions shall not be made or picked up by the employer and no service credit shall be earned by a member while on leave except:

(a) A member on military leave shall be entitled to service credit in accordance with KRS 61.555; and

(b) A member on educational leave who meets the criteria established by the state Department of Personnel for approved educational leave, who is receiving seventy-five percent (75%) or more of full salary, shall receive service credit and shall pay member contributions in accordance with KRS 78.610, and his employer shall pay employer contributions or the contributions shall be picked up in accordance with KRS 61.565. If a tuition agreement is broken by the member, the member and employer contributions paid or picked up during the period of educational leave shall be refunded.

(4) The retirement office, upon detection, shall refund any erroneous employer and employee contributions made to the retirement system and any interest credited in accordance with KRS 78.640.

The Committee Substitute to **HB 36** is as follows:

AN ACT relating to retirement.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 78.615 is amended to read as follows:

(1) Employee contributions shall be deducted each payroll period from the creditable compensation of each employee of an agency participating in the system while he is classified as regular full-time as defined in KRS 78.510 unless the person did not elect to become a member as provided by KRS 61.545(3) or by KRS 78.540(2). After August 1, 1982, employee contributions shall be picked up by the employer pursuant to KRS 78.610(4).

(a) For employees who are not employed by a school board, service credit shall be allowed for each month contributions are deducted or picked up during a fiscal or calendar year, if the employee receives creditable compensation for an average of one hundred (100) hours or more of work per month based on the actual hours worked in a calendar or fiscal year. If the average number of hours of work is less than one hundred (100) hours per month, the employee shall be allowed credit only for those months he receives creditable compensation for one hundred (100) hours of work.

(b) For noncertified employees of school boards, service credit shall be allowed for each month contributions are deducted or picked up under the employee's employment contract during a school year determined by dividing the actual number of contracted days worked by twenty (20) and ***rounding any remainder to the next***~~[rounded to the nearest]~~ whole month if the employee receives creditable compensation for an average of eighty (80) or more hours of work per month based on the employee's employment contract. The school board shall certify the number of days worked, the rate of pay, and the hours in a work day for each employee.

1. If the employee works fewer than the number of contracted days, the employee shall receive service credit determined by dividing the actual number of contracted days worked by twenty (20) and ***rounding any remainder to the next***~~[rounded to the nearest]~~ whole month, provided that the number of hours worked during the period averages eighty (80) or more hours.

2. If the employee works fewer than the number of contracted days and the average number of hours worked

is less than eighty (80) per month, then the employee shall receive service credit for each calendar month in which he worked eighty (80) or more hours.

3. The retirement system shall refund contributions and service credit for any period for which the employee is not given credit under this subsection.

4. Effective July 1, 1999, a noncertified employee who averages eighty (80) or more hours per month based on the employee's employment contract and who works at least one hundred and seventy (170) days, shall receive a minimum of ten (10) months service credit.

5. Effective July 1, 2000, a noncertified employee who averages eighty (80) or more hours per month based on the employee's employment contract and who works at least one hundred and seventy (170) days, shall receive a minimum of eleven (11) months service credit.

6. Effective July 1, 2001, a noncertified employee who averages eighty (80) or more hours per month based on the employee's employment contract and who works at least one hundred and seventy (170) days, shall receive twelve (12) months service credit.

(2) Employee contributions shall not be deducted from the creditable compensation of any employee or picked up by the employer while he is seasonal, emergency, temporary, or part-time. No service credit shall be earned.

(3) Contributions shall not be made or picked up by the employer and no service credit shall be earned by a member while on leave except:

(a) A member on military leave shall be entitled to service credit in accordance with KRS 61.555; and

(b) A member on educational leave who meets the criteria established by the state Department of Personnel for approved educational leave, who is receiving seventy-five percent (75%) or more of full salary, shall receive service credit and shall pay member contributions in accordance with KRS 78.610, and his employer shall pay employer contributions or the contributions shall be picked up in accordance with KRS 61.565. If a tuition agreement is broken by the member, the member and employer contributions paid or picked up during the period of educational leave shall be refunded.

(4) The retirement office, upon detection, shall refund any erroneous employer and employee contributions made to the retirement system and any interest credited in accordance with KRS 78.640.

SECTION 2. A NEW SECTION OF KRS CHAPTER 78 IS CREATED TO READ AS FOLLOWS:

(1) Each county shall pay employer contributions based on the creditable compensation of the employees determined to be in regular full-time positions at the employer rate determined by the board in accordance with the provisions of KRS 61.565.

(2) Each school board shall pay employer contributions based on the creditable compensation of the noncertified employees eligible to receive service credit under Section 1 of this Act at the employer rate determined by the board in accordance with the provisions of KRS 61.565.

The Committee Amendment No. 1 to **HB 36** is as follows:

On page 2, between lines 24 and 25, by adding the following:"***7. The Kentucky Retirement Systems shall adjust the service credit for all affected members who earned service credit under this section for the school years 1996-97 and 1997-98 by recomputing the members' service based on the rounding method provided in paragraph (b) of this subsection.***"

HB 271, AN ACT relating to executive branch ethics.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 11A.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Business" means any corporation, ***limited liability corporation,*** partnership, ***limited liability partnership,*** sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted for profit;

(2) "Commission" means the Executive Branch Ethics Commission;

(3) "Compensation" means any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another;

(4) "Family" means spouse and children, as well as a person who is related to a public servant as any of the following, whether by blood or adoption: parent, brother, sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half

brother, half sister;

(5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received;

(6) "Income" means any money or thing of value received or to be received as a claim on future services, whether in the form of a fee, salary, expense allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of compensation or any combination thereof;

(7) "Officer" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems board of trustees, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Occupational Safety and Health Review Commission, the Kentucky Board of Education, the State Board for Adult and Technical Education, the Council on Postsecondary Education, and any ***person who holds a personal service contract to perform on a full-time basis a function of any position listed in this subsection***~~[other management personnel with procurement authority]~~;

(8) "Official duty" means any responsibility imposed on a public servant by virtue of his position in the state service;

(9) "Public servant" means:

(a) The Governor;

(b) The Lieutenant Governor;

(c) The Secretary of State;

(d) The Attorney General;

(e) The Treasurer;

(f) The Commissioner of Agriculture;

(g)~~[The Superintendent of Public Instruction;~~

~~(h)]~~ The Auditor of Public Accounts;

(h)~~[(i)]~~ Each Railroad Commissioner; and

(i)~~[(j)]~~ All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;

(10) "~~[State]~~Agency" means every state office, ***cabinet,*** department,~~[division,]~~ board, commission,~~[institution,]~~ public corporation, ***or***~~[and]~~ authority ***in***~~[within]~~ the executive branch ***of state government. A public servant is employed by the agency by which his appointing authority is employed, unless his agency is attached to the appointing authority's agency for administrative purposes only, or unless the agency's characteristics are of a separate independent nature distinct from the appointing authority and it is considered an agency on its own, such as an independent department***;

(11) "Lobbyist" means any person employed as a legislative agent ***as defined in KRS 6.611(22) or any person employed as an executive agency lobbyist as defined in KRS 11A.201(8)***~~[or legislative counsel to promote, oppose, or act with reference to any legislation which affects, or may affect, private pecuniary interests, as distinct from those of the whole people]~~;

(12) "Lobbyist's principal" means the entity in whose behalf the lobbyist promotes, opposes, or acts~~[with reference to legislative action]~~;~~[and]~~

(13) "Candidate" means those persons who have officially filed candidacy papers or who have been nominated by their political party pursuant to KRS 118.105, 118.115, 118.325, or 118.760 for any of the offices enumerated in subsections (9)(a) to ***(h)***~~[(i)]~~ of this section***;***

(14) "Does business with" or "doing business with" means contracting, entering into an agreement, leasing, or otherwise exchanging services or goods with a state agency in return for payment by the state, including accepting a grant, but not including accepting a state entitlement fund disbursement;

(15) "Public agency" means any governmental entity;

(16) "Appointing authority" means the agency head or any person whom he has authorized by law to act on behalf of the agency with respect to employee appointments; and

(17) "Represent" means to attend an agency proceeding, write a letter, or communicate with an employee of an agency on behalf of someone else.

Section 2. KRS 11A.040 is amended to read as follows:

(1) No public servant, in order to further his own economic interests, or those of any other person, shall knowingly disclose or use confidential information acquired in the course of his official duties.

(2) No public servant shall knowingly receive, directly or indirectly, any interest or profit arising from the use or loan of public funds in his hands or to be raised through any state agency.

(3) No public servant shall knowingly act as a representative or agent for the Commonwealth or any agency in the transaction of any business ***or regulatory action*** with himself, or with any business in which he or a member of his family has any interest greater than five percent (5%) of the total value thereof***, or which has a value of at least ten thousand dollars ($10,000)***.

(4) No public servant shall knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), ***or which has a value of at least ten thousand dollars ($10,000),*** or by any other person for his use or benefit or on his account, undertake, execute, hold, ***bid on, negotiate,*** or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340. This provision shall not apply to:

(a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or

(b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or

(c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises.

(5) No public servant shall knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.

(6) No present or former officer or public servant listed in KRS 11A.010 (9)(a) to (i) shall, within six (6) months following termination of his office or employment, accept employment, compensation, or other economic benefit from any person or business that contracts or does business with***, or is regulated by,*** the state in matters in which he was directly involved during the last thirty-six (36) months of his tenure. This provision shall not prohibit an individual from returning to the same business, firm, occupation, or profession in which he was involved prior to taking office or beginning his term of employment, provided that, for a period of six (6) months, he personally refrains from working on any matter in which he was directly involved during the last thirty-six (36) months of his tenure in state government. This subsection shall not prohibit the performance of ministerial functions including, but not limited to, filing tax returns, filing applications for permits or licenses, or filing incorporation papers, nor shall it prohibit the former officer or public servant from receiving public funds disbursed through entitlement programs.

(7) A former public servant shall not act as a lobbyist or lobbyist's principal for a period of one (1) year after the latter of:

(a) The date of leaving office or termination of employment; or

(b) The date the term of office expires to which the public servant was elected.

(8) A former public servant shall not represent a person in a matter before a state agency in which the former public servant was directly involved, for a period of one (1) year after the latter of:

(a) The date of leaving office or termination of employment; or

(b) The date the term of office expires to which the public servant was elected.

(9) Without the approval of the commission, no public servant shall accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds. The commission shall promulgate administrative regulations to establish a procedure for the approval of outside employment of a public servant, including a requirement that the public servant and his appointing authority state in writing that the public servant is not in a position to influence any agency decision relating to the outside employer.

Section 3. KRS 11A.050 is amended to read as follows:

(1) Each officer, each public servant listed in KRS 11A.010(9)(a) to (i), and each candidate shall file a statement of financial disclosure with the commission, as follows:

(a) Each officer and each public servant listed in KRS 11A.010(9)(a) to ***(h) who occupies his position during any portion of a calendar year shall file the statement for that entire calendar year on or before April 15 of the following year, whether or not he remains an officer or public servant as listed in subsection (9)(a) to (h) of Section 1 of this Act***[~~(i) appointed to or employed in any position as of January 1 of any year shall file the statement for the preceding calendar year, complete through December 31, with the commission on or before April 15 of each year~~].

(b)[~~ Each officer and each public servant listed in KRS 11A.010(9)(a) to (i) appointed to or employed in any position after January 1 of any year shall file the statement reflecting the previous calendar year with the commission no later than thirty (30) days after the date of appointment or employment.~~

~~(c)~~] A candidate shall file the statement reflecting the previous calendar year with the commission no later than February 15.

(2) The statement of financial disclosure shall be filed on a form prescribed by the commission. The commission shall provide copies of the form upon request without charge.

(3) The statement shall include the following information for the preceding calendar year:

  (a) Name and entire residential and business address of filer;
  (b) Title of position or office whereby filing is required;
  (c) Any other occupations of filer and spouse;
  (d) Positions held by the filer or his spouse in any business, partnership, or corporation for profit;
  (e) Names and addresses of all businesses in which the filer, his spouse, or dependent children has or had an interest of ten thousand dollars ($10,000) at fair market value or five percent (5%) ownership interest or more;
  (f) Sources of gross income of the filer or his spouse, as well as information concerning the nature of the business, and the form of the income;
  (g) Sources of retainers received by the filer or his spouse;
  (h) Any representation or intervention for compensation by the filer or his spouse for any person before policy-making entities in state government;
  (i) All positions of a fiduciary nature in a business;
  (j) Information regarding any real property in which there is an interest of ten thousand dollars ($10,000) or more held by the filer, his spouse, or dependent children;
  (k) Sources of gifts of money or property with a retail value of more than two hundred dollars ($200) to the filer, his spouse, or dependent children, except those from spouse, parents, or grandparents; and
  (l) Identity of creditors owed more than ten thousand dollars ($10,000), except debts arising from the purchase of consumer goods.

Paragraphs (a) to (l) of this subsection shall not require disclosure of specific dollar amounts or of privileged information.

Section 4. KRS 11A.110 is amended to read as follows:

The commission shall perform the following additional duties:

(1) On its own initiative or upon ***a signed*** request in writing, issue and publish advisory opinions on the requirements of this chapter for those who wish to use the opinion to guide their own conduct***. If requested in writing by the person seeking the advisory opinion, the commission shall not release that person's name***;

(2) Provide a continuing program of education, assistance, and information to public servants, including, but not limited to, publishing and making available to the persons subject to this chapter and the public explanatory information concerning this chapter, the duties imposed by it, and the means of enforcement;

(3) Promulgate administrative regulations in accordance with KRS Chapter 13A to implement this chapter;

(4) Prescribe forms for statements required by this chapter and furnish the forms to persons required to file the statements. The forms shall be adopted as administrative regulations or adopted by reference in an administrative regulation;

(5) Prepare and publish a manual of guidelines setting forth uniform methods of reporting for use by persons required to file under this chapter;

(6) Accept and file any information voluntarily supplied that exceeds the requirements of this chapter;

(7) Preserve the disclosure statements filed with it for four (4) years from the date of receipt;

(8) Make statements and reports filed with the commission available for public inspection and copying pursuant to KRS 61.870 to KRS 61.884 (Kentucky Open Records Law);

(9) Compile and maintain a current index of all statements filed with the commission to facilitate public access to the reports and statements;

(10) Prepare and publish reports as it may deem appropriate;

(11) Audit statements and reports filed with the commission;

(12) Make recommendations for legislation relating to governmental ethics and other matters included in this chapter as the commission deems desirable; and

(13) Prepare a biennial written report, no later than December 1 of each odd-numbered year, to the Legislative Research Commission, the Governor, and the public on the activities of the commission in the preceding two (2) fiscal years. The report shall contain the names and duties of each individual employed by the commission and a summary of commission determinations and advisory opinions. The commission shall prevent disclosure of the identity of a person involved in decisions or advisory opinions. The report may contain other information on matters within the commission's jurisdiction and recommendations for legislation as the commission deems desirable.

HB 272, AN ACT relating to executive branch ethics.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 11A.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted for profit;

(2) "Commission" means the Executive Branch Ethics Commission;

(3) "Compensation" means any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another;

(4) "Family" means spouse and children, as well as a person who is related to a public servant as any of the following, whether by blood or adoption: parent, brother, sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister;

(5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received;

(6) "Income" means any money or thing of value received or to be received as a claim on future services, whether in the form of a fee, salary, expense allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of compensation or any combination thereof;

(7) "Officer" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems board of trustees, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Occupational Safety and Health Review Commission, the Kentucky Board of Education, the State Board for Adult and Technical Education, the Council on Postsecondary Education, and any other management personnel with procurement authority;

(8) "Official duty" means any responsibility imposed on a public servant by virtue of his position in the state service;

(9) "Public servant" means:

- (a) The Governor;
- (b) The Lieutenant Governor;
- (c) The Secretary of State;
- (d) The Attorney General;
- (e) The Treasurer;
- (f) The Commissioner of Agriculture;
- (g) The Superintendent of Public Instruction;
- (h) The Auditor of Public Accounts;
- (i) Each Railroad Commissioner; and
- (j) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;

(10) "State agency" means every state office, department, division, board, commission, institution, public corporation, and authority within the executive branch;

(11) "Lobbyist" means any person employed as a legislative agent ***as defined in KRS 6.611(22) or any person employed as an executive agency lobbyist as defined in KRS 11A.201(8)***~~[or legislative counsel to promote, oppose, or act with reference to any legislation which affects, or may affect, private pecuniary interests, as distinct from those of the whole people]~~;

(12) "Lobbyist's principal" means the entity in whose behalf the lobbyist promotes, opposes, or acts~~[with reference to legislative action]~~; and

(13) "Candidate" means those persons who have officially filed candidacy papers or who have been nominated by their political party pursuant to KRS 118.105, 118.115, 118.325, or 118.760 for any of the offices enumerated in subsections (9)(a) to (i) of this section.

Section 2. KRS 11A.040 is amended to read as follows:

(1) No public servant, in order to further his own economic interests, or those of any other person, shall knowingly disclose or use confidential information acquired in the course of his official duties.

(2) No public servant shall knowingly receive, directly or indirectly, any interest or profit arising from the use or loan of public funds in his hands or to be raised through any state agency.

(3) No public servant shall knowingly act as a representative or agent for the Commonwealth or any agency in the transaction of any business with himself, or with any business in which he or a member of his family has any interest greater than five percent (5%) of the total value thereof.

(4) No public servant shall knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340. This provision shall not apply to:

(a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or

(b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or

(c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises***; or***

(d) Purchases from a state agency that are available on the same terms to the general public or that are made at public auction.

(5) No public servant shall knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.

(6) ***No former officer or public servant listed in KRS 11A.010(9)(a) to (h) shall, within six (6) months of termination of his employment, knowingly by himself or through any business in which he owns or controls an interest of at least five percent (5%) or which has a value of at least ten thousand dollars ($10,000), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he was employed. This provision shall not apply to a contract, purchase, or good faith negotiation made under KRS Chapter 416 relating to eminent domain or to agreements that may directly or indirectly involve public funds disbursed through entitlement programs. This provision shall not apply to purchases from a state agency that are available on the same terms to the general public or that are made at public auction.***

(7) No present or former officer or public servant listed in KRS 11A.010 (9)(a) to (i) shall, within six (6) months following termination of his office or employment, accept employment, compensation, or other economic benefit from any person or business that contracts or does business with***, or is regulated by,*** the state in matters in which he was directly involved during the last thirty-six (36) months of his tenure. This provision shall not prohibit an individual from returning to the same business, firm, occupation, or profession in which he was involved prior to taking office or beginning his term of employment, ***or for which he received, prior to his state employment, a professional degree or license,*** provided that, for a period of six (6) months, he personally refrains from working on any matter in which he was directly involved during the last thirty-six (36) months of his tenure in state government. This subsection shall not prohibit the performance of ministerial functions including, but not limited to, filing tax returns, filing applications for permits or licenses, or filing incorporation papers, nor shall it prohibit the former officer or public servant from receiving public funds disbursed through entitlement programs.

(8)~~[(7)]~~ A former public servant shall not act as a lobbyist or lobbyist's principal ***in matters in which he was directly involved during the last thirty-six (36) months of his tenure*** for a period of one (1) year after the latter of:

(a) The date of leaving office or termination of employment; or

(b) The date the term of office expires to which the public servant was elected.

(9)~~[(8)]~~ A former public servant shall not represent a person ***or business***~~[in a matter]~~ before a state agency ***in a matter*** in which the former public servant was directly involved ***during the last thirty-six (36) months of his tenure***, for a period of one (1) year after the latter of:

(a) The date of leaving office or termination of employment; or

(b) The date the term of office expires to which the public servant was elected.

(10)~~[(9)]~~ Without the approval of the commission, no public servant shall accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds. The commission shall promulgate administrative regulations to establish a procedure for the approval of outside employment of a public servant, including a requirement that the public servant and his appointing authority state in writing that the public servant is not in a position to influence any agency decision relating to the outside employer.

Section 3. KRS 11A.060 is amended to read as follows:

(1) The Executive Branch Ethics Commission is hereby established.

(2) The commission shall be composed of five (5) members appointed by the Governor.

(3) Members of the commission shall serve staggered terms of four (4) years. Of the initial members appointed as provided in this section, one (1) member shall serve a term of one (1) year, one (1) member shall serve a term of two (2) years, one (1) member shall serve a term of three (3) years, and two (2) members shall be appointed for terms of four (4) years. Thereafter, all appointments shall be for four (4) years.

(4) The commission shall elect from its membership a chairman and vice chairman. In the absence of the chairman or in the event of a vacancy in that position, the vice chairman shall serve as chairman.

(5) A member of the commission shall receive one hundred dollars ($100) per day for attending meetings and shall be reimbursed for actual and necessary expenses incurred in the performance of duties.

(6) All members shall be registered voters of the state.

(7) Members of the commission shall be removed by the Governor for cause only, including substantial neglect of duty ***and***~~[,]~~ inability to discharge the powers and duties of office~~[, and violation of KRS 11A.040(5) or (6)]~~.

(8) A quorum shall consist of three (3) or more members. An affirmative vote of three (3) or more members shall be necessary for commission action.

(9) The commission shall meet at the call of the chairman or a majority of its members.

(10) The commission shall be attached to the office of the Governor for administrative purposes only.

Section 4. KRS 11A.990 is amended to read as follows:

(1) Any person who violates KRS 11A.040 shall be guilty of a Class D felony. In addition:

  (a) The judgment of conviction for a violation of KRS 11A.040(2) shall recite that the offender is disqualified to hold office thereafter; and

  (b) Any person who violates KRS 11A.040(1) to ***(5)***~~[(7)]~~ shall be judged to have forfeited any employment, or constitutional or statutory office he holds, provisions of KRS Chapter 18A to the contrary notwithstanding.

(2) Any officer and public servant required to file a statement of financial disclosure pursuant to KRS 11A.050 who does not file the statement by a date specified in that section shall have his salary withheld from the first day of noncompliance until he shall have completed the action required by law. The amount withheld shall be deducted from his overall pay and allowances and shall not be recoverable pursuant to Section 235 of the Constitution of Kentucky.

(3) Any person who maliciously files with the commission a false charge of misconduct on the part of any public servant or other person shall be fined not to exceed five thousand dollars ($5,000), or imprisoned in a county jail for a term not to exceed one (1) year, or both.

(4) Prosecution for violation of any provision of KRS 11A.040 shall not be commenced after two (2) years have elapsed from the date of the violation.

(5) Any executive agency lobbyist, employer, or real party in interest who violates any provision in KRS 11A.206 shall for the first violation be subject to a civil penalty not to exceed five thousand dollars ($5,000). For the second and each subsequent violation, he shall be guilty of a Class D felony.

(6) Any executive agency lobbyist, employer, or real party in interest who fails to file the initial registration statement or updated registration statement required by KRS 11A.211 or 11A.216, or who fails to remedy a deficiency in any filing in a timely manner, may be fined by the commission an amount not to exceed one hundred dollars ($100) per day, up to a maximum total fine of one thousand dollars ($1,000).

(7) Any executive agency lobbyist, employer, or real party in interest who intentionally fails to register, or who intentionally files an initial registration statement or updated registration statement required by KRS 11A.211 or 11A.216 which he knows to contain false information or to omit required information shall be guilty of a Class D felony.

(8) An executive agency lobbyist, employer, or real party in interest who files a false statement of expenditures or details of a financial transaction under KRS 11A.221 or 11A.226 is liable in a civil action to any official or employee who sustains damage as a result of the filing or publication of the statement.

(9) Violation of KRS 11A.236 is a Class D felony.

HB 273, AN ACT relating to executive branch ethics.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 11A.080 is amended to read as follows:

(1) (a) Upon a complaint signed under penalty of perjury by any person, or upon its own motion, the commission shall

conduct a preliminary investigation of~~[investigate]~~ any alleged violation of this chapter.

(b) ***The preliminary investigation shall begin*** not later than ten (10) days after the ***next commission meeting following the receipt of the sworn complaint, or, if the investigation is initiated by the commission's own motion, not later than ten (10) days after the date of the adoption of the motion***~~[commission receives the complaint, the commission shall initiate a preliminary inquiry into any alleged violation of this chapter]~~.

(c) Within sixty (60) days of the commencement of the ***preliminary investigation***~~[inquiry]~~, the commission shall forward a copy of the complaint***, if one has been filed, or a statement of possible violations being investigated,*** and a general statement of the applicable law to the person alleged to have committed a violation.

(2) All commission proceedings and records relating to a preliminary investigation shall be confidential~~[until a final determination is made by the commission]~~, except:

(a) The commission may turn over to the Attorney General, the United States Attorney, or the Commonwealth's Attorney of the jurisdiction in which the offense allegedly occurred, evidence which may be used in criminal proceedings;~~[and]~~

(b) If the complainant or alleged violator publicly discloses the existence of a preliminary investigation, the commission may publicly confirm the existence of the inquiry and, in its discretion, make public any documents which were issued to either party***; and***

(c) The commission or its staff may disclose, at its discretion, in an administrative proceeding, records and other information obtained in a preliminary investigation.

(3) If the commission determines in the preliminary investigation that the~~[complaint does not allege]~~ facts ***are not*** sufficient to constitute a violation of this chapter, the commission shall immediately terminate the ***investigation***~~[inquiry]~~ and notify in writing the complainant***, if any,*** and the person alleged to have committed a violation. The commission may confidentially inform the alleged violator of potential violations and provide information to ensure future compliance with the law. If the alleged violator publicly discloses the existence of such action by the commission, the commission may confirm the existence of the resolution and, in its discretion, make public any documents which were issued to the alleged violator.

(4) If the commission, during the course of the preliminary investigation, finds probable cause to believe that a violation of this chapter has occurred, the commission may, upon majority vote:

(a) Due to mitigating circumstances such as lack of significant economic advantage or gain by the alleged violator, lack of significant economic loss to the state, or lack of significant impact on public confidence in government, in writing, confidentially reprimand the alleged violator for potential violations of the law and provide a copy of the reprimand to the alleged violator's appointing authority, if any. If the alleged violator publicly discloses the existence of such an action, the commission may confirm the existence of the action and, in its discretion, make public any documents which were issued to the alleged violator; or

(b) Initiate an ***administrative***~~[adjudicatory]~~ proceeding to determine whether there has been a violation.

Section 2. KRS 11A.100 is amended to read as follows:

(1) The provisions of KRS Chapter 13B shall apply to all commission ***administrative***~~[adjudicatory]~~ hearings.

(2) All administrative hearings of the commission carried out pursuant to the provisions of this section shall be public, unless the members vote to go into executive session in accordance with KRS 61.810.

(3) The commission, upon a finding pursuant to an administrative hearing that there has been clear and convincing proof of a violation of this chapter, may:

(a) Issue an order requiring the violator to cease and desist the violation;

(b) Issue an order requiring the violator to file any report, statement, or other information as required by this chapter;

(c) In writing, publicly reprimand the violator for potential violations of the law and provide a copy of the reprimand to the alleged violator's appointing authority, if any;

(d) In writing, recommend to the violator's appointing authority that the violator be removed or suspended from office or employment, and include a recommendation for length of suspension, to be approved by the appointing authority, if any; or

(e) Issue an order requiring the violator to pay a civil penalty of not more than two thousand dollars ($2,000) for each violation of this chapter.

(4) In addition to any other remedies provided by law, any violation of this chapter which has substantially influenced the action taken by any state agency in any particular matter shall be grounds for voiding, rescinding, or canceling the action on such terms as the interests of the state and innocent third persons require.

(5) The commission shall refer to the Attorney General ***evidence of*** violations of KRS 11A.040 for prosecution. The Attorney General shall have responsibility for all prosecutions under the law and may request from the commission all

evidence collected in its investigation. The commission may represent itself through the general counsel in all subsequent proceedings.

Section 3. KRS 11A.990 is amended to read as follows:

(1) Any person who violates KRS 11A.040 shall be guilty of a Class D felony. In addition:

(a) The judgment of conviction for a violation of KRS 11A.040(2) shall recite that the offender is disqualified to hold office thereafter; and

(b) Any person who violates KRS 11A.040(1) to (7) shall be judged to have forfeited any employment, or constitutional or statutory office he holds, provisions of KRS Chapter 18A to the contrary notwithstanding.

(2) Any officer***,***[~~ and~~] public servant***, or candidate*** required to file a statement of financial disclosure pursuant to KRS 11A.050 who does not file the statement by a date specified in that section shall ***be subject to a civil penalty of up to one hundred dollars ($100) per day, not to exceed a total penalty of five thousand dollars ($5,000). If the officer or public servant remains on the state payroll, the penalty may be deducted from his salary upon order of the commission***[~~have his salary withheld from the first day of noncompliance until he shall have completed the action required by law. The amount withheld shall be deducted from his overall pay and allowances~~] and shall not be recoverable pursuant to Section 235 of the Constitution of Kentucky.

(3) Any person who maliciously files with the commission a false charge of misconduct on the part of any public servant or other person shall be fined not to exceed five thousand dollars ($5,000), or imprisoned in a county jail for a term not to exceed one (1) year, or both.

(4)[~~ Prosecution for violation of any provision of KRS 11A.040 shall not be commenced after two (2) years have elapsed from the date of the violation.~~

~~(5)~~] Any executive agency lobbyist, employer, or real party in interest who violates any provision in KRS 11A.206 shall for the first violation be subject to a civil penalty not to exceed five thousand dollars ($5,000). For the second and each subsequent violation, he shall be guilty of a Class D felony.

(5)[~~(6)~~] Any executive agency lobbyist, employer, or real party in interest who fails to file the initial registration statement or updated registration statement required by KRS 11A.211 or 11A.216, or who fails to remedy a deficiency in any filing in a timely manner, may be fined by the commission an amount not to exceed one hundred dollars ($100) per day, up to a maximum total fine of one thousand dollars ($1,000).

(6)[~~(7)~~] Any executive agency lobbyist, employer, or real party in interest who intentionally fails to register, or who intentionally files an initial registration statement or updated registration statement required by KRS 11A.211 or 11A.216 which he knows to contain false information or to omit required information shall be guilty of a Class D felony.

(7)[~~(8)~~] An executive agency lobbyist, employer, or real party in interest who files a false statement of expenditures or details of a financial transaction under KRS 11A.221 or 11A.226 is liable in a civil action to any official or employee who sustains damage as a result of the filing or publication of the statement.

(8)[~~(9)~~] Violation of KRS 11A.236 is a Class D felony.

(9) Any final order of the commission may be appealed. These appeals shall be made in Franklin Circuit Court.

The Committee Substitute to **HB 273** is as follows:

AN ACT relating to executive branch ethics.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 11A.080 is amended to read as follows:

(1) (a) Upon a complaint signed under penalty of perjury by any person, or upon its own motion, the commission shall ***conduct a preliminary investigation of***[~~investigate~~] any alleged violation of this chapter.

(b) ***The preliminary investigation shall begin*** not later than ten (10) days after the ***next commission meeting following the receipt of the sworn complaint, or, if the investigation is initiated by the commission's own motion, not later than ten (10) days after the date of the adoption of the motion***[~~commission receives the complaint, the commission shall initiate a preliminary inquiry into any alleged violation of this chapter~~].

(c) Within ***ten (10)***[~~sixty (60)~~] days of the commencement of the ***preliminary investigation***[~~inquiry~~], the commission shall forward a copy of the complaint***, if one has been filed, or a statement of possible violations being investigated,*** and a general statement of the applicable law to the person alleged to have committed a violation.

(2) All commission proceedings and records relating to a preliminary investigation shall be confidential[~~ until a final determination is made by the commission~~], except:

(a) The commission may turn over to the Attorney General, the United States Attorney, or the Commonwealth's Attorney of the jurisdiction in which the offense allegedly occurred, evidence which may be used in criminal proceedings;[~~ and~~]

(b) If the[~~ complainant or~~] alleged violator publicly discloses the existence of a preliminary investigation, the commission may publicly confirm the existence of the inquiry and, in its discretion, make public any documents which were issued to either party.

(3) If the commission determines in the preliminary investigation that the[~~ complaint does not allege~~] facts ***are not*** sufficient to constitute a violation of this chapter, the commission shall immediately terminate the ***investigation***[~~inquiry~~] and notify in writing the complainant***, if any,*** and the person alleged to have committed a violation. The commission may confidentially inform the alleged violator of potential violations and provide information to ensure future compliance with the law. If the alleged violator publicly discloses the existence of such action by the commission, the commission may confirm the existence of the resolution and, in its discretion, make public any documents which were issued to the alleged violator.

(4) If the commission, during the course of the preliminary investigation, finds probable cause to believe that a violation of this chapter has occurred, the commission may, upon majority vote:

(a) Due to mitigating circumstances such as lack of significant economic advantage or gain by the alleged violator, lack of significant economic loss to the state, or lack of significant impact on public confidence in government, in writing, confidentially reprimand the alleged violator for potential violations of the law and provide a copy of the reprimand to the alleged violator's appointing authority, if any. If the alleged violator publicly discloses the existence of such an action, the commission may confirm the existence of the action and, in its discretion, make public any documents which were issued to the alleged violator; or

(b) Initiate an ***administrative***[~~adjudicatory~~] proceeding to determine whether there has been a violation.

Section 2. KRS 11A.100 is amended to read as follows:

(1) The provisions of KRS Chapter 13B shall apply to all commission ***administrative***[~~adjudicatory~~] hearings.

(2) All administrative hearings of the commission carried out pursuant to the provisions of this section shall be public, unless the members vote to go into executive session in accordance with KRS 61.810.

(3) The commission, upon a finding pursuant to an administrative hearing that there has been clear and convincing proof of a violation of this chapter, may:

(a) Issue an order requiring the violator to cease and desist the violation;

(b) Issue an order requiring the violator to file any report, statement, or other information as required by this chapter;

(c) In writing, publicly reprimand the violator for potential violations of the law and provide a copy of the reprimand to the alleged violator's appointing authority, if any;

(d) In writing, recommend to the violator's appointing authority that the violator be removed or suspended from office or employment, and include a recommendation for length of suspension, to be approved by the appointing authority, if any; or

(e) Issue an order requiring the violator to pay a civil penalty of not more than two thousand dollars ($2,000) for each violation of this chapter.

(4) In addition to any other remedies provided by law, any violation of this chapter which has substantially influenced the action taken by any state agency in any particular matter shall be grounds for voiding, rescinding, or canceling the action on such terms as the interests of the state and innocent third persons require.

(5) The commission shall refer to the Attorney General ***evidence of*** violations of KRS 11A.040 for prosecution. The Attorney General shall have responsibility for all prosecutions under the law and may request from the commission all evidence collected in its investigation. The commission may represent itself through the general counsel in all subsequent proceedings.

Section 3. KRS 11A.990 is amended to read as follows:

(1) Any person who violates KRS 11A.040 shall be guilty of a Class D felony. In addition:

(a) The judgment of conviction for a violation of KRS 11A.040(2) shall recite that the offender is disqualified to hold office thereafter; and

(b) Any person who violates KRS 11A.040(1) to (7) shall be judged to have forfeited any employment, or constitutional or statutory office he holds, provisions of KRS Chapter 18A to the contrary notwithstanding.

(2) Any officer***,***[~~ and~~] public servant***, or candidate*** required to file a statement of financial disclosure pursuant to KRS 11A.050 who does not file the statement by a date specified in that section shall ***be subject to a civil penalty of up to one hundred dollars ($100) per day, not to exceed a total penalty of five thousand dollars ($5,000). If the officer or public servant remains on the state payroll, the penalty may be deducted from his salary upon order of the commission***[~~have his salary withheld from the first day of noncompliance until he shall have completed the action required by law. The amount withheld shall be deducted from his overall pay and allowances~~] and shall not be

recoverable pursuant to Section 235 of the Constitution of Kentucky.

(3) Any person who maliciously files with the commission a false charge of misconduct on the part of any public servant or other person shall be fined not to exceed five thousand dollars ($5,000), or imprisoned in a county jail for a term not to exceed one (1) year, or both.

(4)[~~Prosecution for violation of any provision of KRS 11A.040 shall not be commenced after two (2) years have elapsed from the date of the violation.~~

~~(5)~~] Any executive agency lobbyist, employer, or real party in interest who violates any provision in KRS 11A.206 shall for the first violation be subject to a civil penalty not to exceed five thousand dollars ($5,000). For the second and each subsequent violation, he shall be guilty of a Class D felony.

(5)[~~(6)~~] Any executive agency lobbyist, employer, or real party in interest who fails to file the initial registration statement or updated registration statement required by KRS 11A.211 or 11A.216, or who fails to remedy a deficiency in any filing in a timely manner, may be fined by the commission an amount not to exceed one hundred dollars ($100) per day, up to a maximum total fine of one thousand dollars ($1,000).

(6)[~~(7)~~] Any executive agency lobbyist, employer, or real party in interest who intentionally fails to register, or who intentionally files an initial registration statement or updated registration statement required by KRS 11A.211 or 11A.216 which he knows to contain false information or to omit required information shall be guilty of a Class D felony.

(7)[~~(8)~~] An executive agency lobbyist, employer, or real party in interest who files a false statement of expenditures or details of a financial transaction under KRS 11A.221 or 11A.226 is liable in a civil action to any official or employee who sustains damage as a result of the filing or publication of the statement.

(8)[~~(9)~~] Violation of KRS 11A.236 is a Class D felony.

HB 274, AN ACT relating to executive branch ethics.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 11A.040 is amended to read as follows:

(1) No public servant, in order to further his own economic interests, or those of any other person, shall knowingly disclose or use confidential information acquired in the course of his official duties.

(2) No public servant shall knowingly receive, directly or indirectly, any interest or profit arising from the use or loan of public funds in his hands or to be raised through any state agency.

(3) No public servant shall knowingly act as a representative or agent for the Commonwealth or any agency in the transaction of any business with himself, or with any business in which he or a member of his family has any interest greater than five percent (5%) of the total value thereof.

(4) No public servant shall knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340. This provision shall not apply to:

- (a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or
- (b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or
- (c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises.

(5) No public servant shall knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.

(6) No present or former officer or public servant listed in KRS 11A.010 (9)(a) to (i) shall, within six (6) months following termination of his office or employment, accept employment, compensation, or other economic benefit from any person or business that contracts or does business with the state in matters in which he was directly involved during the last thirty-six (36) months of his tenure. This provision shall not prohibit an individual from returning to the same business, firm, occupation, or profession in which he was involved prior to taking office or beginning his term of employment, provided that, for a period of six (6) months, he personally refrains from working on any matter in which he was directly involved during the last thirty-six (36) months of his tenure in state government. This subsection shall not prohibit the performance of ministerial functions including, but not limited to, filing tax returns, filing applications for permits or licenses, or filing incorporation papers, nor shall it prohibit the former officer or public servant from receiving public funds disbursed through entitlement programs.

(7) A former public servant shall not act as a lobbyist or lobbyist's principal for a period of one (1) year after the latter of:

- (a) The date of leaving office or termination of employment; or

(b) The date the term of office expires to which the public servant was elected.

(8) A former public servant shall not represent a person in a matter before a state agency in which the former public servant was directly involved, for a period of one (1) year after the latter of:

(a) The date of leaving office or termination of employment; or

(b) The date the term of office expires to which the public servant was elected.

(9) Without the approval of ***his appointing authority***~~[the commission]~~, no public servant shall accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds~~[. The commission shall promulgate administrative regulations to establish a procedure for the approval of outside employment of a public servant, including a requirement that the public servant and his appointing authority state in writing that the public servant is not in a position to influence any agency decision relating to the outside employer]~~.

(a) The appointing authority shall review administrative regulations established under KRS Chapter 11A when deciding whether to approve outside employment for a public servant.

(b) The appointing authority shall not approve outside employment for a public servant if the public servant is involved in decision-making or recommendations concerning the person or business from which the public servant seeks outside employment or compensation.

(c) The appointing authority shall file quarterly with the Executive Branch Ethics Commission a list of all employees who have been approved for outside employment along with the name of the outside employer of each.

HB 275, AN ACT relating to executive branch ethics.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 11A.045 is amended to read as follows:

(1) No public servant, his spouse, or dependent child shall accept tangible gifts or gratuities totaling a value greater than twenty-five dollars ($25) in a single calendar year, or travel expenses, meals, alcoholic beverages, lodging or honoraria of any value, from any person or business that does business with, is regulated by, is seeking grants from, is involved in litigation against, or is lobbying or attempting to influence the actions of the agency in which the public servant is employed or which he supervises, or from any group or association which has as its primary purpose the representation of those persons or businesses. The following items are exempt:

(a) Coffee, soft drinks, pastries, hors d'oeuvres, or similar refreshments;

(b) Food consumed at a public event to which twenty-five (25) or more individuals are in attendance if that event is also open to participants other than public servants and members of the donor's industry;

(c) Meals, beverages, and free admission to an event if the public servant, as a part of his official duty, is a speaker or has a significant role in the program;

(d) A campaign contribution to an employee's own campaign if in compliance with KRS Chapters 121 and 121A and all other campaign finance laws;

(e) A gift from a family member who is not acting as an intermediary for a person from whom the gift would be otherwise prohibited;

(f) Food, clothing, and shelter in times of natural disaster or other emergency;

(g) Door prizes, if also open to persons other than public servants and members of the donor's industry and if all participants have an equal chance of receiving the prize;

(h) Gifts which are modest, reasonable, and customary, received on special occasions such as marriage or retirement;

(i) Awards of modest and reasonable value which are publicly received in recognition of public or charitable service, such as plaques;

(j) Prizes awarded based solely on skill, such as those received in golf or tennis tournaments, if those tournaments are open to participants other than public servants and members of the donor's industry;

(k) Meals at conferences or seminars which are included as part of the dues paid or registration fee and which are available to all attendees; and

(l) A single copy of a textbook received by an educator for review.

(2) Nothing in KRS 11A.001 to 11A.110 shall prohibit or restrict the acceptance by a public servant of the Cabinet for

Economic Development or by any other public servant working directly with the cabinet on an economic incentive package of anything of economic value as a gift or gratuity, if the gift or gratuity:

(a)[~~(1)~~] Was not solicited by the public servant;

(b)[~~(2)~~] Was accepted by the public servant in the performance of his or her official duties and in compliance with guidelines to be established by the Kentucky Economic Development Partnership which shall include requirements that all gifts or gratuities of a reportable value under KRS 11A.050(3)(k) be registered with the Kentucky Economic Development Partnership and with the Executive Branch Ethics Commission and that all tangible property with a value in excess of twenty-five dollars ($25), other than food and beverages consumed on the premises, shall be turned over to the Cabinet for Economic Development within thirty (30) days of receipt. In filing reports of gifts or gratuities with the Executive Branch Ethics Commission, the Cabinet for Economic Development may delete information identifying the donors if the cabinet believes identification of the donors would damage economic development; *and*

(c)[~~(3)~~]Was not accepted under circumstances which would create a violation of KRS Chapter 521.

The Committee Substitute to **HB 275** is as follows:

AN ACT relating to executive branch ethics.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 11A.045 is amended to read as follows:

(1) No public servant, his spouse, or dependent child shall accept tangible gifts or gratuities totaling a value greater than twenty-five dollars ($25) in a single calendar year, or travel expenses, meals, alcoholic beverages, lodging or honoraria of any value, from any person or business that does business with, is regulated by, is seeking grants from, is involved in litigation against, or is lobbying or attempting to influence the actions of the agency in which the public servant is employed or which he supervises, or from any group or association which has as its primary purpose the representation of those persons or businesses. The following items are exempt:

(a) Coffee, soft drinks, pastries, hors d'oeuvres, or similar refreshments;

(b) Food consumed at a public event to which twenty-five (25) or more individuals are in attendance if that event is also open to participants other than public servants and members of the donor's industry;

(c) Meals, beverages, and free admission to an event if the public servant, as a part of his official duty, is a speaker or has a significant role in the program;

(d) A campaign contribution to an employee's own campaign if in compliance with KRS Chapters 121 and 121A and all other campaign finance laws;

(e) A gift from a family member who is not acting as an intermediary for a person from whom the gift would be otherwise prohibited;

(f) Food, clothing, and shelter in times of natural disaster or other emergency;

(g) Door prizes, if also open to persons other than public servants and members of the donor's industry and if all participants have an equal chance of receiving the prize;

(h) Gifts which are modest, reasonable, and customary, received on special occasions such as marriage or retirement;

(i) Awards of modest and reasonable value which are publicly received in recognition of public or charitable service, such as plaques;

(j) Prizes awarded based solely on skill, such as those received in golf or tennis tournaments, if those tournaments are open to participants other than public servants and members of the donor's industry;

(k) Meals at conferences or seminars which are included as part of the dues paid or registration fee and which are available to all attendees; and

(l) A single copy of a textbook received by an educator for review.

(2) Nothing in KRS 11A.001 to 11A.110 shall prohibit or restrict the acceptance by a public servant of the Cabinet for Economic Development or by any other public servant working directly with the cabinet on an economic incentive package of anything of economic value as a gift or gratuity, if the gift or gratuity:

(a)[~~(1)~~] Was not solicited by the public servant;

(b)[~~(2)~~] Was accepted by the public servant in the performance of his or her official duties and in compliance with guidelines to be established by the Kentucky Economic Development Partnership which shall include requirements that all gifts or gratuities of a reportable value under KRS 11A.050(3)(k) be registered with the Kentucky Economic Development Partnership and with the Executive Branch Ethics Commission and that all

tangible property with a value in excess of twenty-five dollars ($25), other than food and beverages consumed on the premises, shall be turned over to the Cabinet for Economic Development within thirty (30) days of receipt. In filing reports of gifts or gratuities with the Executive Branch Ethics Commission, the Cabinet for Economic Development may delete information identifying the donors if the cabinet believes identification of the donors would damage economic development; ***and***

(c)[~~(3)~~]Was not accepted under circumstances which would create a violation of KRS Chapter 521.

Section 2. KRS 11A.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted for profit;

(2) "Commission" means the Executive Branch Ethics Commission;

(3) "Compensation" means any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another;

(4) "Family" means spouse and children, as well as a person who is related to a public servant as any of the following, whether by blood or adoption: parent, brother, sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister;

(5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received;

(6) "Income" means any money or thing of value received or to be received as a claim on future services, whether in the form of a fee, salary, expense allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of compensation or any combination thereof;

(7) "Officer" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems board of trustees, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Occupational Safety and Health Review Commission, the Kentucky Board of Education, the State Board for Adult and Technical Education, ***and*** the Council on Postsecondary Education[~~, and any other management personnel with procurement authority~~];

(8) "Official duty" means any responsibility imposed on a public servant by virtue of his position in the state service;

(9) "Public servant" means:

(a) The Governor;

(b) The Lieutenant Governor;

(c) The Secretary of State;

(d) The Attorney General;

(e) The Treasurer;

(f) The Commissioner of Agriculture;

(g) The Superintendent of Public Instruction;

(h) The Auditor of Public Accounts;

(i) Each Railroad Commissioner; and

(j) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;

(10) "State agency" means every state office, department, division, board, commission, institution, public corporation, and authority within the executive branch;

(11) "Lobbyist" means any person employed as a legislative agent or legislative counsel to promote, oppose, or act with reference to any legislation which affects, or may affect, private pecuniary interests, as distinct from those of the whole people;

(12) "Lobbyist's principal" means the entity in whose behalf the lobbyist promotes, opposes, or acts with reference to legislative action; and

(13) "Candidate" means those persons who have officially filed candidacy papers or who have been nominated by their political party pursuant to KRS 118.105, 118.115, 118.325, or 118.760 for any of the offices enumerated in subsections

(9)(a) to (i) of this section.

HB 300, AN ACT relating to executive branch ethics.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 11A.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted for profit;

(2) "Commission" means the Executive Branch Ethics Commission;

(3) "Compensation" means any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another;

(4) "Family" means spouse and children, as well as a person who is related to a public servant as any of the following, whether by blood or adoption: parent, brother, sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister;

(5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received;

(6) "Income" means any money or thing of value received or to be received as a claim on future services, whether in the form of a fee, salary, expense allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of compensation or any combination thereof;

(7) "Officer" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems board of trustees, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Occupational Safety and Health Review Commission, the Kentucky Board of Education, the State Board for Adult and Technical Education, ***and*** the Council on Postsecondary Education~~[, and any other management personnel with procurement authority]~~;

(8) "Official duty" means any responsibility imposed on a public servant by virtue of his position in the state service;

(9) "Public servant" means:

  (a) The Governor;

  (b) The Lieutenant Governor;

  (c) The Secretary of State;

  (d) The Attorney General;

  (e) The Treasurer;

  (f) The Commissioner of Agriculture;

  (g) The Superintendent of Public Instruction;

  (h) The Auditor of Public Accounts;

  (i) Each Railroad Commissioner; and

  (j) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;

(10) "State agency" means every state office, department, division, board, commission, institution, public corporation, and authority within the executive branch;

(11) "Lobbyist" means any person employed as a legislative agent or legislative counsel to promote, oppose, or act with reference to any legislation which affects, or may affect, private pecuniary interests, as distinct from those of the whole people;

(12) "Lobbyist's principal" means the entity in whose behalf the lobbyist promotes, opposes, or acts with reference to legislative action; and

(13) "Candidate" means those persons who have officially filed candidacy papers or who have been nominated by their political party pursuant to KRS 118.105, 118.115, 118.325, or 118.760 for any of the offices enumerated in subsections (9)(a) to (i) of this section.

Section 2. KRS 11A.050 is amended to read as follows:

(1) Each officer, each public servant listed in KRS 11A.010(9)(a) to (i), and each candidate shall file a statement of financial disclosure with the commission, as follows:

- (a) Each officer and each public servant listed in KRS 11A.010(9)(a) to (i) ***who occupies his position during any portion of a calendar year shall file the statement for that entire calendar year on or before April 15 of the following year, whether or not he remains an officer or public servant as listed in subsection (9)(a) to (i) of Section 1 of this Act***[~~appointed to or employed in any position as of January 1 of any year shall file the statement for the preceding calendar year, complete through December 31, with the commission on or before April 15 of each year~~].
- (b)[~~ Each officer and each public servant listed in KRS 11A.010(9)(a) to (i) appointed to or employed in any position after January 1 of any year shall file the statement reflecting the previous calendar year with the commission no later than thirty (30) days after the date of appointment or employment.~~
- ~~(c)~~] A candidate shall file the statement reflecting the previous calendar year with the commission no later than February 15.

(2) The statement of financial disclosure shall be filed on a form prescribed by the commission. The commission shall provide copies of the form upon request without charge.

(3) The statement shall include the following information for the preceding calendar year:

- (a) Name and entire residential and business address of filer;
- (b) Title of position or office whereby filing is required;
- (c) Any other occupations of filer and spouse;
- (d) Positions held by the filer or his spouse in any business, ***and the name and address of the business***[~~partnership, or corporation for profit~~];
- (e) Names and addresses of all businesses in which the filer, his spouse, or dependent children[~~ has~~] or had an interest of ten thousand dollars ($10,000) at fair market value or five percent (5%) ownership interest or more***.*** ***For all businesses required to be reported under this subsection, the filer shall report the name and address of each co-owner or partner who has an ownership interest of ten thousand dollars ($10,000) or more at fair market value, or five percent (5%) or more, and who, either individually or through a business in which he is an officer or director or has a controlling interest, does business with or is regulated by the state agency for which the filer works or any agency which the filer supervises***;
- (f) ***The name and address of any source of gross income exceeding five hundred dollars ($500) from any one (1) source to***[~~Sources of gross income of~~] the filer***,***[~~ or~~] his spouse, ***or dependent child,*** as well as information concerning the nature of the business, and the form of the income;
- (g) Sources of retainers received by the filer or his spouse ***relating to matters of the state agency for which the filer works or supervises or of any other entity of state government for which the filer would serve in a decision-making capacity, including each source's name and address***;
- (h) Any representation or intervention for compensation by the filer or his spouse for any person ***or business*** before ***a state agency for which the filer works or supervises or before any entity of state government for which the filer would serve in a decision-making capacity, including the name and address of the person or business***[~~policy-making entities in state government~~];
- (i) All positions of a fiduciary nature ***held by the filer or his spouse*** in a business***, including the name and address of the business***;
- (j) Information***, including a street address or location,*** regarding any real property in which there is an interest of ten thousand dollars ($10,000) or more held by the filer, his spouse, or dependent children;
- (k) Sources***, including each source's name and address,*** of gifts of money or property with a retail value of more than two hundred dollars ($200) ***from any one source*** to the filer, his spouse, or dependent children, except those from ***a member of the filer's family***[~~spouse, parents, or grandparents~~]; and
- (l) Identity***, including an address,*** of creditors owed more than ten thousand dollars ($10,000), except debts arising from the purchase of consumer goods.

Paragraphs (a) to (l) of this subsection shall not require disclosure of specific dollar amounts or of privileged information.

Section 3. KRS 11A.990 is amended to read as follows:

(1) Any person who violates KRS 11A.040 shall be guilty of a Class D felony. In addition:

- (a) The judgment of conviction for a violation of KRS 11A.040(2) shall recite that the offender is disqualified to hold office thereafter; and

(b) Any person who violates KRS 11A.040(1) to (7) shall be judged to have forfeited any employment, or constitutional or statutory office he holds, provisions of KRS Chapter 18A to the contrary notwithstanding.

(2) Any officer***,***[~~ and~~] public servant***, or candidate*** required to file a statement of financial disclosure pursuant to KRS 11A.050 who does not file the statement by a date specified in that section shall ***be subject to a civil penalty of up to one hundred dollars ($100) per day, not to exceed a total penalty of five thousand dollars ($5000). If the officer or public servant remains on the state payroll, the penalty shall be deducted from his salary, upon order of the commission,***[~~have his salary withheld from the first day of noncompliance until he shall have completed the action required by law. The amount withheld shall be deducted from his overall pay and allowances~~] and shall not be recoverable ***under***[~~pursuant to~~] Section 235 of the Constitution of Kentucky.

(3) Any person who maliciously files with the commission a false charge of misconduct on the part of any public servant or other person shall be fined not to exceed five thousand dollars ($5,000), or imprisoned in a county jail for a term not to exceed one (1) year, or both.

(4) Prosecution for violation of any provision of KRS 11A.040 shall not be commenced after two (2) years have elapsed from the date of the violation.

(5) Any executive agency lobbyist, employer, or real party in interest who violates any provision in KRS 11A.206 shall for the first violation be subject to a civil penalty not to exceed five thousand dollars ($5,000). For the second and each subsequent violation, he shall be guilty of a Class D felony.

(6) Any executive agency lobbyist, employer, or real party in interest who fails to file the initial registration statement or updated registration statement required by KRS 11A.211 or 11A.216, or who fails to remedy a deficiency in any filing in a timely manner, may be fined by the commission an amount not to exceed one hundred dollars ($100) per day, up to a maximum total fine of one thousand dollars ($1,000).

(7) Any executive agency lobbyist, employer, or real party in interest who intentionally fails to register, or who intentionally files an initial registration statement or updated registration statement required by KRS 11A.211 or 11A.216 which he knows to contain false information or to omit required information shall be guilty of a Class D felony.

(8) An executive agency lobbyist, employer, or real party in interest who files a false statement of expenditures or details of a financial transaction under KRS 11A.221 or 11A.226 is liable in a civil action to any official or employee who sustains damage as a result of the filing or publication of the statement.

(9) Violation of KRS 11A.236 is a Class D felony.

HB 347, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 147A IS CREATED TO READ AS FOLLOWS:

(1) There shall be a Water Resource Development Commission, with the authority and responsibility to:

(a) Request and receive information from all branches of state and local government, including special districts and water districts, in order to prepare a complete inventory of all existing water plants and their financial condition; and

(b) Prepare a statewide plan for the provision of potable water to all citizens of the Commonwealth by the year 2020 and assure that no state or federal funds shall be used for the development of a water system that is not in compliance with the statewide plan upon its adoption.

(2) (a) The commission shall be composed of the following thirteen (13) members:

1. Commissioner of the Department of Local Government, who shall serve as chairman of the commission;

2. Secretary of the Finance and Administration Cabinet;

3. Secretary of the Natural Resources and Environmental Protection Cabinet;

4. Secretary of the Transportation Cabinet;

5. Executive director of the Public Service Commission;

6. Executive director of the Kentucky League of Cities;

7. Executive director of the Kentucky Rural Water Association;

8. Information director of the Kentucky Council of Area Development Districts;

9. Executive director of the Kentucky County Judge/Executive Association;

10. Executive director of the Kentucky Magistrates and Commissioners Association;

11. State director for Rural Development; and

12. Two (2) additional members of the commission appointed by the Governor as at-large members.

(b) The commission shall be headed by an executive director who shall be appointed by and serve at the pleasure of the Governor. The commission shall be attached for administrative purposes to the Department of Local Government. The commission may utilize staff from the agencies headed by commission members employed by state government and hire additional staff as needed.

(c) The members of the commission shall serve a term of four (4) years. Any member who, through change of employment status or for other reasons, no longer meets the criteria for the position to which he or she was appointed shall no longer be eligible to serve on the commission and shall be removed by the Governor.

(d) Members of the commission shall serve without compensation, except that members of the commission who are not salaried governmental employees shall be compensated for expenses incurred in the conduct of commission business.

(e) Members may designate in writing an alternate who has full authority to attend and vote upon any business or transaction of the commission in the absence of the appointed member.

Section 2. The General Assembly confirms Executive Order 96-1339, dated October 3, 1996, which creates the Water Resource Development Commission, to the extent it is not otherwise confirmed by this Act.

HB 348, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 42.0201 is amended to read as follows:

(1) There is created within the Finance and Administration Cabinet the Office of the Controller. The office shall be attached to the Office of the Secretary of the Finance and Administration for administrative and reporting purposes.

(2) The Office of the Controller shall be headed by an executive director appointed by the secretary of the Finance and Administration Cabinet with the approval of the Governor. The executive director shall function as the state controller, who shall be a person qualified by education and experience for the position and held in high professional esteem in the accounting community.

(3) The state controller shall be the Commonwealth's chief accounting officer and shall be responsible for all aspects of accounting policies and procedures, financial accounting systems, and internal accounting control policies and procedures. The Office of the Controller shall establish guidelines for state personnel administration on issues relating to paycheck distribution dates, assignment of data elements to accurately report labor costs, assignment and tracking of actual expenditures by code, and coverage issues relating to Social Security and Medicare.

(4) The state controller; the executive director of the Office of Financial Management and Economic Analysis, Finance and Administration Cabinet; and the state budget director designated under KRS 11.068 shall develop and maintain the Commonwealth's strategic financial management program.

(5) There are established in the Office of the Controller the Division of Accounts and the Division of Social Security.

(a) The Division of Accounts shall be headed by a director appointed by the secretary of the Finance and Administration Cabinet, subject to the approval of the Governor. The director shall report directly to the state controller. The division shall perform financial record keeping functions at the state controller's direction, and shall be responsible for ***the***[~~:~~

~~1. The~~] performance of the cabinet's functions outlined in KRS 45.305, 48.800, and other related statutes; and

[~~2. The state government's duties and functions relating to the county fee system and debt issuance for local entities.~~]

(b) The Division of Social Security shall be headed by a director appointed by the secretary of the Finance and Administration Cabinet pursuant to KRS 12.050. The director shall report directly to the state controller. The division shall be responsible for the duties of the state agency for Social Security specified in KRS 61.410 to 61.500.

Section 2. KRS 42.170 is amended to read as follows:

All of the functions of the state local debt officer provided in KRS Chapters 66 and 103 relating to the issuance of debt obligations of counties, cities, and other local units shall be exercised by the ***commissioner, Department of Local Government or the commissioner's agent designated in writing***[~~Office of the Controller, Finance and Administration Cabinet~~].

Section 3. KRS 42.535 is amended to read as follows:

Each agency holding funds listed in this section shall make a report according to generally accepted accounting principles of all money received and disbursed by the listed funds during each fiscal year, on or before the fifteenth of July, showing the receipts, expenditures, depositories, rates of interest paid by depositories, investments, and rates of return on investments by each listed fund to the Office of the Controller. The funds which shall be reported are:

(1)[~~The county sinking fund;~~

~~(2)~~] Tobacco research trust fund;

(2)[~~(3)~~] The uninsured employers' fund;

(3)[~~(4)~~] The administrative fund created by KRS 342.440, also known as the workers' compensation maintenance fund;

(4)[~~(5)~~] The special claim fund; and

(5)[~~(6)~~] The common school fund.

Section 4. KRS 65.005 is amended to read as follows:

(1) (a) "Special district" means any agency, authority, or political subdivision of the state which exercises less than statewide jurisdiction and which is organized for the purpose of performing governmental or other prescribed functions within limited boundaries. It includes all political subdivisions of the state except a city, a county, or a school district.

(b) "Governing body" means the body possessing legislative authority in a city, county, or special district.

(2) No special district shall be legally created without sending notification of its existence in writing to the clerk of the county within the jurisdiction of which its principal office shall be located. This requirement for notification is in addition to all other provisions of existing law providing for the creation of special districts. The notification shall contain the names and addresses of the members of the governing body of the district, the name and address of its chief executive officer, a specific reference to the statute or statutes pursuant to which it was created, and a brief description of its service area and activities. The clerk shall record the original and forward a copy of the notification to the state local finance officer[~~, Department of Local Government,~~] and the state local debt officer, ***Department of Local Government***[~~Office of the Controller, Finance and Administration Cabinet~~]. The clerk shall be paid a fee of two dollars ($2) by the district for recording and mailing the notification.

(3) The governing body of any existing special district shall submit notification as required in subsection (2) of this section within thirty (30) days after June 16, 1966, and the governing body of a newly-created special district shall submit the required notification at or before its first meeting.

Section 5. KRS 66.011 is amended to read as follows:

As used in this chapter, unless otherwise expressly provided:

(1) "Bonds" means bonds, notes, commercial paper, and other instruments in writing, authorized by or issued pursuant to or in accordance with this chapter, to evidence an obligation to repay or guarantee the repayment of money borrowed, or to pay interest by, or to pay at any future time other money obligations.

(2) "Capitalized interest" means all or a portion of the interest payable on bonds from their date to a date stated or provided for in the proceedings, which interest is to be paid from the proceeds of the bonds.

(3) "Credit enhancement facilities" means letters of credit; lines of credit; stand-by, contingent, or firm bond purchase agreements; insurance, or surety arrangements; guarantees, and other arrangements that provide for direct or contingent payment of bonds; interest or redemption premium on bonds, for security or additional security in the event of nonpayment or default in respect of bonds, or for making payment of bonds; interest or redemption premium on bonds to and at the option and on demand of the holders of bonds or at the option of the issuer or upon certain conditions occurring under put or similar arrangements, or for otherwise supporting the credit or liquidity of bonds; and includes credit, reimbursement, marketing, remarketing, indexing, carrying, interest rate hedge, and subrogation agreements, and other agreements and arrangements for payment and reimbursement of the person providing the credit enhancement facilities and the security for that payment and reimbursement.

(4) "Debt charges" means the principal, including any mandatory sinking fund deposits, interest, and any redemption premium, payable on bonds as the payments come due and are payable and any charges related to credit enhancement facilities. The use of "debt charges" for this purpose does not imply that any particular obligations constitute debt within the meaning of the Kentucky Constitution or other laws.

(5) "Financing costs" means all costs and expenses relating to the issuance and carrying costs of bonds including charges related to credit enhancement facilities which are not debt charges.

(6) "Floating indebtedness" means the amount by which the total of all expenditures by an issuer in any fiscal year exceeds the total of all funds and receipts of the issuer for that fiscal year which are available to the issuer for the purpose of funding those expenditures, but only to the extent that the governing body of the issuer made good-faith estimates of expenditures and funds and receipts available to fund those expenditures and the short-fall in available funds and receipts was due to unforeseeable circumstances or events.

(7) "Fully-registered bonds" means bonds in certificated or uncertificated form, registered as to both principal and interest in

the name of the owner.

(8) "Interest" or "interest equivalent" means those payments or portions of payments, however denominated, that constitute or represent consideration for forbearing the collection of money, or for deferring the receipt or payment of money to a future time.

(9) "Issuer" means a county, city, urban-county, charter county, or other taxing district, and for purposes of making any determinations required under this chapter, may include an authorized representative of the issuer.

(10) "Governing body" means the legislative authority of the issuer.

(11) "Legislation" means an ordinance or resolution passed by a governing body.

(12) "Mandatory sinking fund redemption requirements" means amounts required by proceedings to be deposited in a sinking fund for the purpose of paying, by mandatory redemption prior to stated maturity, the principal of bonds that is due and payable in a subsequent year or fiscal year.

(13) "Net indebtedness" means the principal amount of outstanding bonds of an issuer as determined in accordance with KRS 66.031.

(14) "Notes" means bonds that mature no later than five (5) years from the date they are issued.

(15) "Obligation" means instruments in writing, which are not bonds within the meaning of this chapter, that evidence an obligation to repay money borrowed, or to pay interest by, or to pay at any future time other money obligations, including, without limitation, installment sale, lease, lease purchase, or similar agreements, which obligations bear interest or an interest equivalent.

(16) "Outstanding," referring to bonds, means bonds that have been issued, delivered, and paid for, except any of the following:

(a) Bonds canceled upon surrender, exchange, or transfer, or upon payment or redemption;

(b) Bonds in replacement of which or in exchange for which other bonds have been issued; or

(c) Bonds for the payment, or redemption or purchase for cancellation prior to maturity, of which sufficient moneys or investments, in accordance with the applicable legislation or other proceedings or any applicable law, by mandatory sinking fund redemption requirements, or otherwise, have been deposited, and credited in a sinking fund or with a trustee or paying or escrow agent, whether at or prior to their maturity or redemption, and, in the case of bonds to be redeemed prior to their stated maturity, notice of redemption has been given or satisfactory arrangements have been made for giving notice of that redemption, or waiver of that notice by or on behalf of the affected bond holders has been filed with the issuer or its agent.

(17) "Public project" means any property, asset, or improvement certified by the governing body, which certification is conclusive, as being for a public purpose and having an estimated life or period of usefulness of one (1) year or more, and includes, but is not limited to, real estate, buildings, and personal property, equipment, furnishings, and site improvements, and reconstruction, rehabilitation, renovation, installation, improvement, enlargement, and extension of property, assets, or improvements so certified as having an estimated life or period of usefulness of one (1) year or more and is to be used for a public purpose.

(18) "Person" or "persons" means political and corporate entities, societies, communities, the public generally, individuals, partnerships, and joint stock companies.

(19) "Proceedings" means the legislation, certifications, notices, orders, sale proceedings, trust agreements or indentures, mortgages, leases, lease-purchase agreements, assignments, credit enhancement facility agreements, and other agreements, instruments, and documents, as amended and supplemented, providing for the terms and conditions applicable to, or providing for the security or sale or award of, bonds, and includes the provisions set forth or incorporated in those bonds and proceedings.

(20) "Refund" means to provide for the payment of debt charges and expenses related to that payment at or prior to retirement by purchase, call for redemption, payment at maturity, or otherwise, outstanding obligations of an issuer or its instrumentality, including, without limitation, bonds.

(21) "Register" means the books kept and maintained for registration, exchange, and transfer of registered bonds.

(22) "Self-supporting obligations" means obligations issued for the purpose of paying costs of public projects to the extent that receipts of the issuer, other than the proceeds of taxes levied by that issuer, derived from or with respect to that public project or the operation of the public project being financed, or the enterprise, system, or category of public project of which the public project being financed is part, are estimated by the governing body or a representative of the governing body to be sufficient to pay the current expenses of that operation or of that public project, enterprise, or system and the debt charges payable from those receipts on obligations issued for that public project.

(23) "Sinking fund" means a fund established for the management of moneys to be used for the retirement of outstanding bonds.

(24) "State local debt officer" as used in this chapter and other provisions of law, means the ***commissioner, Department of***

Local Government ~~[state controller, Finance and Administration Cabinet,]~~ or ***the commissioner's***~~[his]~~ agent designated in writing ~~[with the approval of the secretary of the Finance and Administration Cabinet]~~.

(25) "Taxing district" means an issuer, other than a county, city, urban-county, or charter county authorized to levy ad valorem taxes within the meaning of Section 157 of the Constitution of Kentucky which is not a school district.

(26) "Tax-supported lease" means a lease entered into under KRS 65.942 to 65.956 in which the lessee has agreed to levy and collect taxes to make lease payments.

Section 6. KRS 66.370 is amended to read as follows:

(1) A county may, by order of its fiscal court, surrender to the state local debt officer***, Department of Local Government,*** all money in hand, notes, bonds, accounts, or other credits representing assets available, and any other sums which may hereafter become available from any and all sources, for paying the principal and interest of any bonded debt of the county; however, if a county surrenders the sinking fund for any bond issue payable either from the tax levy authorized by Section 157 or by Section 157a of the Constitution of Kentucky or from any special tax levy authorized by law, it shall also surrender the sinking funds for all other bonds payable from the same tax levy as herein defined. The surrender shall be irrevocable on the part of the county. Any county which has a bond issue approved under KRS 66.310 may comply with the provisions of this subsection with respect to the sinking funds for the bonds thus approved and for any other bonds payable from the same tax levy as herein defined.

(2) All cash received under this section by the state local debt officer***, Department of Local Government,*** shall be deposited with the ***commissioner, Department of Local Government***~~[State Treasurer]~~ to the credit of a fund designated the "county sinking fund." All assets other than cash shall be deposited with the ***commissioner, Department of Local Government***~~[State Treasurer]~~ and shall be liquidated, upon authorization of the commission, within a reasonable time.

(3) The county treasurer of any county complying with the provisions of this section shall remit monthly to the state local debt officer***, Department of Local Government,*** all moneys received from any tax levy made for the exclusive purpose of paying principal and interest on any bonds. Any moneys appropriated in the county budget from any other source or any moneys required by law to be used for the same purpose shall be remitted as required for paying any principal or interest maturities, or both, or meeting sinking fund requirements. The state local debt officer***, Department of Local Government,*** may institute actions in the Franklin Circuit Court to enforce the provisions of this subsection or to recover any funds that may have been misapplied.

(4) Accounts showing the county sinking fund receipts and disbursements shall be kept by the state local debt officer***, Department of Local Government,*** for each bond issue of each county for which deposits are made in the fund. As of the close of the county fiscal year the state local debt officer***, Department of Local Government,*** shall, within thirty (30) days thereafter, render to the county judge/executive of each county having deposits in the fund a statement thereof for each bond issue of that county. On or about the first day of May of each year, the state local debt officer***, Department of Local Government,*** shall deliver to the county judge/executive an estimate of the principal and interest requirements of outstanding bonds issued by that county or of the proportionate annual amount which should be deposited in a sinking fund.

(5) Disbursements from the county sinking fund shall, when authorized by the state local debt officer, ***Department of Local Government,*** be made in the same manner as other claims on the Commonwealth are paid. Disbursements may be made only for:

(a) The payment of principal or interest, or both, of the bonds for which the deposit was made; and

(b) The investment of the funds as authorized by law.

(6) All coupons and bonds for the payment of which deposits are made in the county sinking fund shall be paid either directly by the state local debt officer***, Department of Local Government,*** or by the bank designated as paying agent. That bank may be paid a reasonable fee for its services by the ***Department of Local Government***~~[Finance and Administration Cabinet]~~ out of its appropriation. All paid bonds and coupons shall be surrendered to the state local debt officer and canceled, and shall be delivered to the judge/executive of each county along with the annual statement provided for in this section.

Section 7. KRS 147A.020 is amended to read as follows:

(1) The state local debt officer~~[within the Office of the Controller, Finance and Administration Cabinet]~~ and the state local finance officer within the Department of Local Government shall exercise the following administrative functions of the state:

(a) The state local debt officer shall exercise all administrative functions as provided in the county debt act, KRS 66.280 to 66.390, and administrative functions relating to local government bonds as provided in KRS 66.045; and

(b) The state local finance officer shall exercise all administrative functions regarding county and local government budgets, as provided in KRS 68.210 to 68.360.

(2) The state local debt officer shall have the following powers and duties:

(a) To require reports from local governments to enable him to adequately provide the technical and advisory assistance authorized by this section. The reports shall provide the necessary information for a complete file on local government debt, which the state local debt officer shall keep open for public inspection at the ***Department of Local Government***[~~Office of the Controller~~];

(b) To conduct studies in debt management, including ways and means of appraising the terms of alternative bids;

(c) To request assistance and information, which shall be provided by all departments, divisions, boards, bureaus, commissions, and other agencies of state government, to enable the state local debt officer to carry out his duties under this section; and

(d) To compile and publish annually a report which shall include detailed information on local government long-term debt issued and retired during the previous year and outstanding, and other available statistical data on local government finances.

(3) The state local finance officer shall have the following powers and duties:

(a) To coordinate for the Governor the state's responsibility for, and shall be responsible for liaison with the appropriate state and federal agencies with respect to, general revenue sharing for local government;

(b) To provide technical assistance and information to units of local government on matters including, but not limited to, fiscal management, purchases, and contracts; and

(c) To conduct training programs to instruct county and other local officials respecting their duties and responsibilities in the collection, expenditure, and management of public moneys subject to their control and jurisdiction.

Section 8. The General Assembly confirms Executive Order 96-1376, dated October 11, 1996, relating to the reorganization of the Department of Local Government, which transfers the duties and functions of the state local debt officer in the Finance and Administration Cabinet to the Department of Local Government, to the extent it is not otherwise confirmed or superseded by this Act.

The Committee Substitute to **HB 348** is as follows:

AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 42.0201 is amended to read as follows:

(1) There is created within the Finance and Administration Cabinet the Office of the Controller. The office shall be attached to the Office of the Secretary of the Finance and Administration for administrative and reporting purposes.

(2) The Office of the Controller shall be headed by an executive director appointed by the secretary of the Finance and Administration Cabinet with the approval of the Governor. The executive director shall function as the state controller, who shall be a person qualified by education and experience for the position and held in high professional esteem in the accounting community.

(3) The state controller shall be the Commonwealth's chief accounting officer and shall be responsible for all aspects of accounting policies and procedures, financial accounting systems, and internal accounting control policies and procedures. The Office of the Controller shall establish guidelines for state personnel administration on issues relating to paycheck distribution dates, assignment of data elements to accurately report labor costs, assignment and tracking of actual expenditures by code, and coverage issues relating to Social Security and Medicare.

(4) The state controller; the executive director of the Office of Financial Management and Economic Analysis, Finance and Administration Cabinet; and the state budget director designated under KRS 11.068 shall develop and maintain the Commonwealth's strategic financial management program.

(5) There are established in the Office of the Controller the Division of Accounts and the Division of Social Security.

(a) The Division of Accounts shall be headed by a director appointed by the secretary of the Finance and Administration Cabinet, subject to the approval of the Governor. The director shall report directly to the state controller. The division shall perform financial record keeping functions at the state controller's direction, and shall be responsible for:

1. The performance of the cabinet's functions outlined in KRS 45.305, 48.800, and other related statutes; and

2. The state government's duties and functions relating to the county fee system[~~ and debt issuance~~] for local entities.

(b) The Division of Social Security shall be headed by a director appointed by the secretary of the Finance and Administration Cabinet pursuant to KRS 12.050. The director shall report directly to the state controller. The division shall be responsible for the duties of the state agency for Social Security specified in KRS 61.410 to

61.500.

Section 2. KRS 42.535 is amended to read as follows:

Each agency holding funds listed in this section shall make a report according to generally accepted accounting principles of all money received and disbursed by the listed funds during each fiscal year, on or before the fifteenth of July, showing the receipts, expenditures, depositories, rates of interest paid by depositories, investments, and rates of return on investments by each listed fund to the Office of the Controller. The funds which shall be reported are:

(1)[~~The county sinking fund;~~

~~(2)~~] Tobacco research trust fund;

(2)[~~(3)~~] The uninsured employers' fund;

(3)[~~(4)~~] The administrative fund created by KRS 342.440, also known as the workers' compensation maintenance fund;

(4)[~~(5)~~] The special claim fund; and

(5)[~~(6)~~] The common school fund.

Section 3. KRS 65.005 is amended to read as follows:

(1) (a) "Special district" means any agency, authority, or political subdivision of the state which exercises less than statewide jurisdiction and which is organized for the purpose of performing governmental or other prescribed functions within limited boundaries. It includes all political subdivisions of the state except a city, a county, or a school district.

(b) "Governing body" means the body possessing legislative authority in a city, county, or special district.

(2) No special district shall be legally created without sending notification of its existence in writing to the clerk of the county within the jurisdiction of which its principal office shall be located. This requirement for notification is in addition to all other provisions of existing law providing for the creation of special districts. The notification shall contain the names and addresses of the members of the governing body of the district, the name and address of its chief executive officer, a specific reference to the statute or statutes pursuant to which it was created, and a brief description of its service area and activities. The clerk shall record the original and forward a copy of the notification to the state local finance officer[~~, Department of Local Government,~~] and the state local debt officer, ***Department of Local Government***[~~Office of the Controller, Finance and Administration Cabinet~~]. The clerk shall be paid a fee of two dollars ($2) by the district for recording and mailing the notification.

(3) The governing body of any existing special district shall submit notification as required in subsection (2) of this section within thirty (30) days after June 16, 1966, and the governing body of a newly-created special district shall submit the required notification at or before its first meeting.

Section 4. KRS 66.011 is amended to read as follows:

As used in this chapter, unless otherwise expressly provided:

(1) "Bonds" means bonds, notes, commercial paper, and other instruments in writing, authorized by or issued pursuant to or in accordance with this chapter, to evidence an obligation to repay or guarantee the repayment of money borrowed, or to pay interest by, or to pay at any future time other money obligations.

(2) "Capitalized interest" means all or a portion of the interest payable on bonds from their date to a date stated or provided for in the proceedings, which interest is to be paid from the proceeds of the bonds.

(3) "Credit enhancement facilities" means letters of credit; lines of credit; stand-by, contingent, or firm bond purchase agreements; insurance, or surety arrangements; guarantees, and other arrangements that provide for direct or contingent payment of bonds; interest or redemption premium on bonds, for security or additional security in the event of nonpayment or default in respect of bonds, or for making payment of bonds; interest or redemption premium on bonds to and at the option and on demand of the holders of bonds or at the option of the issuer or upon certain conditions occurring under put or similar arrangements, or for otherwise supporting the credit or liquidity of bonds; and includes credit, reimbursement, marketing, remarketing, indexing, carrying, interest rate hedge, and subrogation agreements, and other agreements and arrangements for payment and reimbursement of the person providing the credit enhancement facilities and the security for that payment and reimbursement.

(4) "Debt charges" means the principal, including any mandatory sinking fund deposits, interest, and any redemption premium, payable on bonds as the payments come due and are payable and any charges related to credit enhancement facilities. The use of "debt charges" for this purpose does not imply that any particular obligations constitute debt within the meaning of the Kentucky Constitution or other laws.

(5) "Financing costs" means all costs and expenses relating to the issuance and carrying costs of bonds including charges related to credit enhancement facilities which are not debt charges.

(6) "Floating indebtedness" means the amount by which the total of all expenditures by an issuer in any fiscal year exceeds the total of all funds and receipts of the issuer for that fiscal year which are available to the issuer for the purpose of

funding those expenditures, but only to the extent that the governing body of the issuer made good-faith estimates of expenditures and funds and receipts available to fund those expenditures and the short-fall in available funds and receipts was due to unforeseeable circumstances or events.

(7) "Fully-registered bonds" means bonds in certificated or uncertificated form, registered as to both principal and interest in the name of the owner.

(8) "Interest" or "interest equivalent" means those payments or portions of payments, however denominated, that constitute or represent consideration for forbearing the collection of money, or for deferring the receipt or payment of money to a future time.

(9) "Issuer" means a county, city, urban-county, charter county, or other taxing district, and for purposes of making any determinations required under this chapter, may include an authorized representative of the issuer.

(10) "Governing body" means the legislative authority of the issuer.

(11) "Legislation" means an ordinance or resolution passed by a governing body.

(12) "Mandatory sinking fund redemption requirements" means amounts required by proceedings to be deposited in a sinking fund for the purpose of paying, by mandatory redemption prior to stated maturity, the principal of bonds that is due and payable in a subsequent year or fiscal year.

(13) "Net indebtedness" means the principal amount of outstanding bonds of an issuer as determined in accordance with KRS 66.031.

(14) "Notes" means bonds that mature no later than five (5) years from the date they are issued.

(15) "Obligation" means instruments in writing, which are not bonds within the meaning of this chapter, that evidence an obligation to repay money borrowed, or to pay interest by, or to pay at any future time other money obligations, including, without limitation, installment sale, lease, lease purchase, or similar agreements, which obligations bear interest or an interest equivalent.

(16) "Outstanding," referring to bonds, means bonds that have been issued, delivered, and paid for, except any of the following:

(a) Bonds canceled upon surrender, exchange, or transfer, or upon payment or redemption;

(b) Bonds in replacement of which or in exchange for which other bonds have been issued; or

(c) Bonds for the payment, or redemption or purchase for cancellation prior to maturity, of which sufficient moneys or investments, in accordance with the applicable legislation or other proceedings or any applicable law, by mandatory sinking fund redemption requirements, or otherwise, have been deposited, and credited in a sinking fund or with a trustee or paying or escrow agent, whether at or prior to their maturity or redemption, and, in the case of bonds to be redeemed prior to their stated maturity, notice of redemption has been given or satisfactory arrangements have been made for giving notice of that redemption, or waiver of that notice by or on behalf of the affected bond holders has been filed with the issuer or its agent.

(17) "Public project" means any property, asset, or improvement certified by the governing body, which certification is conclusive, as being for a public purpose and having an estimated life or period of usefulness of one (1) year or more, and includes, but is not limited to, real estate, buildings, and personal property, equipment, furnishings, and site improvements, and reconstruction, rehabilitation, renovation, installation, improvement, enlargement, and extension of property, assets, or improvements so certified as having an estimated life or period of usefulness of one (1) year or more and is to be used for a public purpose.

(18) "Person" or "persons" means political and corporate entities, societies, communities, the public generally, individuals, partnerships, and joint stock companies.

(19) "Proceedings" means the legislation, certifications, notices, orders, sale proceedings, trust agreements or indentures, mortgages, leases, lease-purchase agreements, assignments, credit enhancement facility agreements, and other agreements, instruments, and documents, as amended and supplemented, providing for the terms and conditions applicable to, or providing for the security or sale or award of, bonds, and includes the provisions set forth or incorporated in those bonds and proceedings.

(20) "Refund" means to provide for the payment of debt charges and expenses related to that payment at or prior to retirement by purchase, call for redemption, payment at maturity, or otherwise, outstanding obligations of an issuer or its instrumentality, including, without limitation, bonds.

(21) "Register" means the books kept and maintained for registration, exchange, and transfer of registered bonds.

(22) "Self-supporting obligations" means obligations issued for the purpose of paying costs of public projects to the extent that receipts of the issuer, other than the proceeds of taxes levied by that issuer, derived from or with respect to that public project or the operation of the public project being financed, or the enterprise, system, or category of public project of which the public project being financed is part, are estimated by the governing body or a representative of the governing body to be sufficient to pay the current expenses of that operation or of that public project, enterprise, or system and the

debt charges payable from those receipts on obligations issued for that public project.

(23) "Sinking fund" means a fund established for the management of moneys to be used for the retirement of outstanding bonds.

(24) "State local debt officer" as used in this chapter and other provisions of law, means the ***commissioner, Department of Local Government*** [~~state controller, Finance and Administration Cabinet,~~] or ***the commissioner's***[~~his~~] agent designated in writing [~~with the approval of the secretary of the Finance and Administration Cabinet~~].

(25) "Taxing district" means an issuer, other than a county, city, urban-county, or charter county authorized to levy ad valorem taxes within the meaning of Section 157 of the Constitution of Kentucky which is not a school district.

(26) "Tax-supported lease" means a lease entered into under KRS 65.942 to 65.956 in which the lessee has agreed to levy and collect taxes to make lease payments.

Section 5. KRS 66.370 is amended to read as follows:

(1) A county may, by order of its fiscal court, surrender to the state local debt officer***, Department of Local Government,*** all money in hand, notes, bonds, accounts, or other credits representing assets available, and any other sums which may hereafter become available from any and all sources, for paying the principal and interest of any bonded debt of the county; however, if a county surrenders the sinking fund for any bond issue payable either from the tax levy authorized by Section 157 or by Section 157a of the Constitution of Kentucky or from any special tax levy authorized by law, it shall also surrender the sinking funds for all other bonds payable from the same tax levy as herein defined. The surrender shall be irrevocable on the part of the county. Any county which has a bond issue approved under KRS 66.310 may comply with the provisions of this subsection with respect to the sinking funds for the bonds thus approved and for any other bonds payable from the same tax levy as herein defined.

(2) All cash received under this section by the state local debt officer***, Department of Local Government,*** shall be deposited with the ***commissioner, Department of Local Government***[~~State Treasurer~~] to the credit of a fund designated the "county sinking fund." All assets other than cash shall be deposited with the ***commissioner, Department of Local Government***[~~State Treasurer~~] and shall be liquidated, upon authorization of the commission, within a reasonable time.

(3) The county treasurer of any county complying with the provisions of this section shall remit monthly to the state local debt officer***, Department of Local Government,*** all moneys received from any tax levy made for the exclusive purpose of paying principal and interest on any bonds. Any moneys appropriated in the county budget from any other source or any moneys required by law to be used for the same purpose shall be remitted as required for paying any principal or interest maturities, or both, or meeting sinking fund requirements. The state local debt officer***, Department of Local Government,*** may institute actions in the Franklin Circuit Court to enforce the provisions of this subsection or to recover any funds that may have been misapplied.

(4) Accounts showing the county sinking fund receipts and disbursements shall be kept by the state local debt officer***, Department of Local Government,*** for each bond issue of each county for which deposits are made in the fund. As of the close of the county fiscal year the state local debt officer***, Department of Local Government,*** shall, within thirty (30) days thereafter, render to the county judge/executive of each county having deposits in the fund a statement thereof for each bond issue of that county. On or about the first day of May of each year, the state local debt officer***, Department of Local Government,*** shall deliver to the county judge/executive an estimate of the principal and interest requirements of outstanding bonds issued by that county or of the proportionate annual amount which should be deposited in a sinking fund.

(5) Disbursements from the county sinking fund shall, when authorized by the state local debt officer, ***Department of Local Government,*** be made in the same manner as other claims on the Commonwealth are paid. Disbursements may be made only for:

(a) The payment of principal or interest, or both, of the bonds for which the deposit was made; and

(b) The investment of the funds as authorized by law.

(6) All coupons and bonds for the payment of which deposits are made in the county sinking fund shall be paid either directly by the state local debt officer***, Department of Local Government,*** or by the bank designated as paying agent. That bank may be paid a reasonable fee for its services by the ***Department of Local Government***[~~Finance and Administration Cabinet~~] out of its appropriation. All paid bonds and coupons shall be surrendered to the state local debt officer and canceled, and shall be delivered to the judge/executive of each county along with the annual statement provided for in this section.

Section 6. KRS 147A.020 is amended to read as follows:

(1) The state local debt officer[~~ within the Office of the Controller, Finance and Administration Cabinet~~] and the state local finance officer within the Department of Local Government shall exercise the following administrative functions of the state:

(a) The state local debt officer shall exercise all administrative functions as provided in the county debt act, KRS

66.280 to 66.390, and administrative functions relating to local government bonds as provided in KRS 66.045; and

(b) The state local finance officer shall exercise all administrative functions regarding county and local government budgets, as provided in KRS 68.210 to 68.360.

(2) The state local debt officer shall have the following powers and duties:

(a) To require reports from local governments to enable him to adequately provide the technical and advisory assistance authorized by this section. The reports shall provide the necessary information for a complete file on local government debt, which the state local debt officer shall keep open for public inspection at the ***Department of Local Government***[~~Office of the Controller~~];

(b) To conduct studies in debt management, including ways and means of appraising the terms of alternative bids;

(c) To request assistance and information, which shall be provided by all departments, divisions, boards, bureaus, commissions, and other agencies of state government, to enable the state local debt officer to carry out his duties under this section; and

(d) To compile and publish annually a report which shall include detailed information on local government long-term debt issued and retired during the previous year and outstanding, and other available statistical data on local government finances.

(3) The state local finance officer shall have the following powers and duties:

(a) To coordinate for the Governor the state's responsibility for, and shall be responsible for liaison with the appropriate state and federal agencies with respect to, general revenue sharing for local government;

(b) To provide technical assistance and information to units of local government on matters including, but not limited to, fiscal management, purchases, and contracts; and

(c) To conduct training programs to instruct county and other local officials respecting their duties and responsibilities in the collection, expenditure, and management of public moneys subject to their control and jurisdiction.

Section 7. The following KRS section is repealed:

42.170 Functions of state local debt officer exercised by Office of the Controller.

Section 8. The General Assembly confirms Executive Order 96-1376, dated October 11, 1996, relating to the reorganization of the Department of Local Government, which transfers the duties and functions of the state local debt officer in the Finance and Administration Cabinet to the Department of Local Government, to the extent it is not otherwise confirmed or superseded by this Act.

HB 351, AN ACT relating to government reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. The General Assembly hereby confirms Executive Order 96-1438, dated October 24, 1996, to the extent that it transfers the Emergency Food Assistance Program to the Department of Agriculture. Section 4 of the order is construed to mean that this transfer is permanent and that the order shall expire upon confirmation of the order by the General Assembly.

HB 360, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 36.300 is amended to read as follows:

(1) There is created the Department of Veterans' Affairs, which shall be attached to the Office of the Governor for administrative purposes. Notwithstanding KRS 12.028, the department's status as a separate organizational unit attached to the Office of the Governor shall not be changed except by action of the General Assembly. The department shall be headed by a commissioner appointed by the Governor pursuant to KRS 12.040. ***The Office of the Commissioner is created within the department.***

(2) The Department of Veterans' Affairs shall include the Advisory Board for Veterans' Affairs established by KRS 36.310.

(3) The Department of Veterans' Affairs shall be responsible for providing services to veterans in accordance with KRS 36.330 and 36.350 to 36.370.

Section 2. The General Assembly confirms Executive Reorganization Order 97-733, issued June 13, 1997, to the extent that it is not otherwise confirmed by Section 1 of this Act.

HB 428, AN ACT relating to procurement.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 45A.115 is amended to read as follows:

The secretary of the Finance and Administration Cabinet may provide for prequalification of suppliers as responsible prospective contractors for particular types of supplies, services, and construction. The secretary of the Finance and Administration Cabinet shall not prequalify a supplier as a responsible prospective contractor until the supplier provides the secretary with his sworn statement made under penalty of perjury that he has not knowingly violated any provision of the campaign finance laws of the Commonwealth and that the award of a contract to the supplier will not violate any provision of the campaign finance laws of the Commonwealth. "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists. Solicitation[~~ mailing lists~~] of potential contractors of[~~ such~~] supplies ***or***[~~,~~] services[~~,~~] and ***the opportunity to bid or respond to a solicitation for supplies or services may be limited to prequalified suppliers. Construction solicitation and the opportunity to bid or respond to a solicitation for*** construction shall include but shall not be limited to[~~ such~~] prequalified suppliers. Prequalification shall not foreclose a written determination:

(1) Between the time of the bid opening or receipt of offers and the making of an award, that a prequalified supplier is not responsible; or

(2) That a ***respondent to a construction solicitation***[~~supplier~~] who is not prequalified at the time of bid opening or receipt of offers is responsible.

HB 430, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 36.010 is amended to read as follows:

The Department of Military Affairs shall be attached to the Office of the Governor, have charge of and be responsible to the Governor for the proper functioning of the Kentucky National Guard, militia, and all other military or naval matters of the state, and shall consist of the following ***offices and*** divisions:

(1) ***Office of Management and Administration, containing the:***

(a) Division of Administrative Services;

(b) Division of Facilities;

(c) Bluegrass Station Division; and

(d) Division of Air Transport[~~Administrative divisions~~];

(2) ***Division of Disaster and Emergency Services***[~~Facilities division~~];

(3) ***Office of the Chief of Staff for Federal Army Guard***[~~Active militia division~~];

(4) ***Office of the Chief of Staff for Federal Air Guard; and***[~~Army National Guard division~~];

(5)[~~ Air National Guard division;~~

~~(6)~~] Kentucky Civil Air Patrol[~~; and~~

~~(7) Division of air transport and capital city airport~~].

In order to promote greater efficiency, economy, and improved administration, the divisional structure of the Department of Military Affairs may be changed, redesignated, or reorganized in accordance with KRS Chapter 12. Notwithstanding KRS Chapter 12, the department's attachment to the Office of Governor as a separate organizational unit not attached to any cabinet shall not be changed except by action of the General Assembly.

Section 2. To the extent that it is not otherwise confirmed by this Act, the General Assembly confirms Executive Order 96-838, dated June 27, 1996, which creates the Office of Management and Administration within the Department of Military Affairs; creates and places the Bluegrass Station Division within the Office of Management and Administration; and places the following existing divisions within the Office of Management and Administration: the Division of Administrative Services, the Division of Facilities, and the Division of Air Transport. The Office of Management and Administration shall provide policy, management, and administrative support to all areas of the Department of Military Affairs. The Bluegrass Station Division shall manage, maintain, and lease the former Lexington Bluegrass Army Depot.

The Committee Substitute to **HB 430** is as follows:

AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 36.010 is amended to read as follows:

The Department of Military Affairs shall be attached to the Office of the Governor, have charge of and be responsible to the Governor for the proper functioning of the Kentucky National Guard, militia, and all other military or naval matters of the state, and shall consist of the following ***offices and*** divisions:

(1) ***Office of Management and Administration, containing the:***
  (a) Division of Administrative Services;
  (b) Division of Facilities;
  (c) Bluegrass Station Division; and
  (d) Division of Air Transport[~~Administrative divisions~~];
(2) ***Division of Disaster and Emergency Services***[~~Facilities division~~];
(3) ***Office of the Chief of Staff for Federal Army Guard***[~~Active militia division~~];
(4) ***Office of the Chief of Staff for Federal Air Guard; and***[~~Army National Guard division~~];
(5)[~~ Air National Guard division;~~
~~(6)~~] Kentucky Civil Air Patrol[~~; and~~
~~(7) Division of air transport and capital city airport~~].

In order to promote greater efficiency, economy, and improved administration, the divisional structure of the Department of Military Affairs may be changed, redesignated, or reorganized in accordance with KRS Chapter 12. Notwithstanding KRS Chapter 12, the department's attachment to the Office of Governor as a separate organizational unit not attached to any cabinet shall not be changed except by action of the General Assembly.

Section 2. (1) To the extent that it is not otherwise confirmed by subsection (1) of Section 1 of this Act, the General Assembly confirms Executive Order 96-838, dated June 27, 1996, which creates the Office of Management and Administration within the Department of Military Affairs; creates and places the Bluegrass Station Division within the Office of Management and Administration; and places the following existing divisions within the Office of Management and Administration: the Division of Administrative Services, the Division of Facilities, and the Division of Air Transport. The Office of Management and Administration shall provide policy, management, and administrative support to all areas of the Department of Military Affairs. The Bluegrass Station Division shall manage, maintain, and lease the former Lexington Bluegrass Army Depot.

(2) The General Assembly hereby confirms the remaining organizational structure of the Department of Military Affairs as set forth in subsections (2) to (5) of Section 1 of this Act.

HB 492, AN ACT relating to executive branch ethics.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 11A.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted for profit;

(2) "Commission" means the Executive Branch Ethics Commission;

(3) "Compensation" means any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another;

(4) "Family" means spouse and children, as well as a person who is related to a public servant as any of the following, whether by blood or adoption: parent, brother, sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister;

(5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received;

(6) "Income" means any money or thing of value received or to be received as a claim on future services, whether in the form of a fee, salary, expense allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of compensation or any combination thereof;

(7) "Officer" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, principal assistants, ***and*** division directors[~~, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems board of trustees, Public Service Commission, Worker's Compensation Board and its administrative law judges, the~~

~~Occupational Safety and Health Review Commission, the Kentucky Board of Education, the State Board for Adult and Technical Education, the Council on Postsecondary Education, and any other management personnel with procurement authority~~];

(8) "Official duty" means any responsibility imposed on a public servant by virtue of his position in the state service;

(9) "Public servant" means:

(a) The Governor;

(b) The Lieutenant Governor;

(c) The Secretary of State;

(d) The Attorney General;

(e) The Treasurer;

(f) The Commissioner of Agriculture;

(g) The Superintendent of Public Instruction;

(h) The Auditor of Public Accounts;

(i) Each Railroad Commissioner; and

(j) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;

(10) "State agency" means every state office, department, division, board, commission, institution, public corporation, and authority within the executive branch;

(11) "Lobbyist" means any person employed as a legislative agent or legislative counsel to promote, oppose, or act with reference to any legislation which affects, or may affect, private pecuniary interests, as distinct from those of the whole people;

(12) "Lobbyist's principal" means the entity in whose behalf the lobbyist promotes, opposes, or acts with reference to legislative action; and

(13) "Candidate" means those persons who have officially filed candidacy papers or who have been nominated by their political party pursuant to KRS 118.105, 118.115, 118.325, or 118.760 for any of the offices enumerated in subsections (9)(a) to (i) of this section.

SECTION 2. A NEW SECTION OF KRS CHAPTER 11A IS CREATED TO READ AS FOLLOWS:

(1) No member of any board, commission, authority, council, or committee in the executive branch of state government shall himself or through a business in which he owns or controls an interest of more than five percent (5%) or which has a value of at least ten thousand dollars ($10,000), or by any other person for his use or benefit or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the board, commission, authority, council, or committee of which he is a member. This prohibition shall not apply to purchases that are available on the same terms to the general public or which are made at public auction.

(2) A member of a board, commission, authority, council, or committee in the executive branch of state government shall disclose to the other members of the board, commission, authority, council, or committee of which he is a member, any direct or indirect interest in any undertaking that puts his personal interest in conflict with that of the agency. This disclosure shall be made in writing or shall be recorded in the minutes of a formal meeting. A member who is required to publicly disclose a direct or indirect interest shall abstain from all decisions concerning his interest, if the decision would affect him as a member of a business, profession, occupation, or group in a manner different from other members of the business, profession, occupation, or group.

(3) Members and full time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems board of trustees, Public Service Commission, Workers' Compensation Board and its administrative law judges, the Occupational Safety and Health Review Commission, the Kentucky Board of Education, the State Board for Adult and Technical Education, and the Council on Postsecondary Education shall file a statement of financial disclosure under KRS 11A.050.

Section 3. KRS 11A.990 is amended to read as follows:

(1) Any person who violates KRS 11A.040 shall be guilty of a Class D felony. In addition:

(a) The judgment of conviction for a violation of KRS 11A.040(2) shall recite that the offender is disqualified to hold office thereafter; and

(b) Any person who violates KRS 11A.040(1) to (7) shall be judged to have forfeited any employment, or constitutional or statutory office he holds, provisions of KRS Chapter 18A to the contrary notwithstanding.

(2) Any officer***,***[~~ and~~] public servant***, candidate, or any member or full-time administrative officer of boards and***

commissions listed in subsection (3) of Section 2 of this Act required to file a statement of financial disclosure ***under***[~~pursuant~~] to KRS 11A.050 who does not file the statement by a date specified in that section shall ***be subject to a civil penalty of up to one hundred dollars ($100) per day, not to exceed a total penalty of five thousand dollars ($5000). If the officer, public servant, or member or full-time administrative officer of boards and commissions listed in subsection (3) of Section 2 of this Act remains on the state payroll, the penalty shall be deducted from his salary, upon order of the commission,***[~~have his salary withheld from the first day of noncompliance until he shall have completed the action required by law. The amount withheld shall be deducted from his overall pay and allowances~~] and shall not be recoverable ***under***[~~pursuant to~~] Section 235 of the Constitution of Kentucky.

(3) Any person who maliciously files with the commission a false charge of misconduct on the part of any public servant or other person shall be fined not to exceed five thousand dollars ($5,000), or imprisoned in a county jail for a term not to exceed one (1) year, or both.

(4) Prosecution for violation of any provision of KRS 11A.040 shall not be commenced after two (2) years have elapsed from the date of the violation.

(5) Any executive agency lobbyist, employer, or real party in interest who violates any provision in KRS 11A.206 shall for the first violation be subject to a civil penalty not to exceed five thousand dollars ($5,000). For the second and each subsequent violation, he shall be guilty of a Class D felony.

(6) Any executive agency lobbyist, employer, or real party in interest who fails to file the initial registration statement or updated registration statement required by KRS 11A.211 or 11A.216, or who fails to remedy a deficiency in any filing in a timely manner, may be fined by the commission an amount not to exceed one hundred dollars ($100) per day, up to a maximum total fine of one thousand dollars ($1,000).

(7) Any executive agency lobbyist, employer, or real party in interest who intentionally fails to register, or who intentionally files an initial registration statement or updated registration statement required by KRS 11A.211 or 11A.216 which he knows to contain false information or to omit required information shall be guilty of a Class D felony.

(8) An executive agency lobbyist, employer, or real party in interest who files a false statement of expenditures or details of a financial transaction under KRS 11A.221 or 11A.226 is liable in a civil action to any official or employee who sustains damage as a result of the filing or publication of the statement.

(9) Violation of KRS 11A.236 is a Class D felony.

HCR 59, A CONCURRENT RESOLUTION directing the Legislative Research Commission to establish a Special Subcommittee for Military and Defense-Related Issues.

WHEREAS, the United States Military is the Commonwealth's fourth largest industry, ranking behind only motor vehicle manufacturing, industrial machinery manufacturing, and coal mining, and surpassing farming, in payroll and earnings within this state; and

WHEREAS, the U.S. military spends approximately $3 billion per year in direct payrolls to soldiers and civilians, retirement and veterans' benefits, and contracts with companies throughout Kentucky; and

WHEREAS, recent Department of Defense downsizing, as a result of base closure and realignment and force structure and budget reductions, has negatively impacted the Commonwealth, resulting in the loss of approximately 13,000 positions and an annual payroll of $185 million; and

WHEREAS, future threats to further reduce military and civilian workforces and infrastructure in the Commonwealth must be resisted based on comprehensive, informed, and rational grounds utilizing the best efforts of the General Assembly and all interested groups and individuals throughout the Commonwealth; and

WHEREAS, it is imperative that the Commonwealth develop and foster policies and programs to reduce the vulnerability of this vital Kentucky industry to further base realignments and closings, to preserve Fort Campbell's strength and status, and to preserve and expand roles and missions for Fort Knox; and

WHEREAS, the General Assembly's present interim structure does not adequately focus legislative interest and efforts upon issues involving the total military's presence in, and importance to, Kentucky, including all aspects of active, retired, reserve, and National Guard affairs in which the state has an interest;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The Legislative Research Commission shall establish a Special Subcommittee for Military and Defense-Related Issues to operate during the 1998-99 interim. The Subcommittee shall be composed of members of the General Assembly appointed by the Legislative Research Commission. The Subcommittee shall include at least one (1) member of the House of Representatives and one (1) member of the Senate appointed from the membership of each of the following interim joint committees:

(1) State Government;
(2) Appropriations and Revenue;
(3) Economic Development;
(4) Education; and
(5) Transportation.

Section 2. The Special Subcommittee for Military and Defense-Related Issues shall report its findings and recommendations through the Legislative Research Commission to the Interim Joint Committee on State Government. Members of the Subcommittee who are appointed to the Subcommittee by virtue of their membership on another interim joint committee, as specified in Section 1 of this Resolution, are encouraged and urged to report the Subcommittee's findings and recommendations to their respective interim joint committees.

Section 3. Staff services to be utilized for the Special Subcommittee for Military and Defense-Related Issues are estimated to cost $20,000. These staff services shall be provided from the regular Legislative Research Commission budget and are subject to the limitations and other research responsibilities of the Commission.

SB 93, AN ACT relating to the Commission on the Deaf and Hard of Hearing.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 163.506 is amended to read as follows:

(1) The Commission on the Deaf and Hard of Hearing shall consist of:
  (a) Seven (7) members appointed by the Governor as follows:
    1. One (1) audiologist chosen from a list of three (3) names submitted by the Kentucky Speech and Hearing Association;
    2. Three (3) hard of hearing or deaf persons chosen from a list of six (6) names submitted by the Kentucky Association of the Deaf;
    3. One (1) deaf or hard of hearing person chosen from a list of three (3) names submitted by the Kentucky Chapter of the Alexander Graham Bell Association for the Deaf, the initial appointment to be for a one (1) year term;
    4. One (1) ***hard of hearing or deaf*** person chosen from a list of three (3) names submitted by the Kentucky members of Self Help for Hard of Hearing People, the initial appointment to be for a two (2) year term;
    5. One (1) deaf***, late-deafened,*** or hard of hearing person chosen from a list of three (3) names submitted by the American Association of Retired Persons, the initial appointment to be for a two (2) year term;
  (b) ***Two (2) employees***[~~One (1) representative~~] of the Cabinet for Human Resources***, one (1) representing families and children and one (1) representing health services,*** appointed by the secretary ***of the cabinet***;
  (c) The secretary of the Education, Arts, and Humanities Cabinet or his designee;
  (d) The president of the Kentucky Association for the Deaf or his designee;
  (e) The president of the Kentucky Registry of Interpreters for the Deaf or his designee; and
  (f) Three (3) persons appointed by the Commission on the Deaf and Hard of Hearing as constituted in subsections (1)(a) through (1)(e) of this section, appointed as follows:
    1. One (1) parent of a hard of hearing or deaf child;
    2. One (1) representative of a ***public or*** private organization providing consistent services to the deaf and hard of hearing; and
    3. One (1) member at large.

(2) All members shall serve three (3) year terms except state officials or their designees who shall serve during their terms of office. Of the members appointed pursuant to subsections (1)(a)2. through (1)(a)5. and subsection (1)(f) of this section, no more than three (3) of those members shall have terms beginning in the same year. Any person who is a member of the commission on July 13, 1990, shall serve until he resigns or until his term expires.

(3) Each member of the commission shall be reimbursed for his necessary travel and other expenses actually incurred in the discharge of his duties.

SB 148, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. The General Assembly confirms Executive Order 96-716, issued June 5, 1996, which transferred all personnel, equipment, supplies, records, and funds relating to the Veterans Division and the Kentucky Center for Veteran Affairs, formerly in the Department of Military Affairs, from the Department of Military Affairs to the Department of Veterans' Affairs.

SB 154, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 147A.002 is amended to read as follows:

(1) The Department of Local Government shall be headed by a commissioner, and shall be divided for administrative purposes into the Division of Community ***Development***~~[Programs]~~ and such other divisions as the commissioner, with the approval of the Governor, determines. The Division of Community ***Development***~~[Programs]~~ shall be responsible for the administration of Title I of the Housing and Community Development Act of 1974 as amended through 1981, which includes the community block grant program and the 107 technical assistance program.

(2) The commissioner, with the approval of the Governor, shall appoint necessary deputies, assistants, attorneys and other employees and shall fix their compensation and authorize payment of their expenses according to law.

Section 2. The General Assembly confirms Executive Order 97-1391, dated October 21, 1997, relating to the reorganization of the Department of Local Government, to the extent that it is not otherwise confirmed by this Act, and which creates the Division of Community Development, Division of Support Services, Division of Financial Services, and Division of Training and ADD Services, which abolishes the Division of County and Municipal Accounting, Division of Administrative Services, Division of Community Programs, and Division of Development Finance, which expands the office of the Commissioner to include an additional principal assistant to be appointed by the Commissioner, which assigns the Water Resource Development Commission to the office of the Commissioner, and which orders the secretaries of the Finance and Administration Cabinet and Personnel Cabinet and the commissioner of the Department of Local Government to take all steps necessary to effectuate its provisions.

On page 2, line 1, by inserting, after "determines", the words "***that the complaint does not allege facts sufficient to constitute a violation of this chapter, or if the commission determines***".

Floor Amendment No. 1 to **HB 532**, by Representative Colter:

On page 32, between lines 25 and 26, by inserting the following:

"SECTION 17. A NEW SECTION OF KRS 161.230 TO 161.716 IS CREATED TO READ AS FOLLOWS:

On or after August 1, 1998, any member of the Teachers' Retirement System who has at least two hundred and forty (240) months of service credit may purchase a combined maximum total of five (5) years of retirement service credit that is not otherwise purchasable under any of the provisions of KRS 161.230 to 161.716 and that meets the definition of nonqualified service as provided in Section 1526 of the Federal Taxpayer Relief Act of 1997. The purchase price for the retirement service credit shall be calculated and paid for based on the full actuarial cost as determined by the system. The payment shall not be picked up by the employer as described in KRS 161.540(2), and the employee's payment shall be paid into the individual member's contribution account and shall be considered accumulated contributions of the member. Payment by the member may be by lump sum or by increments."; and

On page 32, line 26, by changing "Section 17" to Section 18".

Motions, Petitions and Communications (Continued)

Representative Crenshaw moved the adoption of the following **HR 70**:

HR 70, A RESOLUTION adjourning the House of Representatives in loving memory and honor of Vivian Barker Wright.

With deepest respect and admiration, we pay homage and tribute to Vivian Barker Wright.

WHEREAS, Vivian Barker Wright was born on February 19, 1918, a native of Wise, Virginia, and traversed these earthly bounds on February 6, 1998; and

WHEREAS, Vivian Barker Wright was the adored daughter of Wright Stickley and Cynthia Gilliam Barker, who preceded her in death; she was the devoted wife of the late Erle C. Wright; she was the loving mother of a daughter, Representative Kathy Stein and son-in-law Alan Stein, and of two sons, Wayne Wright of Reston, Virginia, and Jack Wright and daughter-in-law Sharon Hatfield of Athens, Ohio; and she was the proud grandmother of six grandchildren and one great-grandchild; and

WHEREAS, Vivian Barker Wright graduated from Wise High School in Wise, Virginia, and Radford University in

Radford, Virginia; and she received a Master's Degree in Education from the University of Virginia; and

WHEREAS, Vivian Barker Wright was a retired primary school teacher, and she was considered an active and involved citizen of the Wise, Virginia, community where she was a devout member of the First Baptist Church and the Wise Education Association; she was a former member of the Town of Wise Planning Commission; she was active in Fortnightly and Senior Citizens' clubs; and through the years, she was applauded for her art in canning and was the recipient of many prizes at the Wise County Fair; and

WHEREAS, the passing of Vivian Barker Wright has left a void that will be difficult to fill, and she is mourned across the length and breadth of the Commonwealth;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. This honorable body hereby expresses its profound sense of sorrow upon the passing of Vivian Barker Wright, and extends to her family and friends its most heartfelt sympathy.

Section 2. When the House of Representatives adjourns this day, it does so in loving memory and honor of Vivian Barker Wright.

Section 3. The Clerk of the House of Representatives is hereby directed to transmit a copy of this Resolution to the Honorable Kathy Stein, 364 Transylvania Park, Lexington, Kentucky 40508.

There being no objection **HR 70** was adopted.

Floor Amendments (Continued)

Floor Amendment No. 1 to the Committee Substitute to **HB 160**, by Representative P. Clark:

On Page 1, line 1, By deleting everything after the enacting clause and inserting the following in lieu thereof:

"Section 1. (1) The Legislative Research Commission is directed to establish by July 1, 1998, a study commission to study the benefits and effects of complementary and alternative medicine, nonconventional medical treatment, acupuncture, and naturopathy. The voting members of the study commission shall include the deans of the Commonwealth's three (3) medical schools or their respective designees, not more than one (1) designee by each dean, and three (3) representatives of accredited schools of complementary and alternative medicine, chosen by the Legislative Research Commission.

(2) Representatives of the Kentucky State Board of Chiropractic Examiners, the Kentucky Nurses Association, the Kentucky Medical Association, the American Association of Oriental Medicine, and the Kentucky Department of Public Health shall serve as nonvoting advisors to the commission, except that in case of a tie in the vote of the members of the study commission, the representative of the Kentucky Nurses Association shall have the power to vote upon the tied question.

(3) The study commission shall consider reports and findings on the particular issue then under study by the commission provided by the National Institute of Health, giving special weight to reports and findings of the Institute, by the American Medical Association, by the American College for the Advancement of Medicine, and by the College of Oriental Medicine, Kyung Hee University, Korea, and by not more than four (4) clinics in Kentucky, designated by the Cabinet for Human Resources, acting through the commissioner of the Department for Public Health, for the purpose of conducting and gathering information on the practice of acupuncture, naturopathy, and Oriental medicine under contract with the Department for Public Health for the use by the study commission in making its report to the General Assembly by October 31, 1999.

(4) The study commission shall report any findings and recommendations to the General Assembly and the Legislative Research Commission by October 31, 1999. However, in order to effectuate the public interest in having available full access to safe and effective procedures and treatments for the promotion of good health of the citizens of the Commonwealth, the study commission shall proceed with its work with expedition, seeking first to determine what complementary/alternative medicine, nonconventional medical treatment, acupuncture, and naturopathy treatments or procedures are safe and effective, so that the provisions of subsections (2) and (3) of this section may be implemented at the earliest time.

Section 2. If, during the study period, any alternative/complementary or naturopathic medical treatment under review by the study commission shall be determined by the study commission to be safe and effective, medical treatment shall be promptly referred to the Kentucky Board of Medical Licensure for consideration for possible approval as part of the practice of medicine, the General Assembly finding that it is in the public interest that methods of health treatment and promotion determined to be safe and effective should be available to the citizens of the Commonwealth as promptly as possible.

Section 3. If, during the study period, acupuncture or Oriental medicine, or both, shall be determined by the study commission to be safe and effective, the method of treatment so determined shall promptly be referred to the Kentucky Department for Public Health for consideration for approval as an authorized method of health treatment in the Commonwealth, the General Assembly finding that it is in the public interest that methods of health treatment and promotion determined to be safe and effective should be available to the citizens of the Commonwealth as promptly as possible.

Section 4. Staff services to be utilized in completing this study are estimated to cost forty-nine thousand ($49,000) dollars. These staff services shall be provided from the regular Commission budget and are subject to the limitations and other research responsibilities of the Commission.

Section 5. All of the hearings held by the study commission shall be open to the public.".

Floor Amendment No. 2 Title to **HB 160**, by Representative P. Clark:

On page 1, By changing the Title of the Act to read:

"An ACT relating to health care and promotion".

Motions, Petitions and Communications (Continued)

Representative Colter moved that Floor Amendment No. 1 to **HB 422** be withdrawn. Agreed.

Representative Colter moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Colter moved that her vote be changed from "nay" to "yea" on **HB 299**. Agreed.

Representative R. Adams moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative R. Adams moved that his vote be changed from "yea" to "nay" on **HB 299**. Agreed.

Representative Stacy moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Stacy moved that he be recorded as voting "nay" on Floor Amendment No. 5 to the Committee Substitute to **HB 106**. Agreed.

Representative Crimm moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Crimm moved that his vote be changed from "nay" to "yea" on **HB 299**. Agreed.

Representative Stein moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Stein moved that she be recorded as voting "yea" on **HB 67, HB 340, HB 354, HB 357, HB 362, HB 365, HB 343, HB 356, HB 358, HB 364, HB 383, HB 345, HB 341, HB 83, HB 233, HB 172**, and **HB 315**. Agreed.

The following members filed requests to have their names added as co-sponsors of Bills under rules previously suspended: **HB 36, HB 506**, Representative Thomas; **HB 377, HB 380, HB 422**, Representative Worthington; **HB 52**, Representative Crenshaw; **HB 70**, Representative Reinhardt; **HB 225**, Representative Pope, Zimmerman; **HB 292, HB 293**, Representative Crimm; **HB 386**, Representative Crall; **HB 412, HB 444**, Representative Brandstetter; **HB 455**, Representative Riggs; **HB 506**, Representative Marcotte; **HB 532**, Representative Colter; **HR 71**, Representative Zimmerman.

The following members filed requests to have their names withdrawn as co-sponsors to Bills under rules previously suspended: **HB 106**, Representative Horlander; **HB 533**, Representative Hoffman.

Announcements

The following meetings were announced:

Judiciary, 8:00 a.m., Room 149, February 11, 1998.

Majority freshmen, upon adjournment, February 17, 1998.

Northern Kentucky Chamber of Commerce Reception, 5:00 p.m., February 11, 1998.

Tourism Development and Energy, February 11, 1998, 10:00 a.m.

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., February 11, 1998.

On the roll call the vote was **Yeas 64**--J. Adams, R. Adams, Adkins, Alexander, A. Arnold, Ballard, Barrows, Baugh, Brandstetter, Bratcher, D. Butler, D. D. Butler, Callahan, L. Clark, P. Clark, Colter, Crimm, Damron, DeWeese, Ford, Gee, Geveden, Gooch, D. Graham, G. Graham, Haydon, Hoffman, Hogancamp, Horlander, Jenkins, Johns, Kerr, Lee, Lindsay, Lovell, Marcotte, Mason, McKee, Moberly, Murgatroyd, Napier, Newsome, Palumbo, Polston, Rader, Reinhardt, Richards, Riner, Siler, Simpson, Sims, Stacy, Stein, Stumbo, Thomas, Treesh, Turner, Vincent, Walton, Wayne, Weaver, Wilkey, Yonts, Zimmerman. **Nays 4**--Bowling, Crall, Nunn, Stewart.

The motion to adjourn was adopted.

WEDNESDAY, FEBRUARY 11, 1998

TWENTY-FIFTH LEGISLATIVE DAY

The House was called to order by Speaker Richards.

Prayer by Cliff Howard, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representative Deskins.

Representative Ballard moved that the absent member be granted leave of absence in accordance with the rules of the House. Agreed.

Representative Ballard moved that the reading of the Journal of February 10, 1998, be dispensed with and the same approved. Agreed.

Representative Ballard moved that the Rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Ballard moved that all properly filed co-sponsor requests be approved. Agreed.

Senate Message

Announcing passage of **SB 77, SB 103, SB 169,** and **HB 54**. (Time: 2:10 p.m.)

Representative Adkins moved that the rules be suspended to grant floor privileges and to act upon a Legislative Citation. Agreed. Representative Adkins moved the adoption of the following **Legislative Citation No. 68**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby congratulates Vanessa Maggard upon receiving the 1998 President's Award for Excellence in Mathematics and Science Teaching by the National Science Foundation and acknowledges great appreciation for her achievements. This outstanding educator has demonstrated extraordinary dedication to the students of Sandy Hook Elementary School by her enthusiastic efforts to teach math and science in a productive and innovative way. The entire membership is pleased to join Representative Rocky Adkins in extending best wishes to Vanessa Maggard on this occasion and expressing the hope for continued success and good fortune. **Legislative Citation No. 68** was adopted without objection. (See February 11, 1998 co-sponsor roll call - Appendix.)

Floor Amendments

Floor Amendment No. 1 to the Committee Substitute to **HB 275**, by Representative Wayne:

On page 1, line 2, after the word "***child,***" by inserting "***knowingly***".

Representative Ford moved that the rules be suspended to grant floor privileges to former Representative Lawson Walker. Agreed.

Introduction of Bills and Resolutions

HB 565, by Representative D. Butler: AN ACT relating to alcoholic beverages.

HB 566, by Representatives D. Butler, Callahan, Simpson, L. Clark, Marzian and Miller: AN ACT relating to horse racing.

HB 567, by Representatives Gray, Stumbo, and J. Adams: AN ACT relating to the zoning of manufactured housing.

HB 568, by Representatives Lovell and Moberly: AN ACT relating to property tax, and declaring an emergency.

HR 74, by Representative G. Graham: A RESOLUTION adjourning the House of Representatives in loving memory and honor of Mildred Gardenhire.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolutions:

Agriculture and Small Business: **HJR 72**

Appropriations and Revenue: **HB 547, HB 551**

Banking and Insurance: **HB 555**

Counties and Special Districts: **HB 548, HB 559**

Health and Welfare: **HB 561**

Judiciary: **HB 552, HB 556, HB 557, HB 563**

Licensing and Occupations: **HB 550, HB 558, HB 564**

State Government: **HB 549, HB 553, HB 554, HB 562, HCR 73**

Tourism Development and Energy: **HB 560**

The Clerk reported that the Committee on Committees has referred the following Resolution:

House Floor: **HR 71**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Cities: **HB 526**

Health and Welfare: **HB 471, HB 518, HB 541, SB 28, SB 68, SB 145**

Report of Committees

The Committee on Judiciary reported **HB 325** and **HB 455,** with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 325, AN ACT relating to the Department of Corrections.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 72.025 is amended to read as follows:

Coroners shall require a post-mortem examination to be performed in the following circumstances:

(1) When the death of a human being appears to be caused by homicide or violence;

(2) When the death of a human being appears to be the result of suicide;

(3) When the death of a human being appears to be the result of the presence of drugs or poisons in the body;

(4) When the death of a human being appears to be the result of a motor vehicle accident and the operator of the motor vehicle left the scene of the accident or the body was found in or near a roadway or railroad;

(5) When the death of a human being occurs while the person is in a state mental institution or mental hospital when there is no previous medical history to explain the death, or while the person is in police custody, a jail or penal institution[~~, except pursuant to a sentence of death~~];

(6) When the death of a human being occurs in a motor vehicle accident and when an external examination of the body does not reveal a lethal traumatic injury;

(7) When the death of a human being appears to be the result of a fire or explosion;

(8) When the death of a child appears to indicate child abuse prior to the death;

(9) When the manner of death appears to be other than natural;

(10) When human skeletonized remains are found;

(11) When post-mortem decomposition of a human corpse exists to the extent that external examination of the corpse cannot rule out injury or where the circumstances of death cannot rule out the commission of a crime;

(12) When the death of a human being appears to be the result of drowning;

(13) When the death of an infant appears to be caused by sudden infant death syndrome in that the infant has no previous

medical history to explain the death;

(14) When the death of a human being occurs as a result of an accident;

(15) When the death of a human being occurs under the age of forty (40) and there is no past medical history to explain the death;

(16) When the death of a human being occurs at the work site and there is no apparent cause of death such as an injury or when industrial toxics may have contributed to the cause of death;

(17) When the body is to be cremated and there is no past medical history to explain the death;

(18) When the death of a human being is sudden and unexplained; and

(19) When the death of a human being occurs and the decedent is not receiving treatment by a licensed physician and there is no ascertainable medical history to indicate the cause of death.

Section 2. KRS 196.270 is amended to read as follows:

There shall be established and maintained within the Department of Corrections a centralized canteen operation which shall be incorporated and self-supporting. Each institution administered by the department ***and each institution which operates under a contract between the state and a private provider*** shall participate in the canteen operation. The directors of the canteen shall be as follows: the commissioner ***of the Department of Corrections***, the deputy commissioner of Adult Institutions, the executive director of the Division of Administrative Services, and the wardens of all state ***and private*** correctional institutions. All profits from the canteen, including the sale of handicrafts made by inmates to the general public, shall be used exclusively for the benefit of the inmates of the department. The directors of the canteen may consolidate the assets of the existing ***state and private*** canteens for this purpose and to employ the staff and inmates necessary to efficiently manage the canteen.

Section 3. KRS 197.020 is amended to read as follows:

(1) The Department of Corrections shall:

(a)[~~(1)~~] Formulate and prescribe all necessary regulations and bylaws for the government and discipline of the penitentiary, the rules for the government and official conduct of all officials connected with the penitentiary and for the government of the prisoners in their deportment and conduct;

(b)[~~(2)~~] Prescribe the character of food and diet of the prisoners; rules for the preservation of the health of the prisoners; the daily cleansing of the penitentiary; the cleanliness of the persons of the prisoners; the general sanitary government of the penitentiary and prisoners; the character of the labor; and quantity of food and clothing; and the length of time during which the prisoners shall be employed daily;

(c)[~~(3)~~]Adopt, amend, and rescind, as the department deems necessary, administrative regulations governing the disposition of abandoned, lost, or confiscated property of prisoners; and

(d)[~~(4)~~] Cause the administrative regulations prescribed by them, together with the law allowing commutation of time to prisoners for good conduct, to be printed and posted in conspicuous places in the cell houses and workshops.

(2) The department may impose a reasonable fee for the use of medical facilities by a prisoner who has the ability to pay for the medical and dental care. These funds may be deducted from the prisoner's inmate account. A prisoner shall not be denied medical or dental treatment because he has insufficient funds in his inmate account.

Section 4. KRS 197.025 is amended to read as follows:

(1) KRS 61.884 and 61.878 to the contrary notwithstanding, no person, including any inmate confined in a jail or any facility ***or any individual on active supervision*** under the jurisdiction of the department, shall have access to any records if the disclosure is deemed by the commissioner of the department or his designee to constitute a threat to the security of the inmate, any other inmate, correctional staff, the institution, or any other person.

(2) ***KRS 61.872 to the contrary notwithstanding, the department shall not be required to comply with a request for any record from any inmate confined in a jail or any facility or any individual on active supervision under the jurisdiction of the department, unless the request is for a record which pertains to that individual.***

(3) KRS 61.880 to the contrary notwithstanding, all persons confined in a penal facility shall challenge any denial of an open record with the Attorney General pursuant to the procedures set out in KRS 61.880(2) before an appeal can be filed in a Circuit Court.

(4)[~~(3)~~] KRS 61.872 to the contrary notwithstanding, the Department of Corrections shall refuse to accept the hand delivery of an open records request from a confined inmate.

(5)[~~(4)~~] KRS 61.870 to 61.884 to the contrary notwithstanding, all records containing information expunged pursuant to law shall not be open to the public.

(6)[~~(5)~~] The policies and procedures of administrative regulations of the department which address the security and control of inmates and penitentiaries shall not be accessible to the public or inmates. The Administrative Regulations

Review Subcommittee's review process for these policies and procedures shall be conducted in closed sessions.

(7) KRS 61.880(1) to the contrary notwithstanding, upon receipt of a request for any record, the department shall determine within five (5) days after receipt of the request, excepting Saturdays, Sundays, and legal holidays, whether the record shall be released.

Section 5. KRS 439.470 is amended to read as follows:

(1) The commissioner shall have the power and duty to make rules for the conduct of persons placed on probation or parole, except the commissioner shall not make any rule which conflicts with the conditions of probation imposed by the court or conditions of release imposed by the board.

(2) ***The commissioner may utilize an approved monitoring device as defined in KRS 532.200(5) in the supervision of persons placed on probation or parole and to impose a reasonable fee on the probationer or parolee, as a condition of probation or parole, for equipment usage.***

(3) The commissioner, or his designee shall:

- (a) Be responsible for any reports of investigation and supervision as may be requested by the board or the courts;
- (b) Divide the state into districts and assign probation and parole officers to serve in the various districts and courts;
- (c) Direct the work of the officers and other employees assigned to him;
- (d) Formulate methods of investigation, supervision, record keeping, and reports;
- (e) Conduct training courses for the staff;
- (f) Negotiate with public or private groups or institutions for further training of employees and authorize the expenditure of funds for that purpose when needed;
- (g) Develop policies on probation and parole work in the light of other welfare administration policies.

HB 455, AN ACT relating to criminal justice matters.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

(1) The Department of Juvenile Justice or a local organization approved by the Department of Juvenile Justice may form local juvenile delinquency prevention councils for the purpose of encouraging the initiation of, or supporting ongoing, interagency cooperation and collaboration in addressing juvenile crime and juvenile status offenses.

(2) The membership of the local council shall be determined by the Department of Juvenile Justice. The members of the council shall be appointed as provided by the department by administrative regulation and shall be appointed for not longer than four (4) years, but members may be reappointed for a successive term. A member of the council shall receive no salary for service as a member of the council but may be reimbursed for expenses in the same manner as a state employee.

(3) The duties and responsibilities of a juvenile delinquency prevention council shall include but not be limited to:

- ***(a) Developing a local juvenile justice plan based upon utilization of the resources of law enforcement, the school system, the Department of Juvenile Justice, the Department for Social Services, and others in a cooperative and collaborative manner to prevent or discourage juvenile delinquency and to develop meaningful alternatives to incarceration;***
- ***(b) Entering into a written local interagency agreement specifying the nature and extent of contributions that each signatory agency will make in achieving the goals of the local juvenile justice plan;***
- ***(c) Sharing of information as authorized by law to carry out the interagency agreements;***
- ***(d) Applying for and receiving public or private grants to be administered by one (1) of the participating city or county; and***
- ***(e) Providing a forum for the presentation of interagency recommendations and the resolution of disagreements relating to the contents of the interagency agreement or the performance by the parties of their respective obligations under the agreement.***

(4) Training of council members shall be the responsibility of the department.

(5) The department of Juvenile Justice shall provide grants to the councils to establish or enhance prevention programs.

(6) The department shall promulgate administrative regulations in accordance with KRS Chapter 13A that relate to:

- ***(a) The formation of councils;***
- ***(b) The operation of councils;***
- ***(c) The duties of councils; and***

(d) The administration and operation of the grant program.

SECTION 2. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

(1) The Department of Juvenile Justice shall, with available funds, develop and administer a statewide detention program and, as each regional facility is constructed and ready for occupancy, shall, within appropriation limitations, provide for:

(a) The operation of pre-adjudication detention facilities for children charged with public offenses; and

(b) The operation of post-adjudication detention facilities for children adjudicated delinquent or found guilty of public offenses.

Funds appropriated for the purposes of this section shall only be used for facilities defined in KRS 15A.200.

(2) In each region in which the Department of Juvenile Justice operates or contracts for the operation of a detention facility, the department shall, within appropriation limitations, develop and administer a program for alternatives to detention that shall provide for:

(a) The operation of or contracting for the operation of pre-adjudication alternatives to detention and follow-up programs for children who are before the court and who enter pretrial diversion or informal adjustment programs; and

(b) The operation of or contracting for the operation of post-adjudication alternatives to detention and follow-up programs, including but not limited to community-based programs, mentoring, counseling, and other programs designed to limit the unnecessary use of secure detention and ensure public safety.

(3) The department shall charge counties and urban-county governments for lodging juveniles in state-owned or contracted pre-adjudication facilities and for lodging juveniles not committed to the department in state-owned or contracted post-adjudication facilities. The department shall pay all costs for juveniles committed to the custody of the department following adjudication.

(4) Detention rates charged by contracting detention facilities shall not exceed the rate in effect on July 1, 1997, subject to increases approved by the department.

(5) The Department of Juvenile Justice shall issue and enforce administrative regulations to govern the following:

(a) Administration;

(b) Intake and classification;

(c) Programs and services;

(d) Record-keeping;

(e) Rules and discipline;

(f) Transfers;

(g) Reimbursement rates and conditions; and

(h) Detention facility rate increases.

Section 3. KRS 15A.067 is amended to read as follows:

(1) As used in this section, "facility" means any of the facilities specified in KRS 15A.200 operated by a political subdivision of the Commonwealth of Kentucky for the care of juveniles alleged to be delinquent, or adjudicated delinquent.

(2) There is established within the Department of Juvenile Justice, a Division of Educational Services, that shall be responsible for the delivery of appropriate educational programs to incarcerated youth. Each facility shall provide educational services to adjudicated delinquents who may be ordered by the court to remain in the juvenile detention facility for an indeterminate period.

(3) ***Any other statutes to the contrary notwithstanding, the Department of Juvenile Justice shall have access to all educational records, public or private, of any juvenile in a facility or program.***

(4) The Division of Educational Services shall ensure that all incarcerated youth be provided appropriate screening and educational programs as follows:

(a) For students identified before incarceration as having an educational disability, the Division of Educational Services shall make specially designed instruction and related services available as required by Kentucky Board of Education administrative regulations applicable to students with disabilities.

(b) For students incarcerated for more than fourteen (14) days, the division shall ensure that appropriate screening is provided to all youth. Screening shall include, but not be limited to, seeking the juvenile's educational record.

(c) For students incarcerated for more than thirty (30) days, the division shall ensure that all youth are provided an appropriate education.

(5)[~~(4)~~] The Department of Juvenile Justice shall be responsible for providing, in its contracts with private juvenile detention facilities and county jails, the specific obligations of those entities to provide educational services to incarcerated juveniles consistent with this section, including funding provisions.

(6)[~~(5)~~] The Department of Education and all local school district administrators shall cooperate with officials responsible for the operation of juvenile detention facilities and with the Division of Educational Services to ensure that all documents necessary to establish educational status and need shall follow the students who are being held in these facilities so the students can be afforded educational opportunities.

(7)[~~(6)~~] (a) Upon disposition by the juvenile court that an adjudicated juvenile shall stay in a juvenile detention facility for any period of time, the facility shall notify the juvenile's last resident school district of the student's whereabouts.

(b) Within five (5) days after the juvenile is released, the Division of Educational Services shall notify the district in which the student will reside of the youth's release and educational status and forward any educational records.

(8)[~~(7)~~] The Department of Juvenile Justice shall***, after consultation***[~~collaborate~~] with the Department of Education***, promulgate***[~~as it promulgates~~] an administrative regulation for the effective implementation of this section.

[~~(8) The Department of Education shall administer this program in cooperation with the Justice Cabinet for the 1996-97 fiscal year. Effective July 1, 1997, the Justice Cabinet shall be responsible for the implementation of this section.~~]

Section 4. KRS 610.265 is amended to read as follows:

(1) Any child who is accused of committing a status or public offense or of being in contempt of court may be detained in a secure juvenile detention facility or juvenile holding facility or, if neither is reasonably available, an intermittent holding facility, for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays.

(2) (a) Within twenty-four (24) hours of the start of the period of detention described in subsection (1) of this section, exclusive of weekends and holidays, a hearing shall be held by the judge or trial commissioner of the court for the purpose of determining whether the child shall be further detained. At the hearing held pursuant to this subsection, the court shall consider the nature of the offense, the child's background and history, and other information relevant to the child's conduct or condition.

(b) If the court orders the child detained further, ***and if the child is charged with a capital offense Class A felony, or Class B felony,***[~~such~~] detention shall occur in either a secure juvenile detention facility or a juvenile holding facility pending the child's next court appearance subject to the court's review of the detention order prior to that court appearance. ***Any other child, ordered to be detained in a state-operated facility pursuant to the statewide detention plan, shall be referred to the Department of Juvenile Justice for a security assessment and placement in an approved detention facility or program pending the child's next court appearance. The security assessment shall be done at the facility where the juvenile is initially detained.***

(c) If the child is not released, the court designated worker shall notify the parent, person exercising custodial control or supervision, a relative, guardian or other responsible adult.

Section 5. KRS 610.280 is amended to read as follows:

(1) (a) If a child is detained pursuant to KRS 610.265 for the alleged commission of a public offense and not released, a hearing shall be held as soon as practical, but not to exceed twenty-four (24) hours, exclusive of weekends and holidays, of the commencement of detention if the child is detained in an intermittent holding facility. If the child is detained in a secure juvenile detention facility or a juvenile holding facility, then a hearing shall be held as soon as practical, but not to exceed forty-eight (48) hours, exclusive of weekends and holidays, of the commencement of detention.

(b) If a child is detained for the alleged commission of a status offense and not released, a hearing shall be held as soon as practical, but not to exceed twenty-four (24) hours, exclusive of weekends and holidays, of the commencement of detention.

(2) The hearing shall address the following issues:

(a) If there is probable cause to believe that an offense has been committed and that the accused child committed that offense. Probable cause may be established in the same manner as in a preliminary hearing in cases involving adults accused of felonies. The child shall be afforded the right to confront and cross-examine witnesses. The Commonwealth shall bear the burden of proof and if it should fail to establish probable cause, the child shall be released and the complaint or petition dismissed unless the court determines further detention is necessary to assure the appearance of the child in court on another pending case; and

(b) In determining detention, the court shall consider the seriousness of the alleged offense, the possibility that the child would commit an offense dangerous to himself or the community pending disposition of the alleged offense, the child's prior record, if any, and whether there are other charges pending against the child. ***Any child, ordered to be detained in a state-operated facility pursuant to the statewide detention plan, shall be referred to the***

Department of Juvenile Justice for a security assessment and placement in an approved detention facility or program pending the child's next court appearance. The security assessment shall be done at the facility where the juvenile is initially detained.

(3) If, after completion of the detention hearing, the court is of the opinion that detention is necessary, the order shall state on the record the specific reasons for detention.

Section 6. KRS 635.060 is amended to read as follows:

If in its decree the juvenile court finds that the child comes within the purview of this chapter, the court, at the dispositional hearing may:

(1) Order the child or his parents, guardian, or person exercising custodial control to make restitution or reparation to any injured person to the extent, in the sum and upon the conditions as the court determines. However, no parent, guardian, or person exercising custodial control shall be ordered to make restitution or reparation unless the court has provided notice of the hearing, provided opportunity to be heard, and made a finding that the person's failure to exercise reasonable control or supervision was a substantial factor in the child's delinquency; or

(2) Place the child on probation, home incarceration, or under supervision in the child's own home or in a suitable home or boarding home, upon the conditions that the court shall determine. A child placed on probation, home incarceration, or supervision shall be subject to the visitation and supervision of a juvenile probation officer of the Department of Juvenile Justice. Except as provided in KRS 635.083, a child placed on probation, home incarceration, or supervision shall remain subject to the jurisdiction of the court until the child becomes eighteen (18) years of age, unless the child is discharged prior thereto by the court, except that if a person is placed on probation, home incarceration, or supervision after the person reaches the age of seventeen (17) years and six (6) months, the probation, home incarceration, or supervision shall be for a period not to exceed one (1) year; or

(3) Commit the child to the custody or guardianship of the Department of Juvenile Justice, a child-caring facility, a child-placing agency authorized to care for the child, or place the child under the custody and supervision of a suitable person. If the child is detained in an approved secure juvenile detention facility, juvenile holding facility, or intermittent holding facility in accordance with KRS 15A.200 to 15A.240 at the time the child is committed to the custody of the Department of Juvenile Justice, the Department of Juvenile Justice shall accept physical custody of the child, remove the child from the approved secure juvenile detention facility or juvenile holding facility, and secure appropriate placement ***as soon as possible but not to exceed thirty-five (35)***[~~within seven (7)~~] days of the time of commitment. All orders of commitment may include advisory recommendations the court may deem proper in the best interests of the child and of the public. The commitment or placement shall be until the age of eighteen (18), subject to ***KRS 635.070 and to*** the power of the court to terminate the order and discharge the child prior thereto, except that if the commitment or placement is after a person has reached the age of seventeen (17) years and six (6) months, the commitment or placement shall be for an indeterminate period not to exceed one (1) year. The court, in its discretion, upon motion by the child and with the concurrence of the Department of Juvenile Justice, may authorize an extension of commitment up to age twenty-one (21) to permit the Department of Juvenile Justice to assist the child in establishing independent living arrangements; or

(4) [~~Effective July 1, 1997,~~]If the child is fourteen (14) years of age but less than sixteen (16) years of age, order that the child be confined in an approved secure juvenile detention facility***,***[~~ or~~] juvenile holding facility***, or approved detention program as authorized by the Department of Juvenile Justice*** in accordance with KRS ***Chapter*** 15A[~~.200~~] for a period of time not to exceed forty-five (45) days; or

(5) [~~Effective July 1, 1997,~~]If the child is sixteen (16) years of age or older, order that the child be confined in an approved secure juvenile detention facility***,***[~~ or~~] juvenile holding facility***, or approved detention program as authorized by the Department of Juvenile Justice*** in accordance with KRS ***Chapter*** 15A[~~.200~~] for a period of time not to exceed ninety (90) days; or

(6) Any combination of the dispositions listed above.

The Department of Juvenile Justice shall pay for the confinement of children confined pursuant to subsections (4) or (5) of this section ***in accordance with the statewide detention plan and administrative regulations implementing the plan***.[~~ The requirement that the Department of Juvenile Justice pay for confinement of persons confined pursuant to subsections (4) and (5) of this section shall apply only to juveniles confined on or after July 1, 1997.~~]

SECTION 7. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

(1) The Department of Juvenile Justice shall, in cooperation with the Cabinet for Human Resources, the Department of Corrections, the Administrative Office of the Courts, and the Kentucky State Police, be responsible for the recording of those data elements for juveniles that are needed for the development of the centralized criminal history record information system.

(2) The database shall at a minimum contain the information required in KRS 27A.310 to 27A.440; and

(3) The Department of Juvenile Justice shall provide access to the Kentucky State Police, the Department of Corrections, the Cabinet for Human Resources, and the Administrative Office of the Courts to its database.

SECTION 8. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

The Department of Juvenile Justice shall update its database within thirty (30) days of receipt of information. The update shall include information from the:

(1) Offender records;

(2) Institutional records; and

(3) Administrative records.

SECTION 9. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall update its database within thirty (30) days of receipt of information. The update shall include information from:

(1) Offender records;

(2) Institutional records; and

(3) Administrative records.

SECTION 10. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

(1) The following agencies shall disclose and share with each other all information they maintain on a minor:

  (a) All sheriff's offices, police departments, and any other law enforcement agency;

  (b) All Commonwealth's attorneys and county attorneys;

  (c) The Attorney General;

  (d) All jails and juvenile detention facilities, public and private;

  (e) All courts and clerks of courts;

  (f) The Administrative Office of the Courts;

  (g) All departments within the Justice Cabinet; and

  (h) All departments within the Cabinet for Human Resources.

(2) Except as provided in this section, all information shared by agencies specified above shall be subject to applicable confidentiality and access restrictions imposed by law.

(3) All public or private elementary or secondary schools, vocational or business schools, or institutions of higher education shall provide all records to any of the agencies listed in subsection (1) of this section upon written request.

(4) Any sharing of records or information pursuant to this section shall be done for official purposes only, on a bona fide need to know basis, in connection with a legitimate investigation, prosecution, treatment program, or similar purpose.

Section 11. KRS 7.111 is amended to read as follows:

(1) The Kentucky State Police, Department of Corrections, ***the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Administrative Office of the Courts shall provide access to their databases and the centralized criminal history record information system and the data contained therein to other criminal justice agencies, including criminal justice statistical analysis centers, and to the Legislative Research Commission. The right of access granted herein shall not include the right to add to, delete, or alter data without permission of the agency holding the data.

(2) Criminal justice agencies and the Legislative Research Commission shall not make public information on an individual person's criminal history record where such record is protected by state or federal law or regulation.

(3) The Legislative Research Commission shall have access to information which does not identify an individual person when determined by the director of the Legislative Research Commission to be necessary for a legislative purpose.

(4) The Legislative Research Commission shall have access to individual persons' criminal history records subject to the following provisions:

  (a) Access shall not include information on federal offenses or convictions;

  (b) Access shall not include information on out-of-state convictions; and

  (c) Requests for the release of the information shall be approved by the Legislative Research Commission by vote at a meeting of the Commission.

Section 12. KRS 17.151 is amended to read as follows:

The Kentucky State Police shall, in cooperation with the Administrative Office of the Courts***, the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Department of Corrections, be responsible for the recording of those data elements that are needed for development of the centralized criminal history record information system:

(1) The database shall at a minimum contain the information required in KRS 27A.310 to 27A.440;

(2) The Kentucky State Police shall provide access to the Administrative Office of the Courts***, the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Department of Corrections to its database; and

(3) The Kentucky State Police***, the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Department of Corrections shall assign the same identification number or other variable to each person whose name appears in the database.

Section 13. KRS 17.152 is amended to read as follows:

All data supplied to the centralized criminal history record information system by the Kentucky State Police, Administrative Office of the Courts, ***the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Department of Corrections shall be compatible with the system and shall contain both citation and personal identification numbers.

Section 14. KRS 17.150 is amended to read as follows:

(1) Every sheriff, chief of police, coroner, jailer, prosecuting attorney, probation officer, parole officer; warden or superintendent of a prison, reformatory, correctional school, mental hospital or institution for the retarded; State Police, state fire marshal, Board of Alcoholic Beverage Control; Cabinet for Human Resources; Transportation Cabinet; Department of Corrections; ***Department of Juvenile Justice;*** and every other person or criminal justice agency, except the Court of Justice, public or private, dealing with crimes or criminals or with delinquency or delinquents, when requested by the cabinet, shall:

 (a) Install and maintain records needed for reporting data required by the cabinet;

 (b) Report to the cabinet as and when the cabinet requests all data demanded by it, except that the reports concerning a juvenile delinquent shall not reveal his or his parents' identity;

 (c) Give the cabinet or its accredited agent access for purpose of inspection; and

 (d) Cooperate with the cabinet to the end that its duties may be properly performed.

(2) Intelligence and investigative reports maintained by criminal justice agencies are subject to public inspection if prosecution is completed or a determination not to prosecute has been made. However, portions of the records may be withheld from inspection if the inspection would disclose:

 (a) The name or identity of any confidential informant or information which may lead to the identity of any confidential informant;

 (b) Information of a personal nature, the disclosure of which will not tend to advance a wholesome public interest or a legitimate private interest;

 (c) Information which may endanger the life or physical safety of law enforcement personnel; or

 (d) Information contained in the records to be used in a prospective law enforcement action.

(3) When a demand for the inspection of the records is refused by the custodian of the record, the burden shall be upon the custodian to justify the refusal of inspection with specificity. Exemptions provided by this section shall not be used by the custodian of the records to delay or impede the exercise of rights granted by this section.

(4) Centralized criminal history records are not subject to public inspection. Centralized history records mean information on individuals collected and compiled by the Justice Cabinet from criminal justice agencies and maintained in a central location consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges and any disposition arising therefrom, including sentencing, correctional supervision and release. The information shall be restricted to that recorded as the result of the initiation of criminal proceedings or any proceeding related thereto. Nothing in this subsection shall apply to documents maintained by criminal justice agencies which are the source of information collected by the Justice Cabinet. Criminal justice agencies shall retain the documents and no official thereof shall willfully conceal or destroy any record with intent to violate the provisions of this section.

(5) The provisions of KRS Chapter 61 dealing with administrative and judicial remedies for inspection of public records and penalties for violations thereof shall be applicable to this section.

(6) The secretary of justice shall adopt the administrative regulations necessary to carry out the provisions of the criminal history record information system and to insure the accuracy of the information based upon recommendations submitted by the commissioner, Department of State Police.

(7) The Administrative Office of the Courts may, upon suitable agreement between the Chief Justice and the secretary of justice, supply criminal justice information and data to the cabinet. No information, other than that required by KRS 27A.350 to 27A.420 and 27A.440, shall be solicited from a circuit clerk, justice or judge, court, or agency of the Court of Justice unless the solicitation or request for information is made pursuant to an agreement which may have been reached between the Chief Justice and the secretary of justice.

SECTION 15. A NEW SECTION OF KRS CHAPTER 27A IS CREATED TO READ AS FOLLOWS:

The Department of Juvenile Justice shall have access to all court records, active and closed, relating to or in the custody of the juvenile session of the District Court or the Administrative Office of the Courts, or both.

Section 16. KRS 27A.300 is amended to read as follows:

The Administrative Office of the Courts shall, in cooperation with the Kentucky State Police***, the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Department of Corrections, be responsible for the recording of those data elements that are needed for development of the centralized criminal history record information system:

(1) The database shall at a minimum contain the information contained in KRS 27A.310 to 27A.440;

(2) The Administrative Office of the Courts shall provide access to the Kentucky State Police***, the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Department of Corrections to its database; and

(3) The Administrative Office of the Courts shall, where the number is known, assign the same identification number or other variable to each person whose name appears in the database.

Section 17. KRS 164.283 is amended to read as follows:

(1) As used in this section unless the context otherwise requires:

(a) "Academic" means a student's official record of academic performance, including, but not limited to transcript of grades or other action taken by the institution directly related to academic performance. The term "academic" does not include any nonacademically-related action the institution may take.

(b) "Universities and colleges" means all state supported postsecondary educational institutions in Kentucky.

(c) "Institution" means all public supported institutions of higher learning in Kentucky.

(2) All student academic records shall be confidential and shall not require a student's Social Security number to identify the student, with the exception of the exemptions stated in subsections (3) to (9) of this section, and shall not be released by any public supported institution of higher education in Kentucky, to any person, organization, institution, group or agency, except with the express consent of the individual student. This confidentiality shall apply only to student academic records, including, but not limited to official transcript of grades.

(3) All student academic records shall be made available upon request to any agency of the federal or state government for the purpose of determining a student's eligibility for military service, and shall include making such records available to local draft boards. This authority shall be limited only to determining the student's eligibility for military service and shall not be extended, except with the individual student's consent as specified in subsection (2) of this section.

(4) Any institution may provide the legal parents of any student under twenty-one (21) years of age with a copy of the student's academic record.

(5) All student academic records shall be made available to any federal, state, or local law enforcement agency***, the Department of Juvenile Justice,*** and any court of law upon ***written*** request[~~ or issuance of a subpoena~~].

(6) All student academic records shall be made available upon request to any grantor of scholarships or loans based upon the maintenance of a satisfactory level of scholarship, but shall be for the official use of the grantors only.

(7) All student academic records shall be made available upon request to a public or private junior college from which the individual student was graduated or to a public or private secondary school from which the individual student was graduated.

(8) All student academic records shall be made available upon request to the Council on Postsecondary Education for professional academic research.

(9) All student academic records shall be made available upon request to any official of the university or college in which the student is enrolled who is directly concerned with the student's academic progress. This authority shall include but is not limited to the individual student's academic adviser.

(10) This section shall be applicable to all academic records maintained by all public postsecondary educational institutions in Kentucky.

SECTION 18. A NEW SECTION OF KRS CHAPTER 194 IS CREATED TO READ AS FOLLOWS:

(1) The Cabinet for Human Resources shall, in cooperation with the Department of Juvenile Justice, the Department of Corrections, the Administrative Office of the Courts, and the Kentucky State Police, be responsible for the recording of those data elements that are needed for the development of the centralized criminal history record information system.

(2) The database shall at a minimum contain the information required in KRS 27A.310 to 27A.440.

(3) The Cabinet for Human Resources shall provide access to the Kentucky State Police, the Department of Corrections, the Department of Juvenile Justice, and the Administrative Office of the Courts to its database.

Section 19. KRS 196.093 is amended to read as follows:

The Department of Corrections shall, in cooperation with the Kentucky State Police***, the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Administrative Office of the Courts, be responsible for the recording of those data elements that are needed for the development of the centralized criminal history record information system:

(1) The database shall at a minimum contain the information required in KRS 27A.310 to 27A.440;

(2) The Department of Corrections shall provide access to the Kentucky State Police***, the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Administrative Office of the Courts to its database; and

(3) The Department of Corrections shall assign the same identification number or other variable to each person whose name appears in the database.

Section 20. KRS 605.090 is amended to read as follows:

(1) Unless precluded by law, any child committed to the Department of Juvenile Justice or the cabinet may by the decision of the Department of Juvenile Justice or the cabinet or its designee, at any time during the period of his commitment, be:

(a) Upon fourteen (14) days' prior written notice to the court, discharged from commitment. Written notice of discharge shall be given to the committing court and to any other parties as may be required by law;

(b) Placed in the home of his parents, a suitable foster home, or boarding home, upon such conditions as the Department of Juvenile Justice or the cabinet may prescribe and subject to visitation and supervision by a family service worker or juvenile probation and parole officer. At the time a committed child is placed in the home of his parents by the Department of Juvenile Justice or the cabinet, the parents shall be informed in writing of the conditions of the placement and the criteria that will be used to determine whether removal is necessary;

(c) Placed in one (1) of the facilities or programs operated by the Department of Juvenile Justice or the cabinet, except that: No child committed under the provisions of KRS 610.010(1)(b), (c), or (d) ***shall be placed in a facility operated by the Department of Juvenile Justice for children adjudicated as a public offender unless the cabinet and the department agree, and the court consents, that the placement is in the best interest of the child and that the placement does not exceed a group home level; and***

(d) Placed in a child-caring facility operated by a local governmental unit or by a private organization willing to receive the child, upon such conditions as the cabinet may prescribe;

(e) Treated as provided in KRS Chapter 645;

(f) Following the transfer or placement of a child pursuant to subsections (b), (c), (d), or (e) of this section, the Department of Juvenile Justice or the cabinet shall, within fourteen (14) days, excluding weekends and holidays, give written notice to the court ***and law enforcement agencies specified in KRS 610.110*** of the transfer, the placement, and the reasons therefor.

(2) ***No***[~~or any~~] child ten (10) years of age or under shall be placed in a facility operated by the Department of Juvenile Justice for children adjudicated as public offenders;

(3) If a child committed to the cabinet as dependent, neglected, or abused is placed in the home of his parents, the child shall not be removed except in accordance with the following standards and procedures:

(a) If the family service worker believes that the committed child continues to be dependent, neglected, or abused, but immediate removal is unnecessary to protect the child from imminent death or serious physical injury, the casework situation and evidence shall be reviewed with his supervisor to determine whether to continue work with the family intact or to remove the child. There shall be documentation that the family service worker, prior to the court hearing, made an effort to contact the parents to inform them of the specific problems that could lead to removal so they have an opportunity to take corrective action. If the parents are unavailable or do not respond to attempts to communicate, the specific circumstances shall be documented;

(b) If it appears that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm and there is not reasonably available an alternative less drastic than removal of the child from the home, the cabinet shall petition the District Court to review the commitment pursuant to KRS 610.120 in relation to the cabinet's intention to remove the child from the parent's home. The petition shall set forth the facts which constitute the need for removal of the child. The court shall serve notice of the petition and the time and place of the hearing on the parents; however, the family service worker shall also contact the parents to ensure that they received the notice and are aware of the right to be represented by counsel. If the parents' whereabouts are unknown, notice may be mailed to the last known address of an adult who is a near relative. If the court fails to find that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall not be removed from the parents' home;

(c) If a family service worker finds a committed, unattended child who is too young to take care of himself, the family service worker shall make reasonable efforts to arrange for an emergency caretaker in the child's home until the parents return or fail to return within a reasonable time. If no in-home caretaker is available for the child, the family service worker shall request any appropriate law enforcement officer to take the child into protective custody. If, after a reasonable time, it appears the child has been abandoned, the cabinet shall petition the District Court to review the case; or

(d) If there exist reasonable grounds to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents are unable or unwilling to protect the child, the family service worker shall, with the assistance of a law enforcement officer, immediately remove the child prior to filing a petition for review. Within seventy-two (72) hours after the removal, the cabinet shall file a petition for review in District Court pursuant to KRS 610.120 with a request for an expeditious hearing. If the court fails to find that the child's health or welfare or physical, mental or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall be returned to the parents' home.

(4)[~~(3)~~] The cabinet or the Department of Juvenile Justice, as appropriate, shall notify the juvenile court of the county of placement with the conditions of supervised placement of each child placed in that county from one (1) of the residential treatment facilities operated by the Department of Juvenile Justice or the cabinet. Notice of the conditions of such placement may be made available by the court to any law enforcement agency.

(5)[~~(4)~~] The person in charge of any home to which a child is probated, and the governing authority of any private facility or agency to which a child is committed, shall make such reports to the court as the court may require, and such reports as the Department of Juvenile Justice or the cabinet may require in the performance of its functions under the law. The Department of Juvenile Justice or the cabinet shall have the power to make such visitations and inspections of the homes, facilities, and agencies in which children who have committed public offenses have been placed as it deems necessary to carry out its functions under the law.

(6)[~~(5)~~] The Department of Juvenile Justice may assist the courts in placing children who have committed public offenses in boarding homes, and, under agreements with the individual courts, may assume responsibility for making such placements. Counties may pay or contribute towards the expenses of maintaining such children and, to the extent authorized by the fiscal court, the Department of Juvenile Justice may incur obligations chargeable to the county for such expenses.

Section 21. KRS 610.110 is amended to read as follows:

(1) The disposition shall determine the action to be taken by the court on behalf of, and in the best interest of, the child under the provisions of KRS Chapter 630 or 635.

(2) At the disposition, all information helpful in making a proper disposition, including oral and written reports, shall be received by the court in compliance with subsection (1) of this section and relied upon to the extent of their probative value, provided that the parties or their counsel shall be afforded an opportunity to examine and controvert the reports.

(3) The court shall***, and the Department of Juvenile Justice may upon request,*** notify the law enforcement agency of the child's ***city,*** county***, or urban county*** of residence ***as appropriate*** and the law enforcement agencies where any offense was committed of the disposition of each case and of each child committed by the court who is placed in a residential treatment facility by the Department of Juvenile Justice or the cabinet.

(4) If any court commits a child to the Department of Juvenile Justice or the cabinet, a child-caring facility, or child-placing agency, the court shall cause to be transmitted to the Department of Juvenile Justice or the cabinet, facility, or agency, as appropriate, a certified copy of the commitment order, together with a summary of the court's information concerning the child. A certified copy of the court order shall be proof of the authority of the Department of Juvenile Justice or the cabinet, facility, or agency to hold the child. Such certified order shall be sufficient authority for any law enforcement officer to take into custody any person named therein and deliver him to such a place as shall be directed by the Department of Juvenile Justice or the cabinet, facility, or agency given custody of him in the order.

(5) In placing a child on probation in a home or boarding home, or in committing a child to a child-caring facility or child-placing agency, the court shall as far as practicable select a home, facility, or agency operated or governed by persons of a similar religious faith as the parents of the child.

(6) Upon motion of the child and agreement of the Department of Juvenile Justice or the cabinet, as appropriate, the court may authorize an extension of commitment up to age twenty-one (21) for the purpose of permitting the Department of Juvenile Justice or the cabinet, as appropriate, to assist the child in establishing independent living arrangements if a return to the child's home is not in his best interest.

Section 22. KRS 610.320 is amended to read as follows:

(1) A special record book shall be kept by the court for all cases, to be known as the "juvenile record," and the docket or calendar of such cases shall be called the "juvenile docket."

(2) No probation officer, nor employee of a probation officer, shall, without the consent of the District Judge sitting in juvenile session, divulge or communicate to any persons other than the court, ***law enforcement, the Department of Juvenile Justice,*** an officer of the court interested in the case, a member of the advisory board of the court, or a representative of the cabinet, any information obtained pursuant to the discharge of his duties, nor shall any record of the action of the probation officer be made public except by leave of the District Judge; provided, that nothing in this subsection shall prohibit the probation officer from divulging or communicating such information to the court, to his colleagues or superiors in his own department, or to another probation officer having a direct interest in the record or

social history of the child.

(3) All law enforcement and court records regarding children who have not reached their eighteenth birthday shall not be opened to scrutiny by the public, except court records, limited to the petition, order of the adjudication, and disposition in juvenile delinquency proceedings concerning a child who is adjudicated a juvenile delinquent for the commission of an offense that would constitute a capital offense or a Class A, B, or C felony if the juvenile were an adult, or any offense involving a deadly weapon, or an offense wherein a deadly weapon is used or displayed. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Release of any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the Federal Social Security Act is also prohibited. Otherwise, the law enforcement records shall be made available to the child, family, guardian, or legal representative of the child involved. The records shall also be made available to the court, probation officers, ***prosecutors, the Department of Juvenile Justice,*** or representatives of the cabinet. Records, limited to the child's adjudication of delinquency, and disposition of a criminal activity covered by KRS 610.345, shall also be made available to public or private elementary and secondary school administrative and counseling personnel, and to any teacher to whose class the student has been assigned for instruction, subject to the provisions of KRS 610.340 and 610.345.

(4) Subject to the Kentucky Rules of Evidence, juvenile court records of adjudications of guilt of a child for an offense which would be a felony if committed by an adult shall be admissible in court at any time the child is tried as an adult, or after the child becomes an adult, at any subsequent criminal trial relating to that same person. Juvenile court records made available pursuant to this section may be used for impeachment purposes during a criminal trial, and may be used during the sentencing phase of a criminal trial. However, the fact that a juvenile has been adjudicated delinquent of an offense which would be a felony if the child had been an adult shall not be used in finding the child to be a persistent felony offender based upon that adjudication.

(5) This section shall not relieve the probation officer or peace officer from divulging such facts as a witness in a trial or hearing involving any cases falling under KRS Chapters 600 to 645 or the production of juvenile records for use in the trial or proceedings.

(6) This section shall not prohibit release of information regarding juvenile proceedings in the District Court which do not reveal the identity of the child or its parents or guardians, or which relate to the child's eligibility for services under Title IV-E or IV-B of the Federal Social Security Act. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court.

Section 23. KRS 610.340 is amended to read as follows:

(1) Unless a specific provision of KRS Chapters 600 to 645 specifies otherwise, all juvenile court records of any nature generated pursuant to KRS Chapters 600 to 645 by any agency or instrumentality, public or private, shall be deemed to be confidential and shall not be disclosed except to the child, parent, and to the extent necessary at the proceeding to victims, or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070 unless ordered by the court for good cause. Juvenile court records which contain information pertaining to arrests, petitions, adjudications, and dispositions of a child may be disclosed to victims or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the Federal Social Security Act shall not be disclosed to victims or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070.

(2) The provisions of this section shall not apply to public officers or employees engaged ***in the investigation of and*** in the prosecution of cases under KRS Chapters 600 to 645 or other portions of the Kentucky Revised Statutes[~~ provided that the inspection of the records and the disclosure of the information contained therein is limited to that required in the investigation and the prosecution of the case~~].

(3) The provisions of this section shall not apply to employees of the ***Department of Juvenile Justice or*** cabinet or its designees responsible for any services under KRS Chapters 600 to 645 or to attorneys for parties involved in actions relating to KRS Chapters 600 to 645 or other prosecutions authorized by the Kentucky Revised Statutes[~~ provided that the inspection of the records and the disclosure of the information contained therein is limited to that required in the investigation and the representation of the client in the case~~].

(4) The provisions of this section shall not apply to records disclosed pursuant to KRS 610.320 or to public or private elementary and secondary school administrative and counseling personnel, to any teacher to whose class the student has been assigned for instruction, or to persons entitled to have juvenile records under KRS 610.345, if the possession and use of the records is in compliance with the provisions of KRS 610.345 and this section.

(5) No person, including school personnel, shall disclose any record or any information contained therein except as permitted by this section or other specific section of KRS Chapters 600 to 645, or except as permitted by specific order of the court.

(6) No person, including school personnel, authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain records to which he is not entitled or for purposes for which he is not permitted to obtain them pursuant to KRS Chapters 600 to 645.

(7) No person, including school personnel, not authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain records which are made confidential pursuant to KRS Chapters 600 to 645 except upon proper motion to a court of competent jurisdiction.

(8) No person shall destroy or attempt to destroy any record required to be kept pursuant to KRS Chapters 600 to 645 unless the destruction is permitted pursuant to KRS Chapters 600 to 645 and is authorized by the court upon proper motion and good cause for the destruction being shown.

(9) As used in this section the term "KRS Chapters 600 to 645" includes any administrative regulations which are lawfully promulgated pursuant to KRS Chapters 600 to 645.

Section 24. KRS 197.045 is amended to read as follows:

(1) Any person convicted and sentenced to a state penal institution may receive a credit on his sentence of not exceeding ten (10) days for each month served, except as otherwise provided in this section, to be determined by the department from the conduct of the prisoner. In addition, the department shall provide an educational good time credit of sixty (60) days to any prisoner who successfully receives a graduate equivalency diploma or a high school diploma, a two (2) or four (4) year college degree, or a two (2) year or four (4) year certification in applied sciences, or who receives a technical education diploma as provided and defined by the department; prisoners may earn additional credit for each program completed. The department may forfeit any good time previously earned by the prisoner, or deny the prisoner the right to earn good time in any amount, if, during the term of imprisonment, a prisoner commits any offense or violates the rules of the institution.

(2) When two (2) or more consecutive sentences are to be served, the several sentences shall be merged and served in the aggregate for the purposes of the good time credit computation or in computing dates of expiration of sentence.

(3) An inmate may, at the discretion of the commissioner, be allowed a deduction from a sentence not to exceed five (5) days per month for performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations and programs. The allowance shall be an addition to commutation of time for good conduct and under the same terms and conditions and without regard to length of sentence.

(4) ***Until successful completion of the sex offender treatment program, a sex offender may earn good time. However, the good time shall not be credited to the sex offender's sentence. Upon the successful completion of the sex offender treatment program, as determined by the program director, the offender shall be eligible for all good time earned but not otherwise forfeited under administrative regulations promulgated by the Department of Corrections. Any sex offender, as defined in KRS 197.410, who has not successfully completed the sex offender treatment program as determined by the program director shall not be entitled to the benefit of any credit on his sentence. The provisions of this section shall not apply to any sex offender convicted before the effective date of this section.***

(5) (a) The Department of Corrections shall, by administrative regulation, specify the length of forfeiture of good time and the ability to earn good time in the future for those inmates who have civil actions dismissed because the court found the action to be malicious or harassing, or if satisfied that the action is legally without merit or factually frivolous.

(b) Penalties set by administrative regulation pursuant to this subsection shall be as uniform as practicable throughout all institutions operated by, under contract to, or under the control of the department and shall specify a specific number of days or months of good time forfeited as well as any prohibition imposed on the future earning of good time.

SECTION 25. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

(1) In addition to the penalties authorized by law, any person convicted of, pleading guilty to, or entering an Alford plea to a felony offense under KRS Chapter 510 shall be sentenced to a period of conditional discharge following release from:

(a) Incarceration upon expiration of sentence; or

(b) Completion of parole.

(2) The period of conditional discharge shall be three (3) years.

(3) During the period of conditional discharge, the defendant shall:

(a) Be subject to all orders specified by the Department of Corrections; and

(b) Comply with all education, treatment, testing, or combination thereof required by the Department of Corrections.

(4) Persons under conditional discharge pursuant to this section shall be subject to the supervision of the Division of Probation and Parole.

(5) If a person violates a provision specified in subsection (3) of this section, the violation shall be reported in writing to the Commonwealth's attorney in the county of conviction. The Commonwealth's attorney shall petition the court to revoke the defendant's conditional discharge and reincarcerate the defendant for no longer than the time remaining on the conditional discharge.

Section 26. KRS 15A.030 is amended to read as follows:

The Justice Cabinet, in addition to the departments set forth in KRS 15A.020, shall consist of the following organizational units which are hereby created or reestablished:

(1) Office of secretary of justice comprised of the secretary of justice, the Commission on Correction and Community Service, the Kentucky State Corrections Commission, and the ***Criminal Justice Council***[~~Kentucky Crime Commission~~]. The Parole Board shall be attached to the Office of the Secretary for administrative ***and support*** purposes only.

(2) Offices of deputy secretaries of justice.

(3) Office of the general counsel.

(4) Medical examiner service program.

Section 27. KRS 15A.040 is amended to read as follows:

(1) The ***Criminal Justice Council***[~~Kentucky Crime Commission~~] shall advise and recommend to the ***Governor and the General Assembly***[~~secretary~~] policies and direction for[~~ departmental~~] long-range planning regarding all elements of the criminal justice system***. The Council shall review and make written recommendations on subjects including but not limited to administration of the criminal justice system, sentencing issues, capital litigation, and the Penal Code. Recommendations for these and all other issues shall be submitted to the Governor and the Legislative Research Commission at least six (6) months prior to every regular session of the Kentucky General Assembly. The council shall:***

(a) Make recommendations to the Justice secretary with respect to the award of state and federal grants and ensure that the grants are consistent with the priorities adopted by the Governor, the General Assembly, and the council;

(b) Conduct comprehensive planning to promote the maximum benefits of grants;

(c) Develop model criminal justice programs;

(d) Disseminate information on criminal justice issues and crime trends;

(e) Provide technical assistance to all criminal justice agencies; and

(f) Review and evaluate proposed legislation effecting criminal justice[~~and shall exercise supervisory authority with respect to federal and state grants as required by federal or state law~~].

(2) [~~Total ~~]Membership of the ***Criminal Justice Council shall consist of the following:***

(a) The secretary of the Justice Cabinet or his designee;

(b) The executive director of the Administrative Office of the Courts;

(c) The Attorney General or his designee;

(d) Two (2) members of the House of Representatives as designated by the Speaker of the House;

(e) Two (2) members of the Senate as designated by the President of the Senate;

(f) A crime victim or victim advocate, as defined in KRS Chapter 346, to be selected and appointed by the Governor;

(g) A Kentucky college or university professor specializing in law, criminology, corrections, or a similar discipline to be selected and appointed by the Governor;

(h) The public advocate or his designee;

(i) The president of the Kentucky Sheriff's Association;

(j) The president of the Kentucky Association of Chiefs of Police; and

(k) A member of the Prosecutors Advisory Council as chosen by the council[~~Kentucky Crime Commission and the appointment of members thereto shall be determined and made by the Governor~~].

(3) The secretary of justice shall serve ex officio as chairman of the ***council***[~~commission~~]. ***Each member of the council shall have one (1) vote.*** Members of the ***council***[~~commission~~] shall serve without compensation, but shall be reimbursed for their expenses actually and necessarily incurred in the performance of their duties.

(4) The council shall meet at least once every three (3) months.

(5) The council may hold additional meetings:

(a) On the call of the chairman;

(b) At the request of the Governor to the chairman; or

(c) At the written request of the members to the chairman, signed by a majority of the members.

(6) Two-thirds (2/3) members of the council shall constitute a quorum for the conduct of business at a meeting.

(7) Failure of any member to attend two (2) meetings within a six (6) month period shall be deemed a resignation from the council and a new member shall be named by the appointing authority.

(8) The council is authorized to establish committees and appoint additional persons who may not be members of the council as necessary to effectuate its purposes, including but not limited to:

(a) Uniform Criminal Justice Information System committee;

(b) Committee on sentencing; and

(c) Penal Code committee.

(9) The council's administrative functions shall be performed by a full-time executive director appointed by the secretary of the Justice Cabinet and supported by the administrative, clerical, and other staff as allowed by budgetary limitations and as needed to fulfill the council's role and mission and to coordinate its activities.

SECTION 28. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby established the Kentucky unified criminal justice information system, referred to in this chapter as the "system." The system shall be a joint effort of the criminal justice agencies. The administrative regulations promulgated by the secretary of justice relating to the system shall be exempt from other statutes and administrative regulations relating to information systems. These administrative regulations may include, but shall not be limited to, enterprise standards or specifications set forth for the procurement, maintenance, operation, and development of the system. For the purposes of this section, "criminal justice agencies" include all departments of the Justice Cabinet, the Transportation Cabinet, the Cabinet for Human Resources, the Administrative Office of the Court, and any agency with the authority to issue a citation or make an arrest.

(2) The program to design, implement, and maintain the system shall be under the supervision of the uniform criminal justice information system committee of the Criminal Justice Council. The membership of this committee shall be determined by the council, upon the recommendation of the Governor's chief information officer, who shall chair the committee.

(3) The committee shall be responsible for recommending standards, policies, and other matters to the secretary of justice for promulgation of administrative regulations in accordance with KRS Chapter 13A to implement the policies, standards, and other matters relating to the system and its operation.

(4) The committee shall submit recommendations to the Criminal Justice Council and the secretary of justice for administrative regulations to implement the uniform policy required to operate the system. The committee shall implement the uniform policy.

(5) The uniform policy shall include a system to enable the criminal justice agencies to share data stored in each other's information systems. Initially, the uniform policy shall maximize the use of existing databases and platforms through the use of a virtual database created by network linking of existing databases and platforms among the various departments. The uniform policy shall also develop plans for the new open system platforms before the existing platforms become obsolete.

(6) The committee shall be responsible for recommending to the Criminal Justice Council and the secretary of justice any necessary changes in administrative regulations necessary to implement the system. The committee shall also recommend to the Criminal Justice Council and the secretary of justice recommendations for statutory additions or changes necessary to implement and maintain the system. The secretary shall be responsible for reporting approved statutory recommendations to the Governor, the Legislative Research Commission, and appropriate committees of the General Assembly.

(7) The chair of the committee shall report annually to the Criminal Justice Council on the status of the system.

(8) All criminal justice agencies shall follow the policies established by administrative regulation for the exchange of data and connection to the system.

(9) The committee shall review how changes to existing criminal justice applications impact the new integrated network. Changes to criminal justice applications that have an impact on the integrated network shall be coordinated through and approved by the committee.

(10) Any future state-funded expenditures by a criminal justice agency for computer platforms in support of criminal justice applications shall be reviewed by the committee.

(11) Any agency or officer that does not participate in the criminal justice information system may be denied access to state and federal grant funds.

SECTION 29. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky State Police shall design, implement, and maintain an automated fingerprint identification system.

(2) The automated fingerprint identification system shall be compatible with any similar system required by the federal government for inclusion of state information in federal criminal justice databases.

(3) The Commonwealth shall provide and maintain in every detention center the automated fingerprint identification system equipment and programs required by the Kentucky State Police through administrative regulation.

SECTION 30. A NEW SECTION OF KRS CHAPTER 441 IS CREATED TO READ AS FOLLOWS:

(1) All persons arrested or detained in any adult or juvenile detention facility shall be fingerprinted.

(2) The jailer may fingerprint persons for other law enforcement agencies.

(3) The jailer shall submit the fingerprints to the Kentucky State Police in the manner and at the time required by the Kentucky State Police through administrative regulation.

Section 31. KRS 610.300 is amended to read as follows:

(1) Physical evidence shall be obtained and utilized in the investigation of public offenses involving children in the same manner as it is obtained and utilized in the investigation of public offenses involving adults.

(2) ***Except for fingerprint records,*** all records and physical evidence so obtained shall be surrendered to the court upon motion for good cause shown or upon elimination of the child as a suspect in the case. ***All records, including fingerprint records, shall be subject to expungement in the manner provided in KRS 431.076 for circumstances specified therein or upon elimination of the child as a suspect in the case.***

(3) The court shall, upon receipt of physical evidence, return any evidence, which is not contraband and is not needed for further prosecution, to its lawful owner. ***The fingerprint cards created pursuant to KRS Chapters 600 to 645 shall be transferred pursuant to KRS 17.110.***

Section 32. KRS 431.520 is amended to read as follows:

Any person charged with an offense shall be ordered released by a court of competent jurisdiction pending trial on his personal recognizance or upon the execution of an unsecured bail bond in an amount set by the court or as fixed by the Supreme Court as provided by KRS 431.540, unless the court determines, in the exercise of its discretion that such a release will not reasonably assure the appearance of the person as required. When such a determination is made, the court shall, either in lieu of or in addition to the above methods of release, impose any of the following conditions of release:

(1) Place the person in the custody of a designated person or organization agreeing to supervise him;

(2) Place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) Require the execution of a bail bond:

(a) With sufficient personal surety or sureties acceptable to the court; in determining the sufficiency of such surety, or sureties, the court shall consider his character, his place of residence, his relationship with the defendant and his financial and employment circumstances; or

(b) With the 10% deposit as provided in KRS 431.530; or

(c) With the deposit of cash equal to the amount of the bond or in lieu thereof acceptable security as provided in KRS 431.535;

(4) ***If the person's record indicates a history of controlled substance or alcohol abuse, order the person to submit to periodic testing for use of controlled substances or alcohol and pay a reasonable fee, not to exceed the actual cost of the test and analysis, as determined by the court with the fee to be collected by the circuit clerk, held in an agency account, and disbursed, on court order, solely to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis performed under this subsection. If the person is declared indigent, the testing fee may be waived by the court. The Administrative Office of the Courts shall establish pilot projects to implement the provisions of this subsection;***

(5) Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours;

(6)[~~(5)~~] A court authorizing the release of a person pursuant to this section shall cause the issuance of an appropriate order containing a statement of the conditions imposed, if any, shall cause such person to be informed of the penalties applicable to violations of the conditions of his release, and shall cause him to be informed that a warrant for his arrest will be issued immediately upon any such violation;

(7)[~~(6)~~] A person for whom conditions of release are imposed and who after twenty-four (24) hours from the time of the imposition of said conditions continues to be detained as a result of his inability to meet the conditions of release, shall, upon written application or upon the court's own motion, be entitled to have the conditions reviewed by the court which imposed them. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon written application or upon the court's own motion, be entitled to a review by the court which imposed the condition;

(8)[~~(7)~~] If at any time following release of a defendant and before he is required to appear for trial, the court is advised of a material change in the defendant's circumstances or that he has not complied with all conditions imposed upon his release, the court having jurisdiction may: (a) order the arrest of the defendant, (b) enter an order requiring the defendant, his surety or sureties to appear and show cause why the bail bond should not be forfeited or the conditions of his release be changed, or (c) both. A copy of said order shall be served upon the defendant, his surety or sureties. If the defendant fails to appear before the court as ordered or if, after hearing, the court finds the conditions of release have not been complied with, the court may change the conditions imposed or forfeit the bail bond or any portion thereof and enter a judgment for the Commonwealth against the defendant and his surety or sureties for the amount of the bail bond or any portion thereof and cost of the proceedings.

Section 33. KRS 431.525 is amended to read as follows:

(1) The amount of the bail shall be:
  (a) Sufficient to insure compliance with the conditions of release set by the court;
  (b) Not oppressive;
  (c) Commensurate with the nature of the offense charged;
  (d) Considerate of the past criminal acts and the reasonably anticipated conduct of the defendant if released; and
  (e) Considerate of the financial ability of the defendant.

(2) When a person is charged with an offense punishable by fine only, the amount of the bail bond set shall not exceed the amount of the maximum penalty and costs.[~~;~~]

(3) When a person has been convicted of an offense and only a fine has been imposed, the amount of the bail shall not exceed double the amount of the fine.

(4) The Administrative Office of the Courts shall establish pilot projects to implement controlled substance or alcohol abuse testing as specified under this subsection. If the person's record indicates a history of controlled substance or alcohol abuse, the court may order the person to submit to periodic testing for use of controlled substances or alcohol and to pay a reasonable fee, not to exceed the actual cost of the test and analysis, as determined by the court, with the fee to be collected by the circuit clerk, held in an agency account, and disbursed, on court order, solely to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis performed under this subsection. If the person is declared indigent, the testing fee may be waived by the court. If the court finds the conditions of release have not been complied with, the court may change the conditions imposed or forfeit the bail bond or any portion thereof and enter a judgment for the Commonwealth against the person and his surety or sureties for the amount of the bail bond or any portion thereof and the cost of the proceedings.

SECTION 34. A NEW SECTION OF KRS CHAPTER 30A IS CREATED TO READ AS FOLLOWS:

(1) The council shall direct the design of, and the Kentucky State Police shall operate and maintain, an automated warrant system.

(2) The automated warrant system shall be compatible with any similar system required by the federal government for inclusion of state information in federal criminal justice databases.

(3) When a warrant is issued, the circuit clerks shall enter the data into automated warrant system equipment and programs required by the council by administrative regulation of the Justice Cabinet.

(4) As used in this section and Section 35 of this Act, a "warrant" means an arrest warrant, a juvenile pickup order, a probation or parole violation warrant, or a warden's warrant for escape.

Section 35. KRS 30A.080 is amended to read as follows:

(1) Every clerk shall maintain ***all warrants,***[~~such~~] records, files, dockets, and indexes as are prescribed by statute or rule.

(2) All necessary record books and all necessary supplies required by the clerk's office shall be procured through the Administrative Office of the Courts and paid for by the Court of Justice.

(3) No clerk shall permit the records or papers of his office to be taken out of his office except in case of invasion or insurrection, or other catastrophe, or pursuant to rule or order of court, and then he shall cause them to be returned as soon as the necessity for the removal ceases to exist.

(4) Records may be permanently transferred from the clerk's office by rule or order of the Supreme Court.

Section 36. KRS 346.030 is amended to read as follows:

(1) There is hereby created a board, to be known as the Crime Victims Compensation Board. ***The***[~~Such~~] board shall consist of five (5) members not all of whom shall be engaged in the same occupation or profession***, at least one (1) of whom shall be a victim as defined in KRS 421.500(1) or a victim advocate as defined in KRS 421.570(1),*** and the[~~said~~] board shall be appointed by the Governor.

(2) The term of office of each such member shall be four (4) years, except that of the members first appointed two (2) shall serve for terms of four (4) years, two (2) shall serve for terms of three (3) years and one (1) shall serve for a term of two (2) years, respectively. Any member appointed to fill a vacancy occurring otherwise than by expiration of a term shall be appointed for the remainder of the unexpired term.

(3) The Governor shall designate one (1) member of the board as chairman thereof, to serve as such at the pleasure of the Governor.

(4) The Governor shall establish the compensation of the members of the board pursuant to the provisions of KRS 64.640.

(5) Each new board member shall receive training on the dynamics of domestic violence, child abuse, sexual assault, homicide, and other violent crimes and the criminal justice process.

Section 37. KRS 346.060 is amended to read as follows:

(1) A claim form may be filed by a person eligible to receive an award, as provided in KRS 346.050, or, if such person is a minor, by his parent or guardian.

(2) A claim form must be filed by the claimant not later than ***five (5) years***[~~one (1) year~~] after the occurrence of the criminally injurious conduct upon which such claim is based, or not later than ***five (5) years***[~~one (1) year~~] after the death of the victim, provided, however, that upon good cause shown, the board may extend the time for filing if, in a particular case, the interest of justice so requires.

(3) Claims shall be filed in the office of the board in person or by mail. Only printed claim forms supplied by the board shall be accepted. The board shall accept for filing all claims submitted by persons eligible under subsection (1) of this section and alleging the jurisdiction requirements set forth in this chapter and meeting the requirements as to form in the rules and regulations of the board.

(4) Upon filing of a claim pursuant to this chapter, the board shall promptly notify the United States attorney (if a federal offense is involved), the Commonwealth's attorney or county attorney of the county wherein the crime is alleged to have occurred. If, within ten (10) days after such notification, such United States attorney, Commonwealth's attorney or county attorney advises the board that a criminal prosecution is pending upon the same alleged crime and requests that action by the board be deferred, the board shall defer all proceedings under this chapter until such time as such criminal prosecution has been concluded and shall so notify such United States attorney, Commonwealth's or county attorney, and the claimant. When such criminal prosecution has been concluded such United States attorney, Commonwealth's or county attorney shall promptly so notify the board. Nothing in this section shall limit the authority of the board to grant emergency awards pursuant to KRS 346.120.

Section 38. KRS 346.130 is amended to read as follows:

(1) No award shall be made unless the board or board member, as the case may be, finds that:

  (a) Criminally injurious conduct occurred;

  (b) Such criminally injurious conduct resulted in personal physical or psychological injury to, or death of, the victim; and

  (c) Police records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the police records show that such report was made more than forty-eight (48) hours after the occurrence of such crime unless the board, for good cause shown, finds the delay to have been justified.

(2) The board upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies shall deny, reconsider, or reduce an award.

(3) Any award made pursuant to this chapter shall be in an amount not exceeding out-of-pocket expenses, including indebtedness reasonably incurred for medical or other services, including mental health counseling, necessary as a result of the injury upon which the claim is based, together with loss of earnings or support resulting from such injury. Mental health counseling shall be paid for a maximum of two (2) years, but only after proper documentation is submitted to the board stating what treatment is planned and for what period of time.[~~ A six (6) months' progress report will also be required by the board.~~] The board shall have the power to discontinue mental health counseling at any time within the two (2) year period. Replacement of eyeglasses and other corrective lenses shall be included in an award, provided they were broken or damaged during the crime.

(4) Any award made for loss of earnings or support shall, unless reduced pursuant to other provisions of this chapter be in an amount equal to the actual loss sustained; provided, however, that no such award shall exceed one hundred fifty dollars ($150) for each week of lost earnings or support. The claimant or victim must have been employed at the time the crime occurred. Said employment shall be verified by the staff of the board after information is provided by the claimant or victim. Should the claimant or victim fail to supply the board with the information requested, the portion of the claim for lost wages or support shall be denied. If there are two (2) or more persons entitled to an award as a result of the injury or death of a person which is the direct result of criminally injurious conduct, the award shall be apportioned by the board among the claimants.

(5) The board is authorized to set a reasonable limit for the payment of funeral and burial expenses which shall include funeral costs, a monument, and grave plot. In no event shall an award for funeral expenses exceed ***five thousand***[~~thirty-five hundred~~] dollars ***($5,000)***[~~($3,500)~~].

(6) Any award made under this chapter shall not exceed twenty-five thousand dollars ($25,000).

(7) No award shall be made for any type of property loss or damage.

SECTION 39. A NEW SECTION OF KRS CHAPTER 421.500 TO 421.575 IS CREATED TO READ AS FOLLOWS:

(1) In order to establish the minimum conduct of criminal justice professionals with respect to crime victims and to communicate the intent of the General Assembly that victims of crime play an integral role in the criminal justice process, KRS 421.500 to 421.575 is hereby named the Kentucky Crime Victim Bill of Rights.

(2) The rights established by KRS 421.500 to 421.575 shall apply in all felony and misdemeanor proceedings in a District or Circuit Court of the Commonwealth.

(3) Nothing in KRS 421.500 to 421.575 shall provide grounds for the victim to challenge a charging decision or a conviction, to obtain a stay of trial, or to compel a new trial. Law enforcement agencies, county attorneys, and Commonwealth's attorneys and courts shall make every reasonable effort to ensure that victims of crime receive the benefits of the rights set out in KRS 421.500 to 421.575.

Section 40. KRS 421.500 is amended to read as follows:

(1) As used in KRS ***421.500 to 421.575***[~~421.510 to 421.550~~], "victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime classified as ***stalking, unlawful imprisonment, use of a minor in a sexual performance, unlawful transaction with a minor in the first degree, terroristic threatening, menacing, harassing communications, intimidating a witness,*** criminal homicide, robbery, rape, assault, sodomy, kidnapping, burglary in the first or second degree, sexual abuse, wanton endangerment, criminal abuse, or incest. If the victim is a minor or legally incapacitated, "victim" means a parent, guardian, custodian or court-appointed special advocate. If the victim is deceased and the relation is not the defendant, the following relations shall be designated as "victim" for the purpose of exercising those rights contained in KRS ***421.500 to 421.575***[~~421.510 to 421.540~~]:

(a) The spouse;

(b) An adult child if paragraph (a) of this subsection does not apply;

(c) A parent if paragraphs (a) and (b) of this subsection do not apply;

(d) A sibling if paragraphs (a) through (c) of this subsection do not apply; and

(e) A grandparent if paragraphs (a) through (d) of this subsection do not apply.

(2) If any court believes that the health, safety, or welfare of a victim who is a minor or is legally incapacitated would not otherwise adequately be protected, the court may appoint a special advocate to represent the interest of the victim and to exercise those rights provided for by KRS ***421.500 to 421.575***[~~421.510 to 421.540~~]. Communication between the victim and the special advocate shall be privileged.

(3) Law enforcement personnel shall ensure that victims receive information on available ***protective,*** emergency, social, and medical services upon initial contact with the victim and are given information on the following as soon as possible:

(a) Availability of crime victim compensation where applicable;

(b) Community based treatment programs;

(c) The criminal justice process as it involves the participation of the victim or witness;

(d) The arrest of the accused; and

(e) How to ***register to be notified when***[~~find out if~~] a person has been released from ***prison,*** jail***,***[~~ or~~] a juvenile detention facility***, or a psychiatric facility or forensic psychiatric facility if the case involves a violent crime as defined in KRS 439.3401 and the person charged with or convicted of the offense has been involuntarily hospitalized pursuant to KRS Chapter 202A***.

(4) Law enforcement officers and attorneys for the Commonwealth shall provide information to victims and witnesses on how they may be protected from intimidation, harassment, and retaliation as defined in KRS 524.040, 524.045 or 524.055.

(5) Attorneys for the Commonwealth shall make a reasonable effort to insure that:

(a) All victims and witnesses who are required to attend criminal justice proceedings are notified promptly of any scheduling changes that affect their appearances;

(b) If victims so desire and if they provide the attorney for the Commonwealth with a current address and telephone number, they shall receive prompt notification, if possible, of judicial proceedings relating to their case, including the defendant's release on bond ***and any special conditions of release***; of the charges against the defendant, the defendant's pleading to the charges, and the date set for the trial; of notification of changes in the custody of the defendant and changes in trial dates; of the verdict, the victim's right to make an impact statement for consideration by the court at the time of sentencing of the defendant, the date of sentencing, the victim's right to receive notice of any parole board hearing held for the defendant, and that the office of Attorney General will notify the victim if an appeal of the conviction is pursued by the defendant; and

(c) The victim knows how to ***register to be notified when***[~~find out if~~] a person has been released from ***a prison,*** jail***,***[~~ or~~] a juvenile detention facility***, or a psychiatric facility or forensic psychiatric facility if the case involves a violent crime as defined in KRS 439.3401 and the person charged with or convicted of the offense has been involuntarily hospitalized pursuant to KRS Chapter 202A;***

(d) The victim receives information on available:

1. Protective, emergency, social, and medical services;

2. Crime victim compensation, where applicable;

3. Restitution, where applicable;

4. Assistance from a victim advocate; and

5. Community-based treatment programs; and

(e) The victim of crime may pursuant to Section 51 of this Act receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts.

(6) The victim shall be consulted by the attorney for the Commonwealth on the disposition of the case including dismissal, release of the defendant pending judicial proceedings, ***any conditions of release,*** a negotiated plea, and entry into a pretrial diversion program.

(7) In prosecution for offenses listed in this section for the purpose of defining "victim," law enforcement agencies and attorneys for the Commonwealth shall promptly return a victim's property held for evidentiary purposes unless there is a compelling reason for retaining it. Photographs of such property shall be received by the court as competent evidence in accordance with the provisions of KRS 422.350.

(8) A victim or witness who so requests shall be assisted by law enforcement agencies and attorneys for the Commonwealth in informing employers that the need for victim or witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work.

(9) The Attorney General, where possible, shall provide technical assistance to law enforcement agencies and attorneys for the Commonwealth if such assistance is requested for establishing a victim assistance program.

(10) If a defendant seeks appellate review of a conviction and the Commonwealth is represented by the Attorney General, the Attorney General shall make a reasonable effort to notify victims promptly of the appeal, the status of the case, and the decision of the appellate court.

Section 41. KRS 421.510 is amended to read as follows:

(1) Where the victim is less than sixteen (16) years old and the crime is a sexual offense including violations of KRS 510.040 to 510.150, 530.020, ***530.064***[~~530.065~~], 530.070, 531.310, 531.320, and 531.370, a speedy trial may be scheduled as provided in subsection (2) of this section.

(2) The court, upon motion by the attorney for the Commonwealth for a speedy trial, shall set a hearing date on the motion within ten (10) days of the date of the motion. If the motion is granted, the trial shall be scheduled within ninety (90) days from the hearing date.

(3) In ruling on any motion or other request for a delay or continuance of the proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

Section 42. KRS 346.185 is amended to read as follows:

(1) There is established in the State Treasury the "Crime Victims' Compensation Fund," hereinafter referred to as the "fund," to be administered by the Crime Victims' Compensation Board. In all cases in which defendants plead or are found guilty of a crime as defined in KRS 500.080(2), there shall be imposed as an additional cost the sum of ***thirty***[~~ten~~] dollars ***($30)***[~~($10)~~]. This sum shall not be suspended or probated. This sum shall be collected in its entirety and shall not be prorated. The clerk of the court shall collect the cost and forward it monthly to the State Treasurer, to be deposited in the fund. Nothing herein shall be construed to limit the power of the court to order additional forms of restitution including public or charitable work or reparation to the victim, to the fund, or otherwise as authorized by law.

(2) The fund shall consist of moneys from the following: appropriations by the General Assembly; the federal government; payments by the defendant pursuant to subsection (1) of this section and any other public or private source. Any unexpended balance remaining in the fund at the end of the biennium shall not lapse and be transferred to the general fund, but shall remain in the crime victims' compensation fund. Any funds not utilized by the board shall be used to provide assistance to programs for victims and the board shall allocate such funds to any agency providing services to victims. In the event there are insufficient funds in the fund to pay all claims in full, all claims shall be paid at seventy percent (70%). If there are no moneys in the fund, then no claim shall be paid until moneys have again accumulated. In addition to payment of claims, moneys in the fund shall be used to pay all the necessary and proper expenses of the Crime Victims' Compensation Board.

(3) When judgment is entered against a defendant as provided in this section and each sum, or any part thereof, remains unpaid, there shall be withheld from any disbursement, payment, benefit, compensation, salary, or other transfer of money from the State of Kentucky to such defendant an amount equal to the unpaid amount of the judgment. The amount shall be paid to the crime victims' compensation fund and satisfaction of the judgment shall be entered on the court record. Under no circumstances shall the general revenue fund be used to reimburse court costs or pay for judgment.

Section 43. KRS 23A.205 is amended to read as follows:

(1) Court costs for a criminal case in the Circuit Court shall be ***eighty-five***[~~fifty five~~] dollars ***($85), which shall include the fee mandated in KRS 346.185***[~~($55)~~].

(2) ***Except as provided in KRS 346.185,*** taxation of costs against a defendant, upon conviction, may be probated or suspended at the discretion of the court.

(3) Additional fees shall be charged in Circuit Court criminal matters as follows:

(a) Preparing a certification $1.00

(b) Preparing a copy of a document (per page) . $0.15

(4) The additional fees required by subsection (3) of this section shall be paid to the clerk at the time the service is requested.

(5) The circuit clerk shall monthly pay five dollars ($5) from each court cost collected pursuant to subsection (1) of this section to the sheriff for use by the sheriff for providing security services and related activities to the court as provided for in KRS 64.092. The clerk shall include among his reports to the Administrative Office of the Courts the amounts paid to the sheriff.

Section 44. KRS 24A.175 is amended to read as follows:

(1) Court costs for a criminal case in the District Court shall be:

(a) For an offense for which prepayment is permitted under KRS 189.394, 431.451, or 431.452 and for which prepayment has been made prior to trial as required by law $42.00

(b) For an offense for which prepayment is not permitted or has not been made .... ***$77.00***[~~$47.00~~]

(c) Court costs designated in paragraph (b) of this subsection shall include the fee mandated in KRS 346.185.

(2) There shall be no court costs for a parking citation when:

(a) The fine is paid to the clerk before the trial date in the same manner as provided for speeding citations under KRS 189.394(3); and

(b) The citation does not involve parking in a fire lane or blocking the traveled portion of the highway.

(3) Additional costs shall be assessed in District Court criminal matters as follows:

(a) Preparing an attestation $0.50

(b) Preparing a certification $1.00

(c) Preparing a copy of a document (per page) $0.25

(4) Taxation of costs against a defendant, upon conviction, including persons sentenced to state traffic school as provided under KRS 186.574, shall be mandatory and shall not be probated or suspended.

(5) The circuit clerk shall, at the time fines and costs are paid over to the state, pay five dollars ($5) from each court cost collected pursuant to subsection (1) of this section to the county treasurer for use by the fiscal court for the sole purpose of defraying the costs of operation of the county jail and the transportation of prisoners and shall include among his reports to the Administrative Office of the Courts the amounts paid to the county.

(6) The circuit clerk shall, at the time fines and costs are paid over to the state, pay ten dollars ($10) from each court cost collected pursuant to subsection (1) of this section to the State Treasury for the benefit and use of the Kentucky Local Correctional Facilities Construction Authority pursuant to KRS 441.625 to 441.695.

(7) The circuit clerk shall monthly pay five dollars ($5) from each court cost collected pursuant to subsection (1) of this section to the sheriff for use by the sheriff for providing security services and related activities to the court as provided for in KRS 64.092. The clerk shall include among his reports to the Administrative Office of the Courts the amounts paid to the sheriff.

SECTION 45. A NEW SECTION OF KRS CHAPTER 26A IS CREATED TO READ AS FOLLOWS:

(1) The Court shall collect the crime victim compensation fee specified in KRS 346.185 when court costs are collected. The fee shall be forwarded by the Circuit Clerk to the State Treasurer at the time costs are transferred to the State Treasurer.

(2) The collection of crime victim compensation fees shall be accounted for as a separate item to the State Treasurer and the Administrative Office of the Courts.

SECTION 46. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

(1) Restitution to a named victim, if there is a named victim, shall be ordered in a manner consistent, insofar as possible, with the provisions of this section and Sections 47, 48, 49, and 50 of this Act in addition to any other part of the penalty for any offense under this chapter. The provisions of this section shall not be subject to suspension or nonimposition.

(2) If pretrial diversion is granted, restitution shall be a part of the diversion agreement.

(3) If probation, shock probation, conditional discharge, or other alternative sentence is granted, restitution shall be a condition of the sentence.

(4) If a person is sentenced to incarceration and paroled, restitution shall be made a condition of parole.

SECTION 47. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

When a judge orders restitution, the judge shall:

(1) Order the restitution to be paid to a specific person or organization through the circuit clerk, who shall disburse the moneys as ordered by the court. In addition, the clerk shall receive a fee of one dollar ($1) from the defendant to defray the costs of making the required disbursement;

(2) Be responsible for overseeing the collection of restitution;

(3) Set the amount of restitution to be paid;

(4) Set the amount and frequency of each restitution payment or require the payment to be made in a lump sum;

(5) Monitor the payment of the restitution to assure that payment is being made;

(6) If restitution is not being paid as ordered, hold a hearing to determine why the restitution is not being paid;

(7) If the restitution is not being paid and no good reason exists therefore institute sanctions against the defendant; and

(8) Not release the defendant from probation supervision until restitution has been paid in full and all other aspects of the probation order have been successfully completed.

SECTION 48. A NEW SECTION OF KRS CHAPTER 439 IS CREATED TO READ AS FOLLOWS:

(1) When there is an identified victim of a defendant's crime to whom restitution has been ordered but not yet paid in full, or restitution has been ordered paid to a government agency and has not yet been paid in full, the Parole Board shall order the defendant to pay restitution as a condition of parole.

(2) When the Parole Board orders restitution, the board shall:

(a) Order the restitution to be paid to a specific person or organization through the Division of Probation and Parole, which shall disburse the moneys as ordered by the board;

(b) The Division of Probation and Parole shall be responsible for overseeing the collection of the restitution;

(c) Set the amount of restitution to be paid, if not already set;

(d) Set the amount and frequency of each restitution payment or require the payment to be made in a lump sum;

(e) Monitor the payment of the restitution to assure that payment is being made;

(f) If restitution is not being paid as ordered, institute parole violation proceedings to determine why the restitution is not being paid;

(g) If the restitution is not being paid and no good reason exists therefor, institute sanctions against the defendant; and

(h) Not release the defendant from parole supervision until restitution has been paid in full.

(3) The board, in addition to any other sanctions which may be imposed on the defendant, ask a court to hold a defendant who is not paying restitution in the manner or amount prescribed in contempt of court.

(4) Any statute relating to the length of parole supervision notwithstanding, the parole for a person owing restitution shall be until the restitution is paid in full, even if this would lengthen the period of supervision beyond the statutory limit of parole supervision or the statutory limit for serving out the sentence imposed.

(5) Payment of restitution in full prior to the end of the period of parole supervision shall not shorten the period of parole supervision.

Section 49. KRS 533.020 is amended to read as follows:

(1) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court shall place him on probation if he is in need of the supervision, guidance, assistance, or direction that the probation service can provide. Conditions of probation shall be imposed as provided in KRS 533.030, but the

court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the period of probation.

(2) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court may sentence him to probation with an alternative sentence if it is of the opinion that the defendant should conduct himself according to conditions determined by the court and that probationary supervision alone is insufficient. The court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the alternative sentence.

(3) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court may sentence him to conditional discharge if it is of the opinion that the defendant should conduct himself according to conditions determined by the court but that probationary supervision is inappropriate. Conditions of conditional discharge shall be imposed as provided in KRS 533.030, but the court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the period of conditional discharge.

(4) The period of probation, probation with an alternative sentence, or conditional discharge shall be fixed by the court and at any time may be extended or shortened by duly entered court order. Such period, with extensions thereof, shall not exceed five (5) years***, or the time necessary to complete restitution, whichever is longer,*** upon conviction of a felony nor two (2) years***, or the time necessary to complete restitution, whichever is longer,*** upon conviction of a misdemeanor. Upon completion of the probationary period, probation with an alternative sentence, or the period of conditional discharge, the defendant shall be deemed finally discharged, provided no warrant issued by the court is pending against him, and probation, probation with an alternative sentence, or conditional discharge has not been revoked.

(5) Notwithstanding the fact that a sentence to probation, probation with an alternative sentence, or conditional discharge can subsequently be modified or revoked, a judgment which includes such a sentence shall constitute a final judgment for purposes of appeal.

Section 50. KRS 533.030 is amended to read as follows:

(1) The conditions of probation and conditional discharge shall be such as the court, in its discretion, deems reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so. The court shall provide as an explicit condition of every sentence to probation or conditional discharge that the defendant not commit another offense during the period for which the sentence remains subject to revocation.

(2) When imposing a sentence of probation or conditional discharge, the court may, in addition to any other reasonable condition, require that the defendant:

(a) Avoid injurious or vicious habits;

(b) Avoid persons or places of disreputable or harmful character;

(c) Work faithfully at suitable employment as far as possible;

(d) Undergo available medical or psychiatric treatment and remain in a specific institution as required for that purpose;

(e) Post a bond, without surety, conditioned on performance of any of the prescribed conditions;

(f) Support his dependents and meet other family responsibilities;

(g) Pay the cost of the proceeding as set by the court;

(h) Remain within a specified area;

(i) Report to the probation officer as directed;

(j) Permit the probation officer to visit him at his home or elsewhere;

(k) Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment; and

(l) If the defendant's record indicates a controlled substance or alcohol problem, submit to periodic testing for use of controlled substances or alcohol and pay a reasonable fee, not to exceed the actual cost of the test and analysis, as determined by the court, said fee to be collected by the circuit clerk, held in an agency account, and disbursed, on court order, solely to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis performed under this subsection. For good cause shown, the testing fee may be waived by the court.

(3) When imposing a sentence of probation or conditional discharge in a case where a victim of a crime has suffered monetary damage as a result of the crime due to his property having been converted, stolen, or unlawfully obtained, or its value substantially decreased as a result of the crime, or where the victim suffered actual medical expenses, direct out-of-pocket losses, or loss of earning as a direct result of the crime, or if as a direct result of the crime the victim incurred medical expenses that were paid by the Cabinet for Human Resources, the Crime Victims Compensation Board, or any

other governmental entity, the court shall order the defendant to make restitution in addition to any other penalty provided for the commission of the offense. Payment of restitution to the victim shall have priority over payment of restitution to any government agency. Restitution shall be ordered in the full amount of the damages, unless the damages exceed one hundred thousand dollars ($100,000) or twice the amount of the gain from the commission of the offense, whichever is greater, in which case the higher of these two (2) amounts shall be awarded. The court may, in lieu of ordering monetary restitution, order the defendant to make restitution by working for or on behalf of the victim. The court shall determine the number of hours of work necessary by applying the then prevailing federal minimum wage to the total amount of monetary damage caused by or incidental to the commission of the crime. The court may, with the consent of the agency, order the defendant to work as specified in KRS 533.070. Any work ordered pursuant to this section shall not be deemed employment for any purpose, nor shall the person performing the work be deemed an employee for any purpose. Where there is more than one (1) defendant or more than one (1) victim, restitution may be apportioned. Restitution shall be subject to the following additional terms and conditions:

(a)~~[Restitution by payment may be ordered in a lump sum or in specified payments;~~

~~(b) Restitution by payment may be ordered paid through the circuit clerk who shall disburse the moneys as ordered by the court;~~

~~(c)]~~ Where property which is unlawfully in the possession of the defendant is in substantially undamaged condition from its condition at the time of the taking, return of the property shall be ordered in lieu of monetary restitution;

~~[(d) Restitution by payment to governmental agencies shall be made through payments to and disbursement by the circuit clerk;]~~

(b)~~[(e)]~~The circuit clerk shall assess an additional fee of two percent (2%) to defray the administrative costs of collection of payments or property. This fee shall be paid by the defendant and shall enure to the general fund of the State Treasury;

(c)~~[(f)]~~ When a defendant fails to make restitution ordered to be paid through the circuit clerk, the circuit clerk shall notify the court.~~[The court shall hold a hearing to determine if the defendant is in contempt of the court or has violated the terms of his probation]~~; and

(d)~~[(g)]~~ An order of restitution shall not preclude the owner of property or the victim who suffered personal physical or mental injury or out-of-pocket loss of earnings or support or other damages from proceeding in a civil action to recover damages from the defendant. A civil verdict shall be reduced by the amount paid under the criminal restitution order.

(4) In addition to any other terms and conditions imposed under this section, the court may require the probationer, as a condition of his probation, to make one (1) payment to a crime stoppers organization in an amount not to exceed the amount of the reward paid by a crime stoppers organization, as defined by KRS 431.570, relative to the probationer.

(5) When a defendant is sentenced to probation or conditional discharge, he shall be given a written statement explicitly setting forth the conditions under which he is being released.

(6) When imposing a sentence of probation or conditional discharge, the court, in addition to conditions imposed under this section, may require as a condition of the sentence that the defendant submit to a period of imprisonment in the county jail or to a period of home incarceration at whatever time or intervals, consecutive or nonconsecutive, the court shall determine. The time actually spent in confinement or home incarceration pursuant to this provision shall not exceed six (6) months or the maximum term of imprisonment assessed pursuant to KRS Chapter 532, whichever is the shorter. Time spent in confinement or home incarceration under this subsection shall be credited against the maximum term of imprisonment assessed for the defendant pursuant to KRS Chapter 532, if probation or conditional discharge is revoked and the defendant is sentenced to imprisonment. Any prohibitions against probation, shock probation, or conditional discharge under KRS 533.060(2), or 532.045 shall not apply to persons convicted of a misdemeanor or Class D felony and sentenced to a period of confinement or home incarceration under this section.

SECTION 51. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

(1) The Attorney General shall develop and administer a program for the protection of crime victims and witnesses and their immediate families.

(2) Within the limits of the administrative regulations, guidelines, and appropriations for this purpose, the program shall provide funding to the State Police or to a sheriff's office or city, county, or urban-county police department agreeing to provide protection to crime victims and witnesses and their families.

(3) Any Commonwealth's attorney or county attorney may apply to the Attorney General for funding for protection of crime victims, witnesses, and their families.

(4) No protective service shall be rendered to the same person for more than six (6) months.

(5) Protective services shall be limited to:

(a) Physical protection of the person;

(b) Physical security measures for the person's residence, vehicle, workplace, or combination thereof; or

(c) Short-term relocation.

(6) The Attorney General shall promulgate administrative regulations under KRS Chapter 73A for the operation of the program.

(7) Nothing in this statute shall be construed to create a cause of action for money damages against the state, a county, a municipality, or any of their agencies, public officials, or employees.

(8) No court shall order a law enforcement agency to protect crime victim witnesses or their immediate families.

SECTION 52. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of ethnic intimidation who intentionally because of race, color, religion, disability as defined in KRS 344.010, or national origin of another individual or group of individuals, violates a provision of any one (1) of the following:

(a) KRS 508.010, 508.020, or 508.025;

(b) KRS 508.050 or 508.060;

(c) KRS 508.100 or 508.110;

(d) KRS 509.020;

(e) KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.100, or 510.110;

(f) KRS 512.020, 512.050, or 512.060;

(g) KRS 513.020, 513.030, or 513.040; or

(h) KRS 525.020, 525.050, 525.060, 525.070, or 525.080.

(2) Unless the underlying offense is a Class A felony, the range of punishment for the crime of ethnic intimidation shall be determined by the underlying statutory violation referenced in subsection (1) of this section, with the punishment being set at one (1) degree higher than that for the underlying statutory violation. If the underlying offense is a Class A felony, the punishment shall be the same as that for a Class A felony.

SECTION 53. A NEW SECTION OF KRS CHAPTER 525 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of institutional vandalism when he, because of race, color, religion, disability as defined in KRS 344.010, or national origin of another individual or group of individuals, knowingly vandalizes, defaces, damages, or desecrates objects defined in KRS 525.110.

(2) Institutional vandalism is a Class D felony.

SECTION 54. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding any criminal prosecution or the result thereof, any person incurring injury to his person or damage or loss to his property as a result of conduct in violation of Section 52 or 53 of this Act shall have cause for a civil action to secure an injunction, damages, or other appropriate relief in law or in equity against any and all persons who have violated Section 52 or 53 of this Act.

(2) Any action, whether or not a violation of Section 52 or 53 of this Act has occurred, shall be determined according to the burden of proof used in other civil actions for similar relief.

(3) Upon prevailing in the civil action, the plaintiff may recover:

(a) Both special and general damages, including damages for emotional distress; and

(b) Punitive damages.

(4) Notwithstanding any other provision of the law, the parent or legal guardian who has been made a party to the action of an unemancipated minor may be liable for any judgment rendered against the minor under this section.

SECTION 55. A NEW SECTION OF KRS CHAPTER 346 IS CREATED TO READ AS FOLLOWS:

A person who suffers personal injury as a result of conduct in violation of Section 54 of this Act is a victim of criminally injurious conduct as defined in KRS 346.020 and is eligible for awards pursuant to KRS Chapter 346.

SECTION 56. A NEW SECTION OF KRS CHAPTER 376 IS CREATED TO READ AS FOLLOWS:

(1) Any statute relating to the filing of liens notwithstanding, no county clerk or other official to whom a lien is directed shall accept the document for filing or recording unless:

(a) The document states the statutory authority that permits the filing of a lien of that type or the filing of a lien for that purpose; or

(b) The person presenting a lien that is based on the judgment of a court tenders with the lien a copy of the judgment entered by the state, federal, or other court of competent jurisdiction; or

(c) The lien contains a signed statement by an attorney licensed to practice law in Kentucky that the lien was prepared by the attorney.

(2) Any lien filed in the office of a county clerk, except as otherwise provided in subsection (3) of this section, shall have a signed statement by the person filing the lien that the person against whom the lien has been filed has been given written notice of the lien through the mails, postage prepaid.

(3) Any document purporting to give evidence of a lien, or a financing statement, that is provided for by KRS Chapter 355 is exempted from the requirements of this section.

SECTION 57. A NEW SECTION OF KRS CHAPTER 376 IS CREATED TO READ AS FOLLOWS:

(1) The owner of real or personal property may bring an action in the District or Circuit Court in the county in which the lien has been filed to direct the official who recorded the lien to remove the lien or to place a notation that the lien is invalid in the book in which the lien has been recorded if it is shown to the satisfaction of the court that the lien is forged, groundless, contains a material misstatement, or is a false claim.

(2) A document purporting to create an interest in or a lien or encumbrance against real or personal property not authorized by statute, judgment of a court of competent jurisdiction, or other specific legal authority shall be presumed to be invalid. This presumption may be overcome by clear and convincing evidence.

(3) Unless written notice, sent by certified mail, return receipt requested to the person against whose property the lien is filed, is sent by the person filing the lien, no statute of limitations shall apply to the actions under this section.

(4) A person for whom a lien has been removed or invalidated by a court pursuant to this section shall be awarded compensatory and punitive damages together with the costs of the action and legal fees to be paid by the person filing or causing the filing of the lien. The court shall, if compensatory or punitive damages are sought, hold a hearing to determine the amount of each type of damages. In lieu of compensatory and punitive damages, the plaintiff may seek statutory damages of one thousand dollars ($1,000).

SECTION 58. A NEW SECTION OF KRS CHAPTER 434 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of filing an illegal lien when he files a document or lien that he should have known was forged, groundless, contained a material misstatement, or was a false claim. It shall be an affirmative defense that any material misstatement was not intentional.

(2) Filing an illegal lien is a Class D felony for the first offense, a Class C felony for any second offense, and a Class B felony for any subsequent offense. A sentence for violation of this section shall be ordered served consecutively to any other sentence received by the defendant.

Section 59. KRS 15.330 is amended to read as follows:

(1) The council is vested with the following functions and powers:

(a) To prescribe standards for the approval and continuation of approval of schools at which law enforcement training courses required under KRS 15.310 to 15.510 and KRS 15.990 to 15.992 shall be conducted, including but not limited to minimum standards for facilities, faculty, curriculum, and hours of attendance related thereto;

(b) To prescribe minimum qualifications for instructors at such schools, except that institutions of higher education shall be exempt from council requirements;

(c) To prescribe qualifications for attendance and conditions for expulsion from such schools;

(d) To approve, to issue and to revoke for cause certificates to schools and instructors as having met requirements under KRS 15.310 to 15.510 and KRS 15.990 to 15.992;

(e) To approve law enforcement officers and other persons as having met requirements under KRS 15.310 to 15.510 and KRS 15.990 to 15.992;

(f) To inspect and evaluate schools at any time and to require of schools, instructors and persons approved or to be approved under the provisions of KRS 15.310 to 15.510 and KRS 15.990 to 15.992, any information or documents;

(g) To recommend reasonable rules and regulations to the secretary to accomplish the purposes of KRS 15.310 to 15.510 and KRS 15.990 to 15.992;

(h) To monitor the Law Enforcement Foundation Program as prescribed in KRS 15.410 to 15.510;[~~ and~~]

(i) To adopt bylaws for the conduct of its business not otherwise provided for***; and***

(j) The council shall have the authority to certify police officers as set out in this chapter.

(2) The provisions of KRS 15.310 to 15.510 and KRS 15.990 to 15.992 do not apply to the Department of State Police ***except for the certification requirement established by this chapter***.

Section 60. KRS 15.420 is amended to read as follows:

As used in KRS 15.410 to 15.510, unless the context otherwise requires:

(1) "Local unit of government" means any city or county, or any combination of cities and counties, of the Commonwealth.

(2) "Police officer" means a full-time member of a lawfully organized police ***or sheriff's*** department of county***, urban-county*** or city government ***or state university safety and security department*** who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of the state, but does not include Kentucky State Police, any elected officer ***except the***~~[,]~~ sheriff,~~[deputy sheriff]~~, constable, deputy constable, district detective, deputy district detective, special local peace officer, auxiliary police officer or any other peace officer not specifically authorized in KRS 15.410 to 15.510.

(3) "Council" means the Kentucky Law Enforcement Council.

Section 61. KRS 15.460 is amended to read as follows:

(1) Beginning July ***15***~~[1]~~, ***1988***~~[1982]~~, an eligible local unit of government shall be entitled to receive annually a supplement of two thousand ***seven***~~[five]~~ hundred ***fifty*** dollars ***($2,750)***~~[($2,500)]~~ for each qualified police officer it employs, plus an amount equal to the required employer's contribution on the supplement to the defined benefit pension plan to which the officer belongs, but no more than the required employer's contribution to the County Employees Retirement System hazardous duty category. ***Beginning July 1, 1999, an eligible local unit of government shall be entitled to receive annually a supplement of three thousand dollars ($3,000) for each qualified police officer it employs, plus an amount equal to the required employer's contribution on the supplement to the defined benefit pension plan to which the officer belongs but no more than the required employer's contribution to the County Employees Retirement System hazardous duty category.*** In the case of County Employees Retirement System membership, the pension contribution on the supplement shall be paid whether the officer enters the system under hazardous duty coverage or nonhazardous coverage. The local unit of government shall pay the amount received for retirement coverage to the appropriate retirement system to cover the required employer contribution on the pay supplement. Should the foundation program funds be insufficient to pay employer contributions to the system, then the total amount available for pension payments shall be prorated to each eligible government so that each receives the same percentage of required pension costs attributable to the cash salary supplement.

(2) Each qualified police officer, whose local government receives a supplement pursuant to subsection (1) of this section, shall be paid by the local government the supplement which his qualifications brought to the local government. The supplement paid each police officer shall be in addition to his regular salary.

Section 62. KRS 70.030 is amended to read as follows:

(1) The sheriff may appoint his own deputies, and may revoke the appointment at his pleasure except where that revocation is prohibited by the provisions of KRS 70.260 to 70.273. In a county containing a city of the first class with a deputy sheriff merit board, the term of office of a deputy shall continue from sheriff to sheriff unless a deputy is removed according to the provisions of KRS 70.260 to 70.273. Before any deputy executes the duties of his office, he shall take the oath required to be taken by the sheriff.

(2) The sheriff may appoint nonsworn clerical, technical, professional, and support personnel to assist him in the performance of the duties of his office. All nonsworn personnel shall serve at the pleasure of the sheriff.

(3) No sheriff whose county has adopted a deputy sheriff merit board under KRS 70.260 shall appoint a deputy who is a member of the immediate family of the sheriff. The term "member of the immediate family" has the meaning given in KRS 70.260.

(4) In order for a sheriff or the members of the sheriff's department to participate in the Kentucky Law Enforcement Foundation Program fund authorized by KRS 15.410 to 15.510, the county shall establish a deputy sheriffs' merit board as provided in this statute.

SECTION 63. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

As used in Sections 63 to 66 of this Act, the following definitions apply:

(1) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of methamphetamine, or possession with intent to manufacture, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, except that this term does not include activities:

(a) By a practitioner incident to administering or dispensing of a controlled substance in the course of his professional practice; or

(b) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or incident to, research, teaching, or chemical analysis; or

(c) By a pharmacist incident to dispensing of a controlled substance in the course of his professional practice.

(2) "Methamphetamine" means any substance that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

(3) "Traffic" means to distribute, dispense, sell, transfer, or possess with intent to distribute, dispense, or sell

methamphetamine.

SECTION 64. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of manufacturing methamphetamine when he knowingly and unlawfully:

(a) Manufactures methamphetamine; or

(b) Possesses the chemicals or equipment for the manufacture of methamphetamine with the intent to manufacture methamphetamine.

(2) Manufacture of methamphetamine is a Class B felony for the first offense and a Class A felony for a second or subsequent offense.

SECTION 65. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of trafficking in methamphetamine when he knowingly and unlawfully sells, transfers, distributes, or dispenses methamphetamine.

(2) Trafficking in methamphetamine is a Class C felony for the first offense and a Class B felony for a second or subsequent offense.

SECTION 66. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) Any person convicted of, pleading guilty to, or entering an Alford plea to any offense involving trafficking in a controlled substance or trafficking in marijuana shall, in addition to any other penalty authorized by law, be sentenced to:

(a) Pay the costs of disposal of the controlled substances;

(b) Pay the costs of disposal of all equipment, chemicals, materials, or other items used in or in furtherance of the trafficking offense;

(c) Pay the costs involved with environmental clean-up and remediation required for the real property and personal property used for or in furtherance of the trafficking offenses; and

(d) Pay the costs of protecting the public from dangers from chemicals, materials, and other items used for or in furtherance of the trafficking offense from the time of the arrest until the time that the clean-up or remediation of the real and personal property is concluded. The Commonwealth shall have a lien on all of the assets of the defendant until the amount specified by the court under this subsection is paid in full. The Commonwealth's attorney shall file the lien.

(2) No court shall stay, waive, delay, or otherwise fail to impose the penalty required by this section.

Section 67. KRS 218A.010 is amended to read as follows:

As used in this chapter:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) A practitioner or by his authorized agent under his immediate supervision and pursuant to his order; or

(b) The patient or research subject at the direction and in the presence of the practitioner.

(2) "Anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone that promotes muscle growth and includes those substances listed in KRS 218A.090(5) but does not include estrogens, progestins, and anticosteroids.

(3) "Controlled substance" means ***methamphetamine, or*** a drug, substance, or immediate precursor in Schedules I through V and includes a controlled substance analogue.

(4) (a) "Controlled substance analogue", except as provided in subparagraph (b), means a substance:

1. The chemical structure of which is substantially similar to the structure of a controlled substance in Schedule I or II; and

2. Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or

3. With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.

(b) Such term does not include:

1. Any substance for which there is an approved new drug application;

2. With respect to a particular person, any substance if an exemption is in effect for investigational use for

that person pursuant to federal law to the extent conduct with respect to such substance is pursuant to such exemption; or

3. Any substance to the extent not intended for human consumption before the exemption described in subparagraph 2. of this paragraph takes effect with respect to that substance.

(5) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(6) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery.

(7) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(8) "Drug" means:

(a) Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(b) Substances intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man or animals;

(c) Substances (other than food) intended to affect the structure or any function of the body of man or animals; and

(d) Substances intended for use as a component of any article specified in this subsection.

It does not include devices or their components, parts, or accessories.

(9) "Immediate precursor" means a substance which is the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(10) "Isomer" means the optical isomer, except as used in KRS 218A.050(3) and 218A.070(1)(d). As used in KRS 218A.050(3), the term "isomer" means the optical, positional, or geometric isomer. As used in KRS 218A.070(1)(d), the term "isomer" means the optical or geometric isomer.

(11) "Manufacture"***, except as provided in Section 63 of this Act,*** means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include activities:

(a) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(b) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or

(c) By a pharmacist as an incident to his dispensing of a controlled substance in the course of his professional practice.

(12) "Marijuana" means all parts of the plant Cannabis sp., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin or any compound, mixture, or preparation which contains any quantity of these substances.

(13) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subsection (13)(a) of this section, but not including the isoquinoline alkaloids of opium;

(c) Opium poppy and poppy straw;

(d) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.

(e) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

(g) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (a) to (f).

(14) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under KRS 218A.030, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(15) "Opium poppy" means the plant of the species papaver somniferum L., except its seeds.

(16) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(17) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(18) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy.

(19) "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific investigator, optometrist as authorized in KRS 320.240, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

(20) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(21) "Second or subsequent offense" means that for the purposes of this chapter an offense is considered as a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter, or under any statute of the United States, or of any state relating to substances classified as controlled substances or counterfeit substances, except that a prior conviction for a nontrafficking offense shall be treated as a prior offense only when the subsequent offense is a nontrafficking offense. For the purposes of this section, a conviction voided under KRS 218A.275 or 218A.276 shall not constitute a conviction under this chapter.

(22) "Sell" means to dispose of a controlled substance to another person for consideration or in furtherance of commercial distribution.

(23) "Tetrahydrocannabinols" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the plant Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

1. Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;
2. Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers;
3. Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers.

(24) "Traffic"***, except as provided in Section 63 of this Act,*** means to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, or sell a controlled substance.

(25) "Transfer" means to dispose of a controlled substance to another person without consideration and not in furtherance of commercial distribution.

(26) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

Section 68. KRS 218A.1412 is amended to read as follows:

(1) A person is guilty of trafficking in a controlled substance in the first degree when he knowingly and unlawfully traffics in: a controlled substance***, except a substance that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers or, that is*** classified in Schedules I or II which is a narcotic drug; a controlled substance analogue; lysergic acid diethylamide; or phencyclidine.

(2) Any person who violates the provisions of subsection (1) of this section shall:

(a) For the first offense be guilty of a Class C felony.

(b) For a second or subsequent offense be guilty of a Class B felony.

Section 69. KRS 218A.1413 is amended to read as follows:

(1) A person is guilty of trafficking in a controlled substance in the second degree when:

(a) He knowingly and unlawfully traffics in a controlled substance classified in Schedules I and II which is not a narcotic drug; ***or specified in KRS 218A.1412;*** or a controlled substance classified in Schedule III; but not lysergic acid diethylamide, phencyclidine, or marijuana; or

(b) He knowingly and unlawfully prescribes, orders, distributes, supplies, or sells an anabolic steroid for:

1. Enhancing performance in an exercise, sport, or game; or
2. Hormonal manipulation intended to increase muscle mass, strength, or weight in the human species without a medical necessity.

(2) Any person who violates the provisions of subsection (1) of this section shall:

(a) For the first offense be guilty of a Class D felony.

(b) For a second or subsequent offense be guilty of a Class C felony.

Section 70. KRS 218A.1415 is amended to read as follows:

(1) A person is guilty of possession of a controlled substance in the first degree when he knowingly and unlawfully possesses: a controlled substance ***that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers or, that is*** classified in Schedules I or II which is a narcotic drug; a controlled substance analogue; lysergic acid diethylamide; or phencyclidine.

(2) Possession of a controlled substance in the first degree is:

(a) For a first offense a Class D felony.

(b) For a second or subsequent offense a Class C felony.

Section 71. KRS 218A.1416 is amended to read as follows:

(1) A person is guilty of possession of a controlled substance in the second degree when he knowingly and unlawfully possesses: a controlled substance classified in Schedules I or II which is not a narcotic drug; ***or specified in KRS 218A.1415;*** or, a controlled substance classified in Schedule III; but not lysergic acid diethylamide, phencyclidine, or marijuana.

(2) Possession of a controlled substance in the second degree is:

(a) For a first offense a Class A misdemeanor.

(b) For a second or subsequent offense a Class D felony.

Section 72. KRS 218A.070 is amended to read as follows:

Unless otherwise rescheduled by regulation of the Cabinet for Human Resources, the controlled substances listed in this section are included in Schedule II:

(1) Any material, compound, mixture, or preparation which contains any quantity of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (a), but not including the isoquinoline alkaloids of opium;

(c) Opium poppy and poppy straw;

(d) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(2) Any material, compound, mixture, or preparation which contains any quantity of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation: Alphaprodine; Anileridine; Bezitramide; Dihydrocodeine; Diphenoxylate; Fentanyl; Isomethadone; Levomethorphan; Levorphanol; Metazocine; Methadone; Methadone-Intermediate; 4-cyano-2-dimethylamino-4; 4-diphenyl butane; Moramide-Intermediate; 2-methyl-3-morpholino-1; 1-diphenyl-propane-carboxylic acid; Pethidine; Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine, Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate; Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid; Phenazocine; Piminodine; Racemethorphan; Racemorphan.

(3) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(a) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(b) [~~Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;~~

~~(c)~~] Phenmetrazine and its salts;

(c)[~~(d)~~]Methylphenidate.

Section 73. KRS 218A.180 is amended to read as follows:

(1) Except when dispensed directly by a practitioner to an ultimate user, no ***methamphetamine or*** controlled substance in Schedule II may be dispensed without the written prescription of a practitioner. No controlled substance in Schedule II shall be refilled. All prescriptions for controlled substances classified in Schedule II shall be maintained in a separate prescription file.

(2) Except when dispensed directly by a practitioner to an ultimate user, a controlled substance included in Schedules III, IV, and V, which is a prescription drug, shall not be dispensed without a written or oral prescription by a practitioner. All oral prescriptions shall be dated and signed by the pharmacist. A pharmacist refilling any prescription shall record on the prescription the date, the quantity and his initials. The maintenance of prescription records under the federal controlled substances laws and regulations, containing substantially the same information as specified herein, shall constitute compliance with this subsection. The prescription shall not be filled or refilled more than six (6) months after the date thereof or be refilled more than five (5) times, unless renewed by the practitioner and a new prescription, written or oral shall be required.

(3) All written prescriptions for controlled substances shall be dated as of and signed by the practitioner on the date when issued and shall bear the full name and address of the patient and the name, address and registration number of the practitioner. All prescriptions for controlled substances shall be retained for a period of two (2) years.

(4) The pharmacist filling a written or oral prescription for a controlled substance shall affix to the package a label showing the date of filling, the pharmacy name and address, the serial number of the prescription, the name of the patient, the name of the prescribing practitioner and directions for use and cautionary statements, if any, contained in such prescription or required by law.

Section 74. KRS 189.990 is amended to read as follows:

(1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456 and 189.960, shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense. Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars ($20) nor more than two thousand dollars ($2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars ($11) nor more than thirty dollars ($30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.

(2) (a) Any person who violates the weight provisions of KRS 189.221, 189.222, 189.226, 189.230, 189.270, or 189.271 shall be fined two cents (2¢) per pound for each pound of excess load when the excess is two thousand (2,000) pounds or less, three cents (3¢) per pound when the excess exceeds two thousand (2,000) pounds and is three thousand (3,000) pounds or less, five cents (5¢) per pound when the excess exceeds three thousand (3,000) pounds and is four thousand (4,000) pounds or less, seven cents (7¢) per pound when the excess exceeds four thousand (4,000) pounds and is five thousand (5,000) pounds or less, and nine cents (9¢) per pound when the excess exceeds five thousand (5,000) pounds but in no case shall the fine be less than sixty dollars ($60) nor more than five hundred dollars ($500).

(b) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, or 189.490, for which another penalty is not specifically provided, shall be guilty of a misdemeanor and shall be fined not less than ten dollars ($10) nor more than five hundred dollars ($500).

(c) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.

(3) (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars ($15).

(b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars ($35) nor more than two hundred dollars ($200).

(4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.

(5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars ($100) nor more than two hundred dollars ($200) or imprisoned not less than thirty (30) days nor more than sixty (60) days or both. For each subsequent offense occurring within three (3) years, such person shall be fined not less than three hundred dollars ($300) nor more than five hundred dollars ($500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.

(6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars ($15) in excess of the cost of the repair of the road.

(7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars ($20) nor more than fifty dollars ($50).

(8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100).

(9) Any person who violates KRS 189.530 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.

(10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.

(11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars ($30) nor more than one hundred dollars ($100) for each offense.

(12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and in case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.

(13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars ($20) nor more than twenty-five dollars ($25).

(15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars ($100), and upon subsequent convictions, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or imprisoned for thirty (30) days, or both.

(17) (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.

(b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name such vehicle used in the transportation of inflammable liquids or explosives is licensed, such person shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500). Each violation shall constitute a separate offense.

(18) Any person who abandons a vehicle upon the right-of-way of a state highway for seven (7) consecutive days shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.

(19) Every person violating KRS 189.393 shall be ***guilty of a Class A misdemeanor***[~~punished upon a first conviction by imprisonment for a period of not less than five (5) days nor more than ninety (90) days, or by fine of not less than thirty-five dollars ($35) nor more than five hundred dollars ($500), or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than ten (10) days nor more than six (6) months, or by a fine of not less than sixty dollars ($60) nor more than one thousand dollars ($1,000), or by both such fine and imprisonment~~].

(20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.

(21) A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of such a regulation shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.

(22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars ($500) or imprisoned for not more than six (6) months, or both.

(23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars ($25) nor more than three hundred dollars ($300).

(24) Any person who violates the provisions of KRS 189.125(3) shall be fined fifty dollars ($50).

(25) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars ($25).

(26) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.

(27) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of

a motor vehicle, may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:

(a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and

(b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.

SECTION 75. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

Any person who was found guilty of a felony offense under KRS Chapter 218A, KRS 237.040, KRS Chapter 507, KRS Chapter 508, KRS Chapter 509, KRS Chapter 511, KRS Chapter 513, KRS 514.030 relating to a motor vehicle, KRS 514.100, KRS 525.020, KRS 525.030, KRS 527.040, KRS 527.070, and KRS 527.100, and who was wearing body armor at the time of the commission of the offense shall not be granted probation, shock probation, parole, conditional discharge, or any other form of early release.

Section 76. KRS 532.060 is amended to read as follows:

(1) A sentence of imprisonment for a felony shall be an indeterminate sentence, the maximum of which shall be fixed within the limits provided by subsection (2), and subject to modification by the trial judge pursuant to KRS 532.070.

(2) The authorized maximum terms of imprisonment for felonies are:

(a) For a Class A felony, not less than twenty (20) years nor more than ***fifty (50) years, or*** life imprisonment;

(b) For a Class B felony, not less than ten (10) years nor more than twenty (20) years;

(c) For a Class C felony, not less than five (5) years nor more than ten (10) years; and

(d) For a Class D felony, not less than one (1) year nor more than five (5) years.

(3) ***In addition to penalties provided in subsection (2) of this section, a sexual offender as defined by KRS 197.410 may be sentenced to an additional period of conditional discharge not to exceed three (3) years.***

(4) The actual time of release within the maximum established by subsection (1), or as modified pursuant to KRS 532.070, shall be determined under procedures established elsewhere by law.

Section 77. KRS 532.030 is amended to read as follows:

(1) When a person is convicted of a capital offense he shall have his punishment fixed at death, ***or at a term of imprisonment for life without benefit of probation or parole,*** or at a term of imprisonment for life without benefit of probation or parole until he has served a minimum of twenty-five (25) years of his sentence, or to a sentence of life, or to a term of not less than twenty (20) years ***nor more than fifty (50) years***.

(2) When a person is convicted of a Class A felony he shall have his punishment fixed at imprisonment in accordance with KRS 532.060.

(3) When a person is convicted of an offense other than a capital offense or Class A felony, he shall have his punishment fixed at:

(a) A term of imprisonment authorized by this chapter; or

(b) A fine authorized by KRS Chapter 534; or

(c) Both imprisonment and a fine unless precluded by the provisions of KRS Chapter 534.

(4) In all cases in which the death penalty may be authorized the judge shall instruct the jury in accordance with subsection (1) of this section. The instructions shall state, subject to the aggravating and mitigating limitations and requirements of KRS 532.025, that the jury may recommend upon a conviction for a capital offense a sentence of death, ***or at a term of imprisonment for life without benefit of probation or parole,*** or a term of imprisonment for life without benefit of probation or parole until the defendant has served a minimum of twenty-five (25) years of his sentence, or a sentence of life, or to a term of not less than twenty (20) years ***nor more than fifty (50) years***.

Section 78. KRS 532.025 is amended to read as follows:

(1) (a) Upon conviction of a defendant in cases where the death penalty may be imposed, a hearing shall be conducted. In such hearing, the judge shall hear additional evidence in extenuation, mitigation, and aggravation of punishment, including the record of any prior criminal convictions and pleas of guilty or pleas of nolo contendere of the defendant, or the absence of any prior conviction and pleas; provided, however, that only such evidence in aggravation as the state has made known to the defendant prior to his trial shall be admissible. Subject to the Kentucky Rules of Evidence, juvenile court records of adjudications of guilt of a child for an offense that would be a felony if committed by an adult shall be admissible in court at any time the child is tried as an adult, or after the child becomes an adult, at any subsequent criminal trial relating to that same person. Juvenile court records made available pursuant to this section may be used for impeachment purposes during a criminal trial and may be used during the sentencing phase of a criminal trial; however, the fact that a juvenile has been adjudicated

delinquent of an offense that would be a felony if the child had been an adult shall not be used in finding the child to be a persistent felony offender based upon that adjudication. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Release of any records resulting from the child's prior abuse and neglect under Title IV-E or IV-B of the Federal Social Security Act is also prohibited. The judge shall also hear argument by the defendant or his counsel and the prosecuting attorney, as provided by law, regarding the punishment to be imposed. The prosecuting attorney shall open and the defendant shall conclude the argument. In cases in which the death penalty may be imposed, the judge when sitting without a jury shall follow the additional procedure provided in subsection (2) of this section. Upon the conclusion of the evidence and arguments, the judge shall impose the sentence or shall recess the trial for the purpose of taking the sentence within the limits prescribed by law. If the trial court is reversed on appeal because of error only in the presentence hearing, the new trial which may be ordered shall apply only to the issue of punishment;

(b) In all cases in which the death penalty may be imposed and which are tried by a jury, upon a return of a verdict of guilty by the jury, the court shall resume the trial and conduct a presentence hearing before the jury. Such hearing shall be conducted in the same manner as presentence hearings conducted before the judge as provided in paragraph (a) of this subsection, including the record of any prior criminal convictions and pleas of guilty or pleas of nolo contendere of the defendant. Upon the conclusion of the evidence and arguments, the judge shall give the jury appropriate instructions, and the jury shall retire to determine whether any mitigating or aggravating circumstances, as defined in subsection (2) of this section, exist and to recommend a sentence for the defendant. Upon the findings of the jury, the judge shall fix a sentence within the limits prescribed by law.

(2) In all cases of offenses for which the death penalty may be authorized, the judge shall consider, or he shall include in his instructions to the jury for it to consider, any mitigating circumstances or aggravating circumstances otherwise authorized by law and any of the following statutory aggravating or mitigating circumstances which may be supported by the evidence:

(a) Aggravating circumstances:

1. The offense of murder or kidnapping was committed by a person with a prior record of conviction for a capital offense, or the offense of murder was committed by a person who has a substantial history of serious assaultive criminal convictions;
2. The offense of murder or kidnapping was committed while the offender was engaged in the commission of arson in the first degree, robbery in the first degree, burglary in the first degree, rape in the first degree, or sodomy in the first degree;
3. The offender by his act of murder, armed robbery, or kidnapping knowingly created a great risk of death to more than one (1) person in a public place by means of a destructive device, weapon, or other device which would normally be hazardous to the lives of more than one (1) person;
4. The offender committed the offense of murder for himself or another, for the purpose of receiving money or any other thing of monetary value, or for other profit;
5. The offense of murder was committed by a person who was a prisoner and the victim was a prison employee engaged at the time of the act in the performance of his duties;
6. The offender's act or acts of killing were intentional and resulted in multiple deaths; and
7. The offender's act of killing was intentional and the victim was a state or local public official or police officer, sheriff, or deputy sheriff engaged at the time of the act in the lawful performance of his duties;

(b) Mitigating circumstances:

1. The defendant has no significant history of prior criminal activity;
2. The capital offense was committed while the defendant was under the influence of extreme mental or emotional disturbance even though the influence of extreme mental or emotional disturbance is not sufficient to constitute a defense to the crime;
3. The victim was a participant in the defendant's criminal conduct or consented to the criminal act;
4. The capital offense was committed under circumstances which the defendant believed to provide a moral justification or extenuation for his conduct even though the circumstances which the defendant believed to provide a moral justification or extenuation for his conduct are not sufficient to constitute a defense to the crime;
5. The defendant was an accomplice in a capital offense committed by another person and his participation in the capital offense was relatively minor;
6. The defendant acted under duress or under the domination of another person even though the duress or the domination of another person is not sufficient to constitute a defense to the crime;

7. At the time of the capital offense, the capacity of the defendant to appreciate the criminality of his conduct to the requirements of law was impaired as a result of mental illness or retardation or intoxication even though the impairment of the capacity of the defendant to appreciate the criminality of his conduct or to conform the conduct to the requirements of law is insufficient to constitute a defense to the crime; and

8. The youth of the defendant at the time of the crime.

(3) The instructions as determined by the trial judge to be warranted by the evidence or as required by KRS 532.030(4) shall be given in charge and in writing to the jury for its deliberation. The jury, if its verdict be a recommendation of death, ***or imprisonment for life without benefit of probation or parole,*** or imprisonment for life without benefit of probation or parole until the defendant has served a minimum of twenty-five (25) years of his sentence, shall designate in writing, signed by the foreman of the jury, the aggravating circumstance or circumstances which it found beyond a reasonable doubt. In nonjury cases, the judge shall make such designation. In all cases unless at least one (1) of the statutory aggravating circumstances enumerated in subsection (2) of this section is so found, the death penalty***, or imprisonment for life without benefit of probation or parole,*** or the sentence to imprisonment for life without benefit of probation or parole until the defendant has served a minimum of twenty-five (25) years of his sentence, shall not be imposed.

Section 79. KRS 533.010 is amended to read as follows:

(1) Any person who has been convicted of a crime and who has not been sentenced to death may be sentenced to probation, probation with an alternative sentencing plan, or conditional discharge as provided in this chapter.

(2) Before imposition of a sentence of imprisonment, the court shall consider~~[the possibility of]~~ probation, probation with an alternative sentencing plan, or conditional discharge. ***Unless the defendant is a violent felon as defined in KRS 439.3401 or a statute prohibits probation, shock probation, or conditional discharge,*** after due consideration of the nature and circumstances of the crime and the history, character, and condition of the defendant, probation~~[, probation with an alternative sentencing plan,]~~ or conditional discharge ***shall***~~[should]~~ be granted, unless the court is of the opinion that imprisonment is necessary for protection of the public because:

(a) There is substantial risk that during a period of probation~~[, probation with an alternative sentencing plan,]~~ or conditional discharge the defendant will commit another crime;

(b) The defendant is in need of correctional treatment that can be provided most effectively by his commitment to a correctional institution; or

(c) A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.

(3) ***In the event the court determines that probation is not appropriate after due consideration of the nature and circumstances of the crime, and the history, character, and condition of the defendant, probation with an alternative sentencing plan shall be granted unless the court is of the opinion that imprisonment is necessary for the protection of the public because:***

(a) There is a likelihood that during a period of probation with an alternative sentencing plan or conditional discharge the defendant will commit a Class D or Class C felony or a substantial risk that the defendant will commit a Class B or Class A felony;

(b) The defendant is in need of correctional treatment that can be provided most effectively by commitment to a correctional institution; or

(c) A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.

(4) The court shall not determine that there is a likelihood that the defendant will commit a Class C or Class D felony based upon the fact that:

(a) The defendant has never been convicted of, pled guilty to, or entered an Alford plea to a felony offense;

(b) If convicted of, having pled guilty to, or entered an Alford plea to a felony offense, the defendant successfully completed probation more than ten (10) years immediately prior to the date of the commission of the felony for which the defendant is now being sentenced and has had no intervening convictions, pleas of guilty, or Alford pleas to any criminal offense during that period; or

(c) The defendant has been released from incarceration for the commission of a felony offense more than ten (10) years immediately prior to the date of the commission of the felony for which the defendant is now being sentenced and has had no intervening convictions, pleas of guilty, or Alford pleas to any criminal offense during that period.

(5) In making a determination under subsection (4) of this section, the court may determine that the greater weight of the evidence indicates that there is a likelihood that the defendant will commit a Class C or Class D felony.

(6) Upon initial sentencing of a defendant or upon modification or revocation of probation, when the court deems it in the best interest of the public and the defendant, the court may order probation with the defendant to serve one (1) of the following alternative sentences:

(a) To a halfway house for no more than twelve (12) months;

(b) To home incarceration with or without work release for no more than twelve (12) months;

(c) To jail for a period not to exceed twelve (12) months with or without work release and other programs as required by the court;

(d) To a residential treatment program for the abuse of alcohol or controlled substances; or

(e) To any other specified counseling program, rehabilitation or treatment program, or facility.

(7) If during the term of the alternative sentence the defendant fails to adhere to and complete the conditions of the alternative sentence, the court may modify the terms of the alternative sentence or may modify or revoke probation and alternative sentence, and commit the defendant to an institution.

(8) In addition to those conditions that the court may impose, the conditions of alternative sentence shall include the following and, if the court determines that the defendant cannot comply with them, then they shall not be made available:

(a) A defendant sentenced to a halfway house shall:

1. Be working or pursuing his or her education, or be enrolled in a full-time treatment program;

2. Pay restitution during the term of probation; and

3. Have no contact with the victim of the defendant's crime;

(b) A defendant sentenced to home incarceration shall:

1. Be employed by another person or self-employed at the time of sentencing to home incarceration and continue the employment throughout the period of home incarceration, unless the court determines that there is a compelling reason to allow home incarceration while the defendant is unemployed;

2. Pay restitution during the term of home incarceration;

3. Enter a treatment program, if appropriate;

4. Pay all or some portion of the cost of home incarceration as determined by the court;

5. Comply with other conditions as specified; and

6. Have no contact with the victim of the defendant's crime;

(c) A defendant sentenced to jail with work release shall:

1. Pay restitution during all or some part of the defendant's term of probation;

2. Pay all or some portion of the cost of incarceration as determined by the court; and

3. Have no contact with the victim of the defendant's crime; or

(d) A defendant sentenced to a residential treatment program for drug and alcohol abuse shall:

1. Undergo mandatory drug screening during term of probation;

2. Be subject to active, supervised probation for a term of five (5) years;

3. Undergo aftercare as required by the treatment program;

4. Pay restitution during the term of probation; and

5. Have no contact with the victim of the defendant's crime.

(9) When the court deems it in the best interest of the defendant and the public, the court may order the person to work at community service related projects under the terms and conditions specified in KRS 533.070. Work at community service related projects shall be considered as a form of conditional discharge.

(10) Probation with alternative sentence shall not be available as set out in KRS 532.045 and 533.060, except as provided in KRS 533.030(6).

(11) The court may utilize a community corrections program authorized or funded under KRS Chapter 196 to provide services to any person released under this section.

Section 80. KRS 532.020 is amended to read as follows:

(1) Any offense defined outside this code for which a law outside this code provides a sentence to a term of imprisonment in the state~~[penitentiary or reformatory]~~ for:

(a) At least one (1) but not more than five (5) years shall be deemed a Class D felony;

(b) At least five (5) but not more than ten (10) years shall be deemed a Class C felony;

(c) At least ten (10) but not more than twenty (20) years shall be deemed a Class B felony;

(d) For ***at least*** twenty (20) ***but not***~~[or]~~ more ***than fifty (50)*** years ***or for life*** shall be deemed a Class A felony.

(2) Any offense defined outside this code for which a law outside this code provides a sentence to a definite term of imprisonment with a maximum which falls between ninety (90) days and twelve (12) months shall be deemed a Class A misdemeanor.

(3) Any offense defined outside this code for which a law outside this code provides a sentence to a definite term of imprisonment with a maximum of less than ninety (90) days shall be deemed a Class B misdemeanor.

(4) Any offense defined outside this code for which a law outside this code provides a sentence to a fine only or to any other punishment, whether in combination with a fine or not, other than death or imprisonment shall be deemed a violation.

Section 81. KRS 532.050 is amended to read as follows:

(1) No court shall impose sentence for conviction of a felony, other than a capital offense, without first ordering a presentence investigation after conviction and giving due consideration to a written report of the investigation. The presentence investigation report shall not be waived; however, the completion of the presentence investigation report may be delayed until after sentencing upon the written request of the defendant if the defendant is in custody and is ineligible for probation or conditional discharge.

(2) The report shall be prepared and presented by a probation officer and shall include an analysis of the defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, personal habits, and any other matters that the court directs to be included.

(3) Before imposing sentence for a felony conviction, the court may order the defendant to submit to psychiatric observation and examination for a period not exceeding sixty (60) days. The defendant may be remanded for this purpose to any available clinic or mental hospital or the court may appoint a qualified psychiatrist to make the examination.

(4) If the defendant has been convicted of any felony offense under KRS Chapter 510, 530.020, 530.064, 531.310, any sexual offense under KRS 506.010 or 506.030, or any other felony offense committed in conjunction with a misdemeanor under KRS Chapter 510, the court shall, prior to determining the sentence, order an evaluation of the defendant to be conducted by the sexual offender treatment program operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services. The evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment, and shall be considered by the court in determining the appropriate sentence. ***A copy of the evaluation shall be furnished to the Commonwealth and to the defendant.*** If the defendant is eligible and the court suspends the sentence and places the defendant on probation or conditional discharge, the provisions of KRS 532.045(3) to (8) shall apply. All communications relative to the evaluation and treatment of the sex offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings. The defendant shall pay for any evaluation or treatment required pursuant to this section up to the defendant's ability to pay but no more than the actual cost of the evaluation or treatment.

(5) ***The presentence investigation report shall identify the counseling treatment, educational, and rehabilitation needs of the defendant and identify community-based and correctional-institutional-based programs and resources available to meet those needs or shall identify the lack of programs and resources to meet those needs.***

(6) Before imposing sentence, the court shall advise the defendant or his counsel of the factual contents and conclusions of any presentence investigation or psychiatric examinations and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the presentence investigation report. It shall not be necessary to disclose the sources of confidential information.

Section 82. KRS 532.080 is amended to read as follows:

(1) When a defendant is found to be a persistent felony offender, the jury, in lieu of the sentence of imprisonment assessed under KRS 532.060 for the crime of which such person presently stands convicted, shall fix a sentence of imprisonment as authorized by subsection (5) or (6) of this section. When a defendant is charged with being a persistent felony offender, the determination of whether or not he is such an offender and the punishment to be imposed pursuant to subsection (5) or (6) of this section shall be determined in a separate proceeding from that proceeding which resulted in his last conviction. Such proceeding shall be conducted before the court sitting with the jury that found the defendant guilty of his most recent offense unless the court for good cause discharges that jury and impanels a new jury for that purpose.

(2) A persistent felony offender in the second degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of one (1) previous felony. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:

- (a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and
- (b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and
- (c) That the offender:
  - 1. Completed service of the sentence imposed on the previous felony conviction within five (5) years prior to

the date of commission of the felony for which he now stands convicted; or

2. Was on probation, parole, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or

3. Was discharged from probation, parole, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or

4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or

5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.

(3) A persistent felony offender in the first degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of two (2) or more felonies. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:

(a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and

(b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and

(c) That the offender:

1. Completed service of the sentence imposed on any of the previous felony convictions within five (5) years prior to the date of the commission of the felony for which he now stands convicted; or

2. Was on probation, parole, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or

3. Was discharged from probation, parole, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or

4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or

5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.

(4) For the purpose of determining whether a person has two (2) or more previous felony convictions, two (2) or more convictions of crime for which that person served concurrent or uninterrupted consecutive terms of imprisonment shall be deemed to be only one (1) conviction, unless one (1) of the convictions was for an offense committed while that person was imprisoned.

(5) A person who is found to be a persistent felony offender in the second degree shall be sentenced to an indeterminate term of imprisonment pursuant to the sentencing provisions of KRS 532.060(2) for the next highest degree than the offense for which convicted. A person who is found to be a persistent felony offender in the second degree shall not be eligible for probation, shock probation, or conditional discharge.

(6) A person who is found to be a persistent felony offender in the first degree shall be sentenced to imprisonment as follows:

(a) If the offense for which he presently stands convicted is a Class A or Class B felony, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than twenty (20) years nor more than ***fifty (50) years, or*** life imprisonment; or

(b) If the offense for which he presently stands convicted is a Class C or Class D felony, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than ten (10) years nor more than twenty (20) years.

(7) [~~If the offense the person presently stands convicted of is a Class A, B, or C felony,~~]A person who is found to be a persistent felony offender in the first degree shall not be eligible for probation, shock probation, or conditional discharge, ***and if the offense the person presently stands convicted of is a Class A, B, or C felony, shall not be eligible***[~~nor~~] for parole until having served a minimum term of incarceration of not less than ten (10) years.

(8) The provisions of this section amended by 1994 Ky. Acts ch. 396, sec. 11, shall be retroactive.

Section 83. KRS 439.3401 is amended to read as follows:

(1) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to the commission of a capital offense, Class A felony, or Class B felony involving the death of the victim, or rape in the first degree or

sodomy in the first degree of the victim[~~, or serious physical injury to a victim~~]. ***The court shall designate in its judgment if the victim suffered death or serious physical injury.***

(2) A violent offender who has been convicted of a capital offense and who has received a life sentence (and has not been sentenced to twenty-five (25) years without parole), or a Class A felony and receives a life sentence, or to death and his sentence is commuted to a life sentence shall not be released on parole until he has served at least ***twenty (20)***[~~twelve (12)~~] years in the penitentiary. ***Violent offenders may have a greater minimum parole eligibility date that other offenders who receive longer sentences, including a sentence of life imprisonment. Any other provision of law to the contrary notwithstanding, it is the intent of the General Assembly that violent offenders be subject to the parole eligibility set forth in subsection (3) of this section.***

(3) A violent offender who has been convicted of a capital offense or Class A felony with a sentence of a term of years or Class B felony who is a violent offender shall not be released on parole until he has served at least ***eighty-five percent (85%)***[~~fifty percent (50%)~~] of the sentence imposed.

(4) ***A violent offender may not be awarded any credit on his sentence authorized by KRS 197.045(1), except the educational credit. A violent offender may, at the discretion of the commissioner, receive credit on his sentence authorized by KRS 197.045(3). In no event shall a violent offender be given credit on his sentence if the credit reduces the term of imprisonment to less than eighty-five percent (85%) of the sentence.***

(5) This section shall not apply to a person who has been determined by a court to have been a victim of domestic violence or abuse pursuant to KRS 533.060 with regard to the offenses involving the death of the victim or serious physical injury to the victim. The provisions of this subsection shall not extend to rape in the first degree or sodomy in the first degree by the defendant.

(6)[~~(5)~~] This section shall apply only to those persons who commit offenses after July 15, ***1998***[~~1986~~].

Section 84. KRS 439.3405 is amended to read as follows:

(1) Notwithstanding any statute eliminating ***parole*** or establishing minimum time for parole eligibility for a certain class or status of offender, including KRS 439.340(10), 439.3401, 532.080(7), and 533.060, the board, with the written consent of a majority of the full board, may review the case of any prisoner and release that prisoner on parole despite any elimination of or minimum time for parole eligibility, when the prisoner has a documented terminal medical condition likely to result in death within one (1) year ***including but not limited to, severe chronic lung disease, end-stage heart disease, severe neuro-muscular disease such as multiple sclerosis; or has severely limited mobility due to paralysis as a result of stroke or trauma; or is dependent on external life support systems*** and would not pose a threat to society if paroled.

(2) Medical information considered under this section shall be limited to the medical findings supplied by Department of Corrections medical staff. The medical staff shall provide in writing the prisoner's diagnosis and prognosis in support of the conclusion that the prisoner suffers from a terminal medical condition likely to result in death within one (1) year ***or because of the conditions set forth in subsection (1) of this section he is totally dependent on others for the activities of daily living***.

(3) The medical information prepared by the Department of Corrections medical staff under this section shall be forwarded to the warden of the institution who shall submit that information and a recommendation for or against parole review under this section to the commissioner of the Department of Corrections or his designee. With the approval of the commissioner of the Department of Corrections, a request for parole review under this section, along with the medical information and warden's recommendation, shall be submitted to the board.

(4) Medical information presented under this section shall be considered along with other information relevant to a decision regarding the granting of parole and shall not constitute the only reason for granting parole.

Section 85. KRS 15.310 is amended to read as follows:

As used in KRS 15.315 to 15.510, 15.990 and 15.992, unless the context otherwise requires:

(1) ***"Basic training course" means the peace officer basic training course provided by the Department of Criminal Justice Training or a course approved and recognized by the Kentucky Law Enforcement Council pursuant to KRS 15.440;***

(2) "Certified peace officer" means a peace officer who is certified under Sections 87 to 98 of this Act;

(3) "Certification" means the act by the council of issuing certification to a peace officer who successfully completes the training requirements established or approved by the Kentucky Law Enforcement Council pursuant to KRS 15.440 and the requirements set forth within this chapter;

(4) "Council" means the Kentucky Law Enforcement Council established by KRS 15.315 to 15.510, 15.990 and 15.992;

(5)[~~(2)~~] "Department" means the Department of Criminal Justice Training of the Justice Cabinet;

(6)[~~(3)~~] "Law enforcement officer" means a member of a lawfully organized police unit or police force of county, city or metropolitan government who is responsible for the detection of crime and the enforcement of the general criminal laws of the state, as well as sheriffs, sworn deputy sheriffs, campus security officers, law enforcement support personnel, public airport authority security officers, other public and federal peace officers responsible for law enforcement, and special local peace officers licensed pursuant to KRS 61.360;~~[and]~~

(7) "Peace Officer" means a person defined in KRS 446.010; and

(8)~~[(4)]~~ "Secretary" means the secretary of the Justice Cabinet.

Section 86. KRS 15.315 is amended to read as follows:

The Kentucky Law Enforcement Council is hereby established as an independent administrative body of state government to be made up as follows:

(1) The Attorney General of Kentucky, the commissioner of the Department of State Police, ***directors of the Southern Police Institute***~~[the dean of the School of Police Administration]~~ of the University of Louisville, the dean of the ***College***~~[School]~~ of Law Enforcement of Eastern Kentucky University, the president of the Kentucky Peace Officers Association, the president of the Kentucky Association of Chiefs of Police, and the Kentucky president of the Fraternal Order of Police, shall be ex officio members of the council, as full voting members of the council by reason of their office. The Kentucky special agent in charge of the Federal Bureau of Investigation shall serve on the council in an advisory capacity only without voting privileges. Each ex officio member may designate in writing a person to represent him and vote on his behalf.

(2) Nine (9) members shall be appointed by the Governor for terms of four (4) years from the following classifications: a city manager or mayor, one (1) Kentucky sheriff, a member of the Kentucky State Bar Association, five (5) chiefs of police, and a citizen of Kentucky not coming within the foregoing classifications. No person shall serve beyond the time he holds the office or employment by reason of which he was initially eligible for appointment. Vacancies shall be filled in the same manner as the original appointment and the successor shall be appointed for the unexpired term. Any member may be appointed for additional terms.

(3) No member may serve on the council with the dual membership as the representative of more than one (1) of the aforementioned groups or the holder of more than one (1) of the aforementioned positions. In the event that an existing member of the council assumes a position entitling him to serve on the council in another capacity the Governor shall appoint an additional member from the group concerned to prevent dual membership.

(4) Membership on the council does not constitute a public office and no member shall be disqualified from holding public office by reason of his membership.

SECTION 87. A NEW SECTION OF KRS 15.315 TO KRS 15.510 IS CREATED TO READ AS FOLLOWS:

(1) The following officers employed or appointed as full-time, part-time, or auxiliary officers, whether paid or unpaid, shall be certified:

(a) State Police officers;

(b) City, county, and urban-county police officers;

(c) Deputy sheriffs, except those identified in KRS 70.045 and 70.263(3);

(d) State or public university safety and security officers appointed pursuant to KRS 164.950;

(e) School security officers employed by local boards of education who are special law enforcement officers appointed under KRS 61.902;

(f) Airport safety and security officers appointed under KRS 183.880;

(g) Department of Alcoholic Beverage Control field representatives and investigators appointed under KRS 241.090; and

(h) Division of Insurance Fraud Investigators appointed under KRS 304.47-040.

(2) The requirements of Sections 87 to 98 of this Act for certification may apply to all state peace officers employed pursuant to KRS Chapter 18A and shall, if adopted, be incorporated by the Department of Personnel for job specifications.

(3) Additional training in excess of the standards set forth in Sections 87 to 98 of this Act for all peace officers possessing arrest powers who have specialized law enforcement responsibilities shall be the responsibility of the employing agency.

(4) The following officers may be certified by the council:

(a) Deputy coroners;

(b) Deputy constables;

(c) Deputy jailers;

(d) Deputy sheriffs under KRS 70.045 and 70.263(3);

(e) Officers appointed under KRS 61.360;

(f) Officers appointed under KRS 61.902, except those who are school security officers employed by local boards of education; and

(g) Private security officers.

(5) The following officers shall be exempted from the certification requirements but may be certified by the council:

(a) Sheriffs;

(b) Coroners;

(c) Constables; and

(d) Jailers.

(6) Federal peace officers cannot be certified under Sections 87 to 98 of this Act.

SECTION 88. A NEW SECTION OF KRS 15.310 TO 15.510 IS CREATED TO READ AS FOLLOWS:

A person certified under Sections 87 to 98 of this Act shall, at the time of becoming certified, meet the following minimum qualifications:

(1) Be a citizen of the United States;

(2) Be at least twenty-one (21) years of age;

(3) Be a high school graduate or have successfully completed a General Education Development (G.E.D.) examination;

(4) Possess a valid license to operate a motor vehicle;

(5) Be fingerprinted for a criminal background check;

(6) Not have been convicted of any felony;

(7) Not be prohibited by federal or state law from possessing a firearm;

(8) Have received and read the Kentucky Law Enforcement Officers Code of Ethics as established by the council;

(9) Have received an honorable discharge if having served in any branch of the armed forces of the United States;

(10) Have passed a medical examination by the council to determine if he can perform peace officer duties as determined by a validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall pass the medical examination, appropriate to the agency's job task analysis, of the employing agency. All agencies shall certify passing medical examination results to the council which shall accept them as complying with KRS 15.315 to 15.510;

(11) Have passed a drug screening test administered or approved by the council by administrative regulation. A person shall be deemed to have passed a drug screening test if the results of the test are negative for the use of an illegal controlled substance or prescription drug abuse. Any agency that administers its own test that meets or exceeds this standard shall certify passing test results to the council which shall accept them as complying with KRS 15.315 to 15.510;

(12) Have undergone a background investigation established or approved by the council by administrative regulation to determine suitability for the position of a peace officer. If the employing agency has established its own background investigation that meets or exceeds the standards of the council, as set forth by administrative regulation, the agency shall conduct the background investigation and shall certify background investigation results to the council, which shall accept them as complying with KRS 15.315 to 15.510;

(13) Have been interviewed by the employing agency;

(14) Not have had certification as a peace officer permanently revoked in another state;

(15) Have taken a psychological examination administered or approved by the council by administrative regulation to determine the person's suitability to perform peace officer duties as determined by a council validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall take that agency's psychological examination, appropriate to the agency's job task analysis. All agencies shall certify psychological examination results to the council which shall accept them as complying with KRS 15.315 to 15.510;

(16) Have passed a physical agility test administered or approved by the council by administrative regulation to determine his suitability to perform peace officer duties as determined by a council validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall take the physical agility examination of the employing agency. All agency shall certify physical agility examination results to the council, which shall accept them as demonstrating compliance with KRS 15.315 to 15.510; and

(17) Have taken a polygraph examination administered or approved by the council by administrative regulation to determine his suitability to perform peace officer duties. Any agency that administers its own polygraph examination as approved by the council shall certify the results that indicate whether a person is suitable for employment as a

peace officer to the council, which shall accept them as complying with KRS 15.315 to 15.510.

SECTION 89. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

(1) The council shall administer the physical agility, polygraph, psychological and drug screen tests at no cost for those agencies requesting council administered tests.

(2) An agency may, at its own expense, administer its own physical agility, polygraph, psychological, medical, and drug screen tests, as well as additional tests.

SECTION 90. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

The following certification categories shall exist:

(1) Pre-certification status. The officer is currently employed or appointed by an agency and meets or exceeds all those minimum qualifications set forth in Section 88, but has not successfully completed a basic training course. The officer shall have full peace officer powers as authorized under the statute under which he was appointed or employed. If an officer fails to successfully complete a basic training course within one (1) year of employment, his enforcement powers shall automatically terminate, and he shall not exercise peace officer powers in the Commonwealth until he has successfully completed a basic training course.

(2) Certification status. Unless the certification is in revoked status or inactive status, the officer is currently employed or appointed by an agency and has met all training requirements. The officer shall have full peace officer powers as authorized under the statute under which he was appointed or employed.

(3) Inactive status.

(a) The person has been separated from the agency by which he was employed or appointed and has no peace officer powers;

(b) The person has been employed by another agency in a non peace officer position; or

(c) The person is on military active duty for a period exceeding three hundred sixty-five (365) days.

The person may remain on inactive status. A person who is on inactive status and who returns to a peace officer position shall have certification status restored if he has not committed an act for which his certified status may be revoked pursuant to this Act, and by successfully completing forty (40) hours of in-service training as prescribed by the council.

(4) Revoked or denied status. The officer has no enforcement powers and has been separated from an enforcement agency for any one (1) of the following reasons:

(a) Failure to meet or maintain training requirements;

(b) Willful falsification of information to obtain or maintain certified status;

(c) Certification was the result of an administrative error;

(d) Failure to meet or maintain minimum certification standards;

(e) Plea of guilty to, conviction of, or entering of an Alford plea to any felony;

(f) Prohibition by federal or state law from possessing a firearm.

(5) The design of a certificate may be changed periodically. When a new certificate is produced, it shall be distributed free of charge to each currently certified peace officer.

SECTION 91. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

(1) Within five (5) working days of employment or appointment, the chief executive officer of the employing agency, or his designee, shall file a report with the council certifying that the newly employed officer is certified or meets or exceeds the precertification qualifications of Section 88 of this Act.

(2) If the person is certified, the council shall continue certified status.

(3) If the person is on inactive status, the council shall upgrade to certified status unless the certification is revoked as provided by Sections 87 to 98 of this Act.

(4) If the person is not certified and not on inactive status, the council shall designate the person as being in precertification status.

(5) A person who is in precertification status shall, upon successful completion of the required basic training, be certified unless he has committed an act that would result in revocation of his certificate in which case he shall be denied certification.

(6) A person who is denied certified status under this section shall have the same right of appeal as a person who has been revoked under Sections 87 to 98 of this Act.

(7) If the certified officer has successfully completed the basic training required by KRS 95.955 and transfers from a

peace officer position from a current employer to a peace officer position for another employer, and both employers have, at least ten (10) working days prior to the effective date of the transfer, notified the council in writing of the transfer, the council shall maintain the officer in certified status.

SECTION 92. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

(1) Any person who is aggrieved by a determination by the employing agency or by the council that he fails to meet the requirements for precertification status may:

(a) If the determination was made by the employing agency, appeal the decision in the same manner as for other employment appeals within the agency; or

(b) If the determination was made by the council, appeal the decision to the Franklin Circuit Court.

SECTION 93. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

(1) Within ten (10) working days from separation from service, the chief executive officer of the employing agency, or his designee, shall file with the council a summary report that provides the relevant information about the person's separation from service.

(2) If the person has been separated for having pled guilty to, been convicted of, or entered an Alford plea to a felony, the council shall revoke the person's certification.

(3) If the person has been separated for any other reason other than death, the council shall place the certification on inactive status. If the person has been separated due to death, the certification shall be retired.

(4) The employing agency's findings of fact and evidentiary conclusions shall be deemed final. The council shall be limited only to revoking the certification.

(5) The council shall not accept or hear complaints.

SECTION 94. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

(1) If the council believes an agency's job task analysis to be insufficient or erroneous, the council shall file a declaratory action in Franklin Circuit Court to declare the job task analysis invalid.

(2) Until the job task analysis has been declared invalid and all appeals have been exhausted, the council shall accept the agency's job task analysis.

SECTION 95. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

(1) An agency may be required to pay for all training received by a person from the Department of Criminal Justice Training or any other facility approved by the Kentucky Law Enforcement Council if the agency knowingly employs or appoints a person to be an officer of any type as enumerated in Section 87 of this Act and if that person fails to achieve certified status as required by Sections 87 to 98 of this Act.

(2) The agency shall be denied participation in the Kentucky Law Enforcement Foundation Program Fund if the agency knowingly employs or appoints a person to be an officer of any type as enumerated in Section 87 of this Act and if that person:

(a) Fails to meet those minimum qualifications set forth in Section 88 of this Act;

(b) Fails to achieve certified status as required by Sections 87 to 98 of this Act; or

(c) Fails to maintain the minimum training requirements set forth in KRS 95.955.

SECTION 96. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

(1) The following Kentucky Revised Statutes and any administrative regulations promulgated thereunder affecting those peace officers required to be certified pursuant to Sections 87 to 98 of this Act shall not be superseded by the provisions of Sections 87 to 98 of this Act, and in all instances the provisions of all statutes specified below shall prevail:

(a) KRS Chapter 16, relating to Kentucky State Police Officers;

(b) KRS Chapter 70, relating to sheriffs, and deputy sheriffs;

(c) KRS Chapter 78, relating to county police;

(d) KRS Chapters 15 and 95, relating to city and urban-county police;

(e) KRS Chapter 18, relating to airport safety and security officers;

(f) KRS Chapter 164, relating to State Universities and Colleges; Regional Education and Archaeology officers;

(g) KRS Chapter 18A, relating to all state peace officers;

(h) KRS Chapter 241.090, relating to Department of Alcoholic Beverage Control field representatives and investigators;

(i) KRS 304.47-040, relating to Division of Insurance Fraud Investigators; and

(j) Any other statutes affecting peace officers not specifically cited herein.

SECTION 97. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

(1) The effective date of Sections 87 to 98 of this Act shall be December 1, 1998. All peace officers employed as of December 1, 1998, shall be deemed to have met all the requirements of Sections 87 to 98 of this Act and shall be granted certified status as long as they remain in continuous employment of the agency by which they were employed as of the effective date of this Act, or shall have successfully completed an approved basic training course approved and recognized by the Kentucky Law Enforcement Council pursuant to KRS 15.440(4) when seeking employment with another law enforcement agency.

(2) Any peace officers employed after December 1, 1998, shall comply with all minimum standards specified in Sections 87 to 97 of this Act. Persons newly employed or appointed after December 1, 1998, shall have one (1) year within which to gain certified status or they shall lose their law enforcement powers.

(3) The Open Records Act notwithstanding, the person's home address, telephone number, date of birth, social security number, background investigation, medical examination, psychological examination, and polygraph examination conducted pursuant to this statute shall not be subject to disclosure.

SECTION 98. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

No provisions of Sections 87 to 98 of this Act shall preclude an appointing or employing agency from having requirements that are in excess of or in addition to any requirements specified by this Act or an administrative regulation promulgated under Sections 87 to 98 of this Act.

Section 99. KRS 403.7527 is amended to read as follows:

A court of this state shall enforce a foreign protective order[~~ filed and authenticated~~] pursuant to KRS 403.737, 403.7521, and 403.7524, including an order which grants relief to a person who is not eligible for a protective order in this state. A court of this state shall enforce all provisions of a foreign protective order including provisions which grant relief that is not available in this state. Any foreign protective order ***coming within the purview of***[~~authenticated pursuant to~~] KRS 403.7524 shall be effective for the period of time fixed by the issuing court.

Section 100. KRS 403.7529 is amended to read as follows:

(1) All foreign protective orders shall have the rebuttable presumption of validity. The validity of a foreign protective order shall only be determined by a court of competent jurisdiction. Until a foreign protective order is declared to be invalid by a court of competent jurisdiction, it shall be given full faith and credit by all peace officers and courts in the Commonwealth.

(2) All peace officers shall treat a foreign protective order as a legal document, valid in Kentucky, and ***shall***[~~may~~] make arrests for a violation thereof in the same manner as for a violation of an emergency protective order or domestic violence order issued in Kentucky.

(3) The fact that a foreign protective order has not been entered into the Law Information Network of Kentucky shall not be grounds for a peace officer not to enforce the provisions of the order unless it is readily apparent to the peace officer to whom the order is presented that the order has either expired according to a date shown on the order, or that the order's provisions clearly do not prohibit the conduct being complained of. Officers acting in good faith shall be immune from criminal and civil liability.

(4) In the event that the order has expired or its provisions do not prohibit the conduct being complained of, the officer shall not make an arrest unless the provisions of a Kentucky statute have been violated, in which case the peace officer shall take the action required by Kentucky law.

Section 101. KRS 403.7539 is amended to read as follows:

(1) Civil proceedings and criminal proceedings for violation of a foreign protective order for the same violation of the protective order shall be mutually exclusive. Once either proceeding has been initiated, the other shall not be undertaken regardless of the outcome of the original proceeding.

(2) If criminal proceedings for violation of a foreign protective order are undertaken, the following shall apply:

   (a) A person is guilty of violation of a foreign protective order when the person intentionally violates the provisions of ***a foreign protective***[~~an~~] order[~~ filed and authenticated,~~] or filed and awaiting authentication, pursuant to KRS 403.7521 and 403.7524.

   (b) Violation of a foreign protective order is a violation of KRS 403.763.

(3) If civil proceedings for violation of a foreign protective order are undertaken, intentional violation of the foreign protective order by the person against whom it was issued shall constitute contempt of court.

SECTION 102. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

(1) When a patient who has been involuntarily committed to a psychiatric facility or forensic psychiatric facility and who has been charged with or convicted of a violent crime as defined in KRS 439.3401 is discharged or transferred

from the facility, the administrator shall notify the law enforcement agency in the county to which the person is to be released, the prosecutor in the county where the violent crime was committed, and the Department of Corrections.

(2) If a patient who has been involuntarily committed to a psychiatric facility or forensic psychiatric facility and who has been charged with or convicted of a violent crime as defined in KRS 439.3401 escapes from the facility, the administrator shall notify the law enforcement agency in the county in which the facility is located, the prosecutor in the county where the violent crime was committed, and the Department of Corrections.

(3) The administrator of a psychiatric facility or forensic psychiatric facility, or the administrator's designee, who acts in good faith in making the notifications required in this section or is unable to provide the release information required, is immune from any civil liability.

(4) The Department of Corrections shall notify, or contract with a private entity to notify, victims of crime who have made a notification request of the discharge or escape of a patient from a psychiatric facility or forensic psychiatric facility.

(5) The Department of Corrections and the Cabinet for Human Resources shall each promulgate administrative regulations under KRS Chapter 13A to carry out the duties set forth in this statute.

Section 103. KRS 514.030 is amended to read as follows:

(1) A person is guilty of theft by unlawful taking or disposition when he unlawfully:
  (a) Takes or exercises control over movable property of another with intent to deprive him thereof; or
  (b) Obtains immovable property of another or any interest therein with intent to benefit himself or another not entitled thereto.

(2) Theft by unlawful taking or disposition is a Class A misdemeanor unless the value of the property is ***one thousand***[~~three hundred~~] dollars ***($1,000)***[~~($300)~~] or more, or unless the property is a firearm (regardless of the value of the firearm), in which case it is a Class D felony.

Section 104. KRS 514.040 is amended to read as follows:

(1) A person is guilty of theft by deception when the person obtains property or services of another by deception with intent to deprive the person thereof. A person deceives when the person intentionally:
  (a) Creates or reinforces a false impression, including false impressions as to law, value, intention, or other state of mind;
  (b) Prevents another from acquiring information which would affect judgment of a transaction;
  (c) Fails to correct a false impression which the deceiver previously created or reinforced or which the deceiver knows to be influencing another to whom the person stands in a fiduciary or confidential relationship;
  (d) Fails to disclose a known lien, adverse claim, or other legal impediment to the enjoyment of property which the person transfers or encumbers in consideration for the property obtained, whether the impediment is or is not valid or is or is not a matter of official record; or
  (e) Issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee.

(2) The term "deceive" does not, however, include falsity as to matters having no pecuniary significance or puffing by statements unlikely to deceive ordinary persons in the group addressed.

(3) Deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise.

(4) For purposes of subsection (1) of this section, a maker of a check or similar sight order for the payment of money is presumed to know that the check or order, other than a postdated check or order, would not be paid, if:
  (a) The maker had no account with the drawee at the time the check or order was issued;
  (b) Payment was refused by the drawee for lack of funds, upon presentation within thirty (30) days after issue, and the maker failed to make good within ten (10) days after receiving notice of that refusal. A maker makes good on a check or similar sight order for the payment of money by paying to the holder the face amount of the instrument, together with any fee to be imposed pursuant to subsection (4)(c) of this section; or
  (c) If a county attorney issues notice to a maker that a drawee has refused to honor an instrument due to a lack of funds as described in subsection (4)(b) of this section, the county attorney may charge a fee to the maker of ten dollars ($10), if the instrument is paid. Money paid to the county attorney pursuant to this section shall be used only for payment of county attorney office operating expenses. Excess fees held by the county attorney on June 30 of each year shall be turned over to the county treasurer before the end of the next fiscal year for use by the fiscal court of the county.

(5) A person is guilty of theft by deception when the person issues a check or similar sight order in payment of all or any part of any tax payable to the Commonwealth knowing that it will not be honored by the drawee.

(6) A person is guilty of theft by deception when the person issues a check or similar sight order in payment of all or any part of a child support obligation knowing that it will not be honored by the drawee.

(7) Theft by deception is a Class A misdemeanor unless the value of the property, service, or the amount of the check or sight order referred to in subsection (5) or (6) of this section is ***one thousand***[~~three hundred~~] dollars ***($1,000)***[~~($300)~~] or more, in which case it is a Class D felony.

Section 105. KRS 514.050 is amended to read as follows:

(1) Except as provided in KRS 365.710, a person is guilty of theft of property lost, mislaid, or delivered by mistake when:

(a) He comes into control of the property of another that he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient; and

(b) With intent to deprive the owner thereof, he fails to take reasonable measures to restore the property to a person entitled to have it.

(2) Theft of property lost, mislaid, or delivered by mistake is a Class A misdemeanor unless the value of the property is ***one thousand***[~~three hundred~~] dollars ***($1,000)***[~~($300)~~] or more, in which case it is a Class D felony.

Section 106. KRS 514.060 is amended to read as follows:

(1) A person is guilty of theft of services when:

(a) He intentionally obtains services by deception or threat or by false token or other means to avoid payment for the services which he knows are available only for compensation; or

(b) Having control over the services of others to which he is not entitled, he intentionally diverts the services to his own benefit or the benefit of another not entitled thereto.

(2) Where compensation for services is ordinarily paid immediately upon the rendering of the services, as in the case of hotels and restaurants, refusal to pay or absconding without payment or offer to pay shall be prima facie evidence that the services were obtained by deception as to intention to pay.

(3) In any prosecution for theft of gas, water, electricity, or other public service, where the utility supplying the service had installed a meter or other device to record the amount of service supplied, proof that:

(a) The meter or other device has been altered, tampered with, or bypassed in such manner as to prevent or reduce the recording thereof; or

(b) Service has been, after having been disconnected by the utility supplying service, reconnected without authorization of the utility

shall be prima facie evidence of the intent to commit theft of service by the person or persons obligated to pay for service supplied through the meter or other device.

(4) Theft of services is a Class A misdemeanor unless the value of the service is ***one thousand***[~~three hundred~~] dollars ***($1,000)***[~~($300)~~] or more, in which case it is a Class D felony.

Section 107. KRS 514.070 is amended to read as follows:

(1) A person is guilty of theft by failure to make required disposition of property received when:

(a) He obtains property upon agreement or subject to a known legal obligation to make specified payment or other disposition whether from such property or its proceeds or from his own property to be reserved in equivalent amount; and

(b) He intentionally deals with the property as his own and fails to make the required payment or disposition.

(2) The provisions of subsection (1) apply notwithstanding that it may be impossible to identify particular property as belonging to the victim at the time of the actor's failure to make the required payment or disposition.

(3) An officer or employee of the government or of a financial institution is presumed:

(a) To know any legal obligation relevant to his criminal liability under this section; and

(b) To have dealt with the property as his own when:

1. He fails to account or pay upon lawful demand; or

2. An audit reveals a shortage or falsification of accounts.

(4) Theft by failure to make required disposition of property received is a Class A misdemeanor unless the value of the property is ***one thousand***[~~three hundred~~] dollars ***($1,000)***[~~($300)~~] or more, in which case it is a Class D felony.

Section 108. KRS 514.080 is amended to read as follows:

(1) A person is guilty of theft by extortion when he intentionally obtains property of another by threatening to:

(a) Inflict bodily injury on anyone or commit any other criminal offense; or

(b) Accuse anyone of a criminal offense; or

(c) Expose any secret tending to subject any person to hatred, contempt, or ridicule, or to impair his credit or business repute; or

(d) Use wrongfully his position as a public officer or servant or employee by performing some act within or related to his official duties, either expressed or implied, or by refusing or omitting to perform an official duty, either expressed or implied, in a manner affecting some person adversely; or

(e) Bring about or continue a strike, boycott, or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act; or

(f) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(2) It is a defense to prosecution based on subsection (1)(b), (c), or (d) that the property obtained by threat of accusation, exposure, lawsuit, or other invocation of official action was claimed as restitution or indemnification for harm done in the circumstances to which accusation, exposure, lawsuit, or other official action relates, or as compensation for property or lawful services.

(3) Theft by extortion is a Class A misdemeanor unless the value of the property obtained is ***one thousand***[~~three hundred~~] dollars ***($1,000)***[~~($300)~~] or more, in which case it is a Class D felony.

Section 109. KRS 514.090 is amended to read as follows:

(1) A person is guilty of theft of labor already rendered when, in payment of labor already rendered by another, he intentionally issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee.

(2) For purposes of subsection (1) of this section, an issuer of a check or similar sight order for the payment of money is presumed to know that the check or order, other than a postdated check or order, would not be paid, if:

(a) The issuer had no account with the drawee at the time the check or order was issued; or

(b) Payment was refused by the drawee for lack of funds, upon presentation within thirty days (30) after issue, and the issuer failed to make good within ten (10) days after receiving notice of that refusal.

(3) Theft of labor already rendered is a Class A misdemeanor unless the value of the labor rendered is ***one thousand***[~~three hundred~~] dollars ***($1,000)***[~~($300)~~] or more, in which case it is a Class D felony.

Section 110. KRS 514.110 is amended to read as follows:

(1) A person is guilty of receiving stolen property when he receives, retains, or disposes of movable property of another knowing that it has been stolen, unless the property is received, retained, or disposed of with intent to restore it to the owner.

(2) The possession by any person of any recently stolen movable property shall be prima facie evidence that such person knew such property was stolen.

(3) Receiving stolen property is a Class A misdemeanor unless the value of the property is ***one thousand***[~~three hundred~~] dollars ***($1,000)***[~~($300)~~] or more, or unless the property is a firearm (regardless of the value of the firearm), in which case it is a Class D felony.

Section 111. KRS 514.120 is amended to read as follows:

(1) A person is guilty of obscuring the identity of a machine or other property when he:

(a) Removes, defaces, covers, alters, destroys, or otherwise obscures the manufacturer's serial number or any other distinguishing identification number or mark, including property marked with a Social Security number or motor vehicle operator's license number for identification purposes, upon any automobile or other propelled vehicle, machine, or electrical or mechanical device, or other property (including any part thereof) with intent to render it or other property unidentifiable; or

(b) Possesses any automobile or other propelled vehicle, machine, or electrical or mechanical device, or other property (including any part thereof) knowing that the serial number or other identification number or mark, including property marked with a Social Security number for identification purposes, has been removed, defaced, covered, altered, destroyed, or otherwise obscured.

(2) Possession of any automobile or other propelled vehicle, machine, or electrical or mechanical device, or other property (including any part thereof) on which the serial number or any other distinguishing identification number or mark, including property marked with a Social Security number or motor vehicle operator's license number for identification purposes, has been removed, defaced, covered, altered, destroyed, or otherwise obscured is prima facie evidence of knowledge of that fact.

(3) A person in possession of any property which is otherwise in violation of this section may apply in writing to the Kentucky State Police, through any law enforcement agency in the county of his residence, for assignment of a number for the property providing he can show that he is the lawful owner of the property pursuant to the provisions of this

section, KRS 16.200, and 500.090. If a number is issued in conformity with the provisions of this section, KRS 16.200, and 500.090, then the person to whom it was issued and any person to whom the property is lawfully disposed of shall not be in violation of these sections. A person lawfully holding a certification issued pursuant to KRS 500.090 shall also be deemed in compliance with this section. This section shall apply only when the application has been filed by the defendant prior to arrest or authorization of a warrant of arrest for the defendant by a court.

(4) Obscuring the identity of a machine or other property is a Class A misdemeanor unless the value of the property is ***one thousand***[~~three hundred~~] dollars ***($1,000)***[~~($300)~~] or more, in which case it is a Class D felony.

Section 112. KRS 532.210 is amended to read as follows:

(1) Any misdemeanant ***or a felon who has not been convicted of, pled guilty to, or entered an Alford plea to a violent felony offense*** may petition the sentencing court for an order directing that all or a portion of a sentence of imprisonment in the county jail be served under conditions of home incarceration. Such petitions may be considered and ruled upon by the sentencing court prior to and throughout the term of the misdemeanant's sentence.

(2) The sentencing judge shall study the record of all persons petitioning for home incarceration and, in his discretion, may:

(a) Cause additional background or character information to be collected or reduced to writing by the county jailer or misdemeanor supervision department;

(b) Conduct hearings on the desirability of granting home incarceration;

(c) Impose on the home incarceree such conditions as are fit, including restitution;

(d) Order that all or a portion of a sentence of imprisonment in the county jail be served under conditions of home incarceration at whatever time or intervals, consecutive or nonconsecutive, as the court shall determine. The time actually spent in home incarceration pursuant to this provision shall not exceed six (6) months or the maximum term of imprisonment assessed pursuant to this chapter whichever is the shorter;

(e) Issue warrants for persons when there is reason to believe they have violated the conditions of home incarceration, conduct hearings on such matters, and order reimprisonment in the county jail upon proof of violation; and

(f) Grant final discharge from incarceration.

(3) All home incarcerees shall execute a written agreement with the court setting forth all of the conditions of home incarceration. The order of home incarceration shall incorporate that agreement and order compliance with its terms. The order and agreement shall be transmitted to the supervising authority and to the appropriate jail official.

(4) Time spent in home incarceration under this subsection shall be credited against the maximum term of imprisonment assessed for the defendant pursuant to this chapter.

(5) Home incarcerees shall be under the supervision of the county jailer except in counties establishing misdemeanor supervision departments, wherein they shall be under the supervision of such departments. Home incarcerees shall be subject to the decisions of such authorities during the period of supervision. Fees for supervision or equipment usage shall be paid directly to the supervising authority.

Section 113. KRS 635.060 is amended to read as follows:

If in its decree the juvenile court finds that the child comes within the purview of this chapter, the court, at the dispositional hearing may:

(1) Order the child or his parents, guardian, or person exercising custodial control to make restitution or reparation to any injured person to the extent, in the sum and upon the conditions as the court determines. However, no parent, guardian, or person exercising custodial control shall be ordered to make restitution or reparation unless the court has provided notice of the hearing, provided opportunity to be heard, and made a finding that the person's failure to exercise reasonable control or supervision was a substantial factor in the child's delinquency; or

(2) Place the child on probation, home incarceration, or under supervision in the child's own home or in a suitable home or boarding home, upon the conditions that the court shall determine. ***Home incarceration shall not be ordered for a child found delinquent of, convicted of, or entering a plea of guilty to, or an Alford plea to a violent felony offense specified in KRS 532.200.*** A child placed on probation, home incarceration, or supervision shall be subject to the visitation and supervision of a juvenile probation officer of the Department of Juvenile Justice. Except as provided in KRS 635.083, a child placed on probation, home incarceration, or supervision shall remain subject to the jurisdiction of the court until the child becomes eighteen (18) years of age, unless the child is discharged prior thereto by the court, except that if a person is placed on probation, home incarceration, or supervision after the person reaches the age of seventeen (17) years and six (6) months, the probation, home incarceration, or supervision shall be for a period not to exceed one (1) year; or

(3) Commit the child to the custody or guardianship of the Department of Juvenile Justice, a child-caring facility, a child-placing agency authorized to care for the child, or place the child under the custody and supervision of a suitable person. If the child is detained in an approved secure juvenile detention facility, juvenile holding facility, or intermittent holding

facility in accordance with KRS 15A.200 to 15A.240 at the time the child is committed to the custody of the Department of Juvenile Justice, the Department of Juvenile Justice shall accept physical custody of the child, remove the child from the approved secure juvenile detention facility or juvenile holding facility, and secure appropriate placement within seven (7) days of the time of commitment. All orders of commitment may include advisory recommendations the court may deem proper in the best interests of the child and of the public. The commitment or placement shall be until the age of eighteen (18), subject to the power of the court to terminate the order and discharge the child prior thereto, except that if the commitment or placement is after a person has reached the age of seventeen (17) years and six (6) months, the commitment or placement shall be for an indeterminate period not to exceed one (1) year. The court, in its discretion, upon motion by the child and with the concurrence of the Department of Juvenile Justice, may authorize an extension of commitment up to age twenty-one (21) to permit the Department of Juvenile Justice to assist the child in establishing independent living arrangements; or

(4) Effective July 1, 1997, if the child is fourteen (14) years of age but less than sixteen (16) years of age, order that the child be confined in an approved secure juvenile detention facility or juvenile holding facility in accordance with KRS 15A.200 for a period of time not to exceed forty-five (45) days; or

(5) Effective July 1, 1997, if the child is sixteen (16) years of age or older, order that the child be confined in an approved secure juvenile detention facility or juvenile holding facility in accordance with KRS 15A.200 for a period of time not to exceed ninety (90) days; or

(6) Any combination of the dispositions listed above.

The Department of Juvenile Justice shall pay for the confinement of children confined pursuant to subsections (4) or (5) of this section. The requirement that the Department of Juvenile Justice pay for confinement of persons confined pursuant to subsections (4) and (5) of this section shall apply only to juveniles confined on or after July 1, 1997.

Section 114. KRS 506.120 is amended to read as follows:

(1) No person, with the purpose to establish or maintain a criminal ***gang***[~~syndicate~~] or to facilitate any of its activities, shall do any of the following:

  (a) Organize or participate in organizing a criminal ***gang***[~~syndicate~~] or any of its activities;

  (b) Provide material aid to a criminal ***gang***[~~syndicate~~] or any of its activities, whether such aid is in the form of money or other property, or credit;

  (c) Manage, supervise, or direct any of the activities of a criminal ***gang***[~~syndicate~~], at any level of responsibility;

  (d) Knowingly furnish legal, accounting, or other managerial services to a criminal ***gang***[~~syndicate~~];

  (e) Commit, or conspire or attempt to commit, or act as an accomplice in the commission of, any offense ***specified in subsection (3) or any other offense*** of a type in which a criminal ***gang***[~~syndicate~~] engages on a continuing basis;

  (f) Commit, or conspire or attempt to commit or act as an accomplice in the commission of, any offense of violence;

  (g) Commit, or conspire or attempt to commit, or act as an accomplice in the commission of bribery in violation of KRS Chapters 518 or 521, or KRS 119.205, 121.025, 121.055, 524.070, 156.465, 45A.340, 63.090, 6.080, 18A.145, 244.390 or 244.600.

(2) Whoever violates this section is guilty of engaging in organized crime, which shall be a Class B felony.

(3) As used in this section "criminal ***gang***[~~syndicate~~]" means five (5) or more persons collaborating to promote or engage in any of the following on a continuing basis:

  (a) ***Any felony offense in violation of KRS Chapters 500 to 534***[~~Extortion or coercion in violation of KRS 514.080, 276.280, 276.310, or 521.020~~];

  (b) ***Any felony offense in violation of KRS Chapter 218A***[~~Engaging in, promoting, or permitting prostitution in violation of KRS Chapter 529~~];

  (c) ***Any misdemeanor assault offense in violation of KRS Chapter 508***[~~Any theft offense as defined in KRS Chapter 514~~];

  (d) ***Any misdemeanor theft offense in violation of KRS Chapter 514;***

  (e) Any violation of KRS 527.030 or 527.050;

  (f) Any misdemeanor prostitution related offense in violation of KRS Chapter 529;

  (g) Violation of KRS 276.280 or 276.310;

  (h) Any gambling offense as defined in KRS 411.090, KRS Chapter 528, or Section 226 of the Constitution;

  (i)[~~(e)~~] Illegal trafficking[~~ in controlled substances as prohibited by KRS Chapter 218A,~~] in intoxicating or spirituous liquor as defined in KRS Chapters 242 or 244, or in destructive devices or booby traps as defined in KRS Chapter 237; ***or***

  (j)[~~(f)~~] Lending at usurious interest, and enforcing repayment by illegal means in violation of KRS Chapter 360.

SECTION 115. A NEW SECTION OF KRS CHAPTER 506 IS CREATED TO READ AS FOLLOWS:

(1) No person shall establish or maintain a criminal gang or facilitate any of its activities.

(2) Whoever violates this section is guilty of engaging in criminal gang activity, which shall be a Class A misdemeanor.

(3) As used in this section, "criminal gang" means any ongoing organization, association, or group of five (5) or more persons, whether formal or informal, having as one of its primary activities the commission of one (1) or more criminal acts other than those specified in KRS 506.120, having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(4) As used in this section, "pattern of criminal gang activity" means the commission, attempted commission, solicitation, or conviction of two (2) or more crimes, provided at least one (1) of these offenses occurred after the effective date of this Act and the last of those offenses occurred within three (3) years after a prior offense, and the offenses were committed on separate occasions, or by two (2) or more persons.

SECTION 116. A NEW SECTION OF KRS CHAPTER 506 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of criminal gang intimidation when he threatens another person because the other person:

- *(a) Refuses to join a criminal gang;*
- *(b) Has withdrawn or is attempting to withdraw from a criminal gang; or*
- *(c) Refuses to submit to a demand made by a criminal gang.*

(2) Criminal gang intimidation is a Class C felony.

SECTION 117. A NEW SECTION OF KRS CHAPTER 506 IS CREATED TO READ AS FOLLOWS:

(1) It is no defense to prosecution under Sections 114, 115, or 116 of this Act that:

- *(a) One (1) or more members of the gang are not criminally responsible for the offense;*
- *(b) One (1) or more members of the gang have been acquitted, have not been prosecuted or convicted, have been convicted of a different offense, or are under prosecution;*
- *(c) A person has been charged with, acquitted, or convicted of any offense under Sections 114, 115, or 116 of this Act.*
- *(d) The participants may not know each other's identity;*
- *(e) The membership in the criminal gang may change from time to time; or*
- *(f) The participants may stand in a wholesaler-retailer or other arm's length arrangement in the conduct of illicit distribution or other operations.*

(2) Once the initial combination of five (5) or more persons is formed, the number or identity of persons remaining in the gang is immaterial as long as four (4) or more persons in the gang, excluding the defendant, are involved in a continuing course of conduct constituting a violation of Sections 114, 115, or 116 of this Act.

SECTION 118. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

(1) A pretrial diversion program shall be operated in each Circuit Court and each District Court. The chief judge of each circuit or district, as appropriate, shall submit a plan for the pretrial diversion program to the Supreme Court for approval on or before December 1, 1999. The pretrial diversion program shall contain the following elements:

- *(a) The program may be utilized for a person charged with a misdemeanor or felony offense who, within ten (10) years immediately preceding the commission of this offense, has not been convicted of a felony under the laws of this state, another state, or of the United States, or has not been on probation or parole and who is not subject to the provisions of paragraph (c) of this subsection.*
- *(b) The program shall not be utilized for persons charged with felony offenses which, if convicted, would classify them as violent offenders under KRS 439.3401 or for persons charged with offenses for which probation, parole, or conditional discharge is prohibited under KRS 532.045.*
- *(c) Any person charged with an offense not specified as precluding a person from pretrial diversion under paragraph (b) of this subsection may apply in writing to the county or Commonwealth's attorney, as appropriate, for entry into a pretrial diversion program.*
- *(d) No person shall be required to enter a plea of guilty as a condition or pretrial diversion or an application for pretrial diversion.*

(2) The county or Commonwealth's attorney shall make a recommendation upon each application for pretrial diversion to the District Judge or Circuit Judge in the court in which the case would be tried. If the attorney for the Commonwealth has recommended pretrial diversion and the judge approves pretrial diversion, it shall be granted according to the terms agreed upon.

(3) If the county or Commonwealth's attorney has made a recommendation against pretrial diversion, the judge may permit pretrial diversion. However, the Commonwealth may appeal the decision.

(4) A decision of the judge to deny pretrial diversion may be appealed in the manner specified in the Rules of Criminal Procedure.

SECTION 119. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

When considering an application for pretrial diversion the attorney for the Commonwealth shall:

(1) Have a criminal record check made to ascertain if the person is eligible for pretrial diversion.

(2) Interview the victim of the crime, if there is an identified victim, and, when the victim of the crime is deceased or the attorney for the Commonwealth deems it necessary, interview a member of the family of the victim of the crime. The attorney for the Commonwealth shall explain to the victim the diversion program, the proposed diversion conditions, and any other matters that the attorney for the Commonwealth deems to be appropriate. The results of the interview and recommendations of the victim may be presented to the court when it is considering the application for pretrial diversion. The victim, or the victim's family if the victim is deceased, may attend the court hearing, if they so desire. The attorney for the Commonwealth shall notify them of this fact and the time, date, and place of the hearing.

(3) Conduct any other investigation that the attorney for the Commonwealth determines may be necessary with regard to the defendant and the circumstances of the crime so as to enable him or her to set proper conditions of pretrial diversion, or to make a decision whether to recommend or oppose the application of the defendant for pretrial diversion. The application shall be opposed if the attorney for the Commonwealth finds that the defendant has a felony record, has failed to complete a pretrial diversion or similar program in the past, or has previously been granted pretrial diversion on two (2) or more occasions.

SECTION 120. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

(1) The provisions of KRS 533.020 relating to the period of probation shall, in so far as possible, be applicable to the period of pretrial diversion.

(2) The provisions of KRS 533.030 relating to conditions of probation and restitution shall, in so far as possible, be applicable to pretrial diversion. Restitution shall be ordered in all cases where a victim has suffered monetary damage as a result of the alleged crime. Restitution to the state, or the victim, or both, may be ordered in any pretrial diversion program.

SECTION 121. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

(1) If the defendant fails to complete the provisions of the pretrial diversion agreement within the time specified, or is not making satisfactory progress toward the completion of the provisions of the agreement, the victim, the attorney for the Commonwealth, or a peace officer may apply to the court for a hearing to determine whether or not the pretrial diversion agreement should be voided and the defendant stand trial as charged.

(2) In making a determination as to whether or not a pretrial diversion agreement should be voided, the court shall use the same criteria as for the revocation of probation, and the defendant shall have the same rights as he or she would if probation revocation was sought.

(3) Making application for a pretrial diversion agreement tolls any statute of limitations relative to the criminal offenses for which the application is made for the period until the application is granted or denied. Approval of the application for pretrial diversion by the court tolls any statute of limitations relative to criminal offenses diverted for the period of the diversion agreement.

(4) If the court voids the pretrial diversion agreement, the court shall notify the applicable prosecutor, in writing, that the pretrial diversion agreement has been voided and the reasons for the action. The prosecutor shall decide whether or not the defendant should be tried and for what charges. If the decision is made to try the defendant the court shall order the defendant to stand trial. The defendant may be arrested and jailed pending pretrial release. The order voiding the pretrial diversion agreement is subject to appeal in the same manner as any probation revocation under the statutes and the Rules of Criminal Procedure.

SECTION 122. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

(1) If the defendant successfully completes the provisions of the pretrial diversion agreement, the charges against the defendant shall be listed as "dismissed-diverted" and shall not constitute a criminal conviction.

(2) The defendant shall not be required to list this disposition on any application for employment, licensure, or otherwise unless required to do so by federal law.

(3) Pretrial diversion records shall not be introduced as evidence in any court in a civil, criminal, or other matter without the consent of the defendant.

SECTION 123. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

The Administrative Office of the Courts, shall promulgate administrative regulations, including but not limited to forms *and other matters deemed necessary for proper administration of a pretrial diversion program.*

SECTION 124. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

(1) The pretrial diversion program authorized by Sections 118 to 123 of this Act shall be the sole program utilized in the Commonwealth.

(2) As of the effective date of this Act, no other pretrial diversion program shall be permitted, except to supervise persons granted pretrial diversion prior to the effective date of this Act. No new persons shall be admitted to these programs.

(3) A person who is in a pretrial diversion program as of the effective date of this Act may continue in that program until he or she successfully completes the program or is removed from the program for other reasons, whichever occurs earlier.

SECTION 125. A NEW SECTION OF KRS CHAPTER 635 IS CREATED TO READ AS FOLLOWS:

(1) No court shall impose sentence for finding of delinquency for an offense which is a felony, other than a capital offense, without first ordering a presentence investigation after conviction and giving due consideration to a written report of the investigation. The presentence investigation report shall not be waived; however, the completion of the presentence investigation report may be delayed until after sentencing upon the written request of the defendant if the defendant is in custody and is ineligible for probation or conditional discharge.

(2) The report shall be prepared and presented by a probation officer or person designated by the Department of Juvenile Justice and shall include an analysis of the defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, personal habits, and any other matters that the court directs to be included.

(3) Before imposing sentence for a felony conviction, the court may order the defendant to submit to psychiatric observation and examination for a period not exceeding sixty (60) days. The defendant may be remanded for this purpose to any available clinic or mental hospital or the court may appoint a qualified psychiatrist to make the examination.

(4) If the defendant has been convicted of any felony offense under KRS Chapter 510, 530.020, 530.064, 531.310, any sexual offense under KRS 506.010 or 506.030, or any other felony offense committed in conjunction with a misdemeanor under KRS Chapter 510, the court shall, prior to determining the sentence, order an evaluation of the defendant to be conducted by the sexual offender treatment program operated or approved by the Department of Juvenile Justice or the Department for Mental Health and Mental Retardation Services. The evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment, and shall be considered by the court in determining the appropriate sentence. A copy of the evaluation shall be furnished to the Commonwealth and to the defendant. If the defendant is eligible and the court suspends the sentence and places the defendant on probation or conditional discharge, the provisions of KRS 532.045(3) to (8) shall apply. All communications relative to the evaluation and treatment of the sex offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings. The defendant shall pay for any evaluation or treatment required pursuant to this section up to the defendant's ability to pay but no more than the actual cost of the evaluation or treatment.

(5) The presentence investigation report shall identify the counseling treatment, educational, and rehabilitation needs of the defendant and identify community-based and correctional-institution-based programs and resources available to meet those needs or shall identify the lack of programs and resources to meet those needs.

(6) Before imposing sentence, the court shall advise the defendant or his counsel of the factual contents and conclusions of any presentence investigation or psychiatric examinations and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the presentence investigation report. It shall not be necessary to disclose the sources of confidential information.

SECTION 126. A NEW SECTION OF KRS CHAPTER 635 IS CREATED TO READ AS FOLLOWS:

(1) Any person who has been convicted or found delinquent of a crime and who has not been sentenced to death may be sentenced to probation, probation with an alternative sentencing plan, or conditional discharge as provided in this chapter.

(2) Before imposition of a sentence of confinement, the court shall consider the possibility of probation, probation with an alternative sentencing plan, or conditional discharge. After due consideration of the nature and circumstances of the crime and the history, character, and condition of the defendant, probation or conditional discharge should be granted, unless the court is of the opinion that imprisonment is necessary for protection of the public because:

- *(a) There is substantial risk that during a period of probation or probation with conditional discharge the defendant will commit another crime;*
- *(b) The defendant is in need of correctional treatment that can be provided most effectively by his commitment to*

a correctional institution; or

(c) A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.

(3) In the event the court determines that probation is not appropriate after due consideration of the nature and circumstances of the crime, and the history, character, and condition of the defendant, probation with an alternative sentencing plan shall be granted unless the court is of the opinion that imprisonment is necessary for the protection of the public because:

(a) There is a likelihood that during a period of probation with an alternative sentencing plan, or conditional discharge the defendant will commit a Class D or Class C felony or a substantial risk that the defendant will commit a Class B or Class A felony;

(b) The defendant is in need of correctional treatment that can be provided most effectively by commitment to a correctional institution; or

(c) A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.

(4) The court shall not determine that there is a likelihood the defendant will commit a Class C or Class D felony based upon the fact that:

(a) The defendant has never been found delinquent, convicted of, pled guilty to, or entered an Alford plea to a felony offense; or

(b) If found delinquent, convicted of, having pled guilty to or entered an Alford plea to a felony offense, the defendant successfully completed probation more than five (5) years immediately prior to the date of the commission of the felony for which the defendant is now being sentenced and has had no intervening finding of delinquency, convictions, pleas of guilty, or Alford pleas to any criminal offense during that period; or

(c) The defendant has been released from incarceration for the commission of a felony offense more than five (5) years immediately prior to the date of the commission of the felony for which the defendant is now being sentenced and has had no intervening findings of delinquency, convictions, pleas of guilty, or Alford pleas to any criminal offense during that period.

(5) In making a determination under subsection (4) of this section, the court may determine that the greater weight of the evidence indicates that there is a likelihood that the defendant will commit a Class C or Class D felony.

(6) Upon initial sentencing of a defendant or upon modification or revocation of probation, when the court deems it in the best interest of the public and the defendant, the court may order probation with the defendant to serve one of the following alternative sentences:

(a) To a halfway house for no more than twelve (12) months;

(b) To home incarceration with or without work release for no more than twelve (12) months;

(c) To jail for a period not to exceed twelve (12) months with or without work release and other programs as required by the court;

(d) To a residential treatment program for the abuse of alcohol or controlled substances; or

(e) To any other specified counseling program, rehabilitation or treatment program, or facility.

(7) If during the term of the alternative sentence, the defendant fails to adhere to and complete the conditions of the alternative sentence, the court may modify the terms of the alternative sentence, or may modify or revoke probation and alternative sentence, and commit the defendant to an institution.

(8) In addition to those conditions which the court may impose, the conditions of alternative sentence shall include the following and, if the court determines that the defendant cannot comply with them, then they shall not be made available:

(a) A defendant sentenced to a halfway house shall:

1. Be working or pursuing his or her education, or be enrolled in a full-time treatment program;

2. Pay restitution during the term of probation; and

3. Have no contact with the victim of the defendant's crime.

(b) A defendant sentenced to home incarceration shall:

1. Pay restitution during the term of home incarceration;

2. Enter a treatment program, if appropriate;

3. Pay all or some portion of the cost of home incarceration as determined by the court;

4. Comply with other conditions as specified; and

5. Have no contact with the victim of the defendant's crime.

(c) A defendant sentenced to detention with work release shall:

1. Pay restitution, during all or some part of the defendant's term of probation;

2. Pay all or some portion of the cost of incarceration as determined by the court; and

3. Have no contact with the victim of the defendant's crime.

(d) A defendant sentenced to a residential treatment program for drug and alcohol abuse shall:

1. Undergo mandatory drug screening during term of probation;

2. Be subject to active, supervised probation for a term of two (2) years;

3. Undergo aftercare as required by the treatment program;

4. Pay restitution during the term of probation; and

5. Have no contact with the victim of the defendant's crime.

(9) When the court deems it in the best interest of the defendant and the public, the court may order the person to work at community service related projects under the terms and conditions specified in KRS 533.070. Work at community service related projects shall be considered as a form of conditional discharge.

(10) Probation with alternative sentence shall not be available as set out in KRS 533.060 and 532.045; except as provided in KRS 533.030(6).

(11) The court may utilize a community corrections program authorized or funded under KRS Chapter 196 to provide services to any person released under this section.

SECTION 127. A NEW SECTION OF KRS CHAPTER 640 IS CREATED TO READ AS FOLLOWS:

(1) No court shall impose sentence for conviction of a felony, including a capital offense, without first ordering a presentence investigation after conviction and giving due consideration to a written report of the investigation. The presentence investigation report shall not be waived; however, the completion of the presentence investigation report may be delayed until after sentencing upon the written request of the defendant if the defendant is in custody and is ineligible for probation or conditional discharge.

(2) The report shall be prepared and presented by an employee of the Department of Juvenile Justice or a probation officer and shall include an analysis of the defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, personal habits, and any other matters that the court directs to be included.

(3) Before imposing sentence for a felony conviction, the court may order the defendant to submit to psychiatric observation and examination for a period not exceeding sixty (60) days. The defendant may be remanded for this purpose to any available clinic or mental hospital or the court may appoint a qualified psychiatrist to make the examination.

(4) If the defendant has been convicted of any felony offense under KRS Chapter 510, 530.020, 530.064, 531.310, any sexual offense under KRS 506.010 or 506.030, or any other felony offense committed in conjunction with a misdemeanor under KRS Chapter 510, the court shall, prior to determining the sentence, order an evaluation of the defendant to be conducted by the sexual offender treatment program operated or approved by the Department of Juvenile Justice or the Department for Mental Health and Mental Retardation Services. The evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment, and shall be considered by the court in determining the appropriate sentence. A copy of the evaluation shall be furnished to the Commonwealth and to the defendant. If the defendant is eligible and the court suspends the sentence and places the defendant on probation or conditional discharge, the provisions of KRS 532.045(3) to (8) shall apply. All communications relative to the evaluation and treatment of the sex offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings. The defendant shall pay for any evaluation or treatment required pursuant to this section up to the defendant's ability to pay but no more than the actual cost of the evaluation or treatment.

(5) The presentence investigation report shall identify the counseling treatment, educational, and rehabilitation needs of the defendant and identify community-based and correctional-institution-based programs and resources available to meet those needs or shall identify the lack of programs and resources to meet those needs.

(6) Before imposing sentence, the court shall advise the defendant or his counsel of the factual contents and conclusions of any presentence investigation or psychiatric examinations and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the presentence investigation report. It shall not be necessary to disclose the sources of confidential information.

SECTION 128. A NEW SECTION OF KRS CHAPTER 640 IS CREATED TO READ AS FOLLOWS:

(1) Any person who has been convicted of a crime may be sentenced to probation, probation with an alternative

sentencing plan, or conditional discharge as provided in this chapter.

(2) Before imposition of a sentence of imprisonment, the court shall consider the possibility of probation, probation with an alternative sentencing plan, or conditional discharge. After due consideration of the nature and circumstances of the crime and the history, character, and condition of the defendant, probation or conditional discharge should be granted, unless the court is of the opinion that imprisonment is necessary for protection of the public because:

(a) There is substantial risk that during a period of probation or probation with conditional discharge the defendant will commit another crime;

(b) The defendant is in need of correctional treatment that can be provided most effectively by his commitment to a correctional institution; or

(c) A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.

(3) In the event the court determines that probation is not appropriate after due consideration of the nature and circumstances of the crime, and the history, character, and condition of the defendant, probation with an alternative sentencing plan shall be granted unless the court is of the opinion that imprisonment is necessary for the protection of the public because:

(a) There is a likelihood that during a period of probation with an alternative sentencing plan, or conditional discharge the defendant will commit a Class D or Class C felony or a substantial risk that the defendant will commit a Class B or Class A felony;

(b) The defendant is in need of correctional treatment that can be provided most effectively by commitment to a correctional institution; or

(c) A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.

(4) The court shall not determine that there is a likelihood the defendant will commit a Class C or Class D felony based upon the fact that:

(a) The defendant has never been convicted of, pled guilty to, or entered an Alford plea to a felony offense; or

(b) If convicted of, having pled guilty to or entered an Alford plea to a felony offense, the defendant successfully completed probation more than five (5) years immediately prior to the date of the commission of the felony for which the defendant is now being sentenced and has had no intervening convictions, pleas of guilty, or Alford pleas to any criminal offense during that period; or

(c) The defendant has been released from incarceration for the commission of a felony offense more than five (5) years immediately prior to the date of the commission of the felony for which the defendant is now being sentenced and has had no intervening convictions, pleas of guilty, or Alford pleas to any criminal offense during that period.

(5) In making a determination under subsection (4) of this section, the court may determine that the greater weight of the evidence indicates that there is a likelihood that the defendant will commit a Class C or Class D felony.

(6) Upon initial sentencing of a defendant or upon modification or revocation of probation, when the court deems it in the best interest of the public and the defendant, the court may order probation with the defendant to serve one of the following alternative sentences:

(a) To a halfway house for no more than twelve (12) months;

(b) To home incarceration with or without work release for no more than twelve (12) months;

(c) To jail for a period not to exceed twelve (12) months with or without work release and other programs as required by the court;

(d) To a residential treatment program for the abuse of alcohol or controlled substances; or

(e) To any other specified counseling program, rehabilitation or treatment program, or facility.

(7) If during the term of the alternative sentence, the defendant fails to adhere to and complete the conditions of the alternative sentence, the court may modify the terms of the alternative sentence, or may modify or revoke probation and alternative sentence, and commit the defendant to an institution.

(8) In addition to those conditions which the court may impose, the conditions of alternative sentence shall include the following and, if the court determines that the defendant cannot comply with them, then they shall not be made available:

(a) A defendant sentenced to a halfway house shall:

1. Be working or pursuing his or her education, or be enrolled in a full-time treatment program;

2. Pay restitution during the term of probation; and

3. Have no contact with the victim of the defendant's crime.

(b) A defendant sentenced to home incarceration shall:

1. Pay restitution during the term of home incarceration;

2. Enter a treatment program, if appropriate;

3. Pay all or some portion of the cost of home incarceration as determined by the court;

4. Comply with other conditions as specified; and

5. Have no contact with the victim of the defendant's crime.

(c) A defendant sentenced to jail with work release shall:

1. Pay restitution, during all or some part of the defendant's term of probation;

2. Pay all or some portion of the cost of incarceration as determined by the court; and

3. Have no contact with the victim of the defendant's crime.

(d) A defendant sentenced to a residential treatment program for drug and alcohol abuse shall:

1. Undergo mandatory drug screening during term of probation;

2. Be subject to active, supervised probation for a term of five (5) years;

3. Undergo aftercare as required by the treatment program;

4. Pay restitution during the term of probation; and

5. Have no contact with the victim of the defendant's crime.

(9) When the court deems it is in the best interest of the defendant and the public, the court may order the person to work at community service related projects under the terms and conditions specified in KRS 533.070. Work at community service related projects shall be considered as a form of conditional discharge.

(10) Probation with alternative sentence shall not be available as set out in KRS 533.060 and 532.045, except as provided in KRS 533.030(6).

(11) The court may utilize a community corrections program authorized or funded under KRS Chapter 196 to provide services to any person released under this section.

Section 129. KRS 197.500 is amended to read as follows:

As used in KRS 197.505 to 197.525, unless the context otherwise requires:

(1) "Department" means the Department of Corrections;

(2) "Adult correctional facility" means ***any minimum or medium adult penal or correctional facility operated for the purpose of housing convicted felons for the department***[~~an adult penal or correctional facility for the exclusive confinement of sentenced adult felons who have been classified by the department to be minimum security and restricted custody inmates and shall include any prison, reformatory, farm center, forestry camp, or similar institution which houses minimum security sentenced adult felons. For purposes of KRS 197.505 to 197.525, a county or regional jail shall not be considered an adult correctional facility~~]; and

(3) "Private provider" means a private legal entity authorized to do business in the Commonwealth and which is in the business of establishing, operating, and managing adult correctional facilities.

Section 130. KRS 197.505 is amended to read as follows:

(1) The state may enter into contracts with a private provider to establish, operate, and manage adult correctional facilities. In all[~~ such~~] contracts the state shall retain clear supervisory and monitoring powers over the operation and management of the adult correctional facility to insure that the inmates are properly cared for and that the employees of the facility and the public are adequately protected.

(2) ***All persons, while acting for a private provider pursuant to the provisions of KRS 197.505 to 197.525 in any capacity entailing the maintenance of custody over any prisoners, shall have the authority and powers of peace officers***[~~No inmate who is ineligible to work or be released outside the walls of the prison pursuant to KRS 197.140 shall be placed in an adult correctional facility that has been contracted for pursuant to this section~~].

(3) ***Operations of a private prison and all matters relating to inmates placed in a private prison shall be housed and treated in the manner specified by the contract and by administrative regulations promulgated by the department***[~~Any restricted custody inmate placed in a private prison shall be housed in a facility with a perimeter fence~~].

(4) Any adult correctional facility contracted for pursuant to this section shall be constructed only in a county with an established Kentucky State Police post or in a county in which at least two (2) State Police officers reside as a result of a duty assignment or in a county with a full-time police department.

Section 131. KRS 197.510 is amended to read as follows:

Any contract entered on or after ***the effective date of this Act***[~~July 15, 1988~~], between the state and a private provider for the operation and management of an adult correctional facility shall include terms which comply with at least the following:

(1)[~~Unless otherwise provided by KRS 197.505 to 197.525, any adult correctional facility contracted for pursuant to KRS 197.505 shall submit a plan to the department for achieving American Correctional Association standards within five (5) years, which is appropriate for the specific type of adult correctional facility.~~

~~(2)~~] The provisions of KRS Chapter 45A shall apply to any contract or any proposal for a contract authorized by KRS 197.505 to 197.525 for an adult correctional facility.

[~~(3) The adult correctional facility shall prepare an annual written budget of anticipated revenues and expenditures which is approved by the appropriate governing authority. The facility shall have written policies which govern revisions in the budget. The facility shall have a fiscal system which accounts for all income and expenditures on an on-going basis.~~

~~(4) The adult correctional facility shall prepare and distribute to its governing authority and appropriate agencies including the department, at a minimum, the following documents: annual budget income and expenditure statements; funding source financial reports; and annual independent audit report.~~]

(2)[~~(5)~~] The adult correctional facility shall have written fiscal policies and procedures adopted by the governing authority which include at a minimum: internal controls; petty cash; bonding; signature control on checks; resident funds; and employee expense reimbursement.

(3)[~~(6)~~] There shall be an annual independent audit of the adult correctional facility. The facility shall have a written policy for inventory control of all property and assets and for purchasing and requisitioning supplies and equipment. The facility shall use a method which documents and authorizes wage payment to employees and consultants.

(4)[~~(7)~~] The private provider shall develop and implement a plan for the dissemination of information about the adult correctional facility to the public, government agencies, and the media. The plan shall be made available to all persons. All documents and records, except financial records, maintained by the private provider shall be deemed public records as defined by KRS 61.870 and be subject to the provisions of KRS 61.872 to 61.884.

(5)[~~(8)~~] The adult correctional facility shall conform to all applicable zoning ordinances and all applicable state and local building codes, including the Kentucky Building Code, 1983 edition and subsequent modifications or replacements thereto.

[~~(9) The adult correctional facility shall comply with all applicable laws and regulations of the local and state government regarding sanitation, food service, safety, and health. Copies of inspections completed by the appropriate authorities shall be sent to the department.~~

~~(10) The adult correctional facility shall comply with the provisions of the Life Safety Code, 1983 edition, National Fire Protection Association 101 and the regulations of the state or the local fire safety authority, whichever has primary jurisdiction over the adult correctional facility. Copies of the inspections completed by the appropriate authorities shall be sent to the department.~~

~~(11) A minimum of sixty (60) square feet of floor space per resident shall be provided in the sleeping area of the adult correctional facility. Other areas to be provided shall include space and furnishings to accommodate group meetings of the residents, private counseling space with adequate furniture, and a visiting area.~~

~~(12) The adult correctional facility shall provide a variety of indoor and outdoor recreational and leisure time activities to include but not be limited to: television, radio, library materials, and recreational facilities. Telephone facilities shall be available on the premises, which are accessible to residents.~~]

(6)[~~(13)~~] The adult correctional facility shall provide a level and quality of programs at least equal to those provided by state-operated facilities that house similar types of inmates and at a cost that provides the state with a savings of not less than ten percent (10%) of the cost of housing inmates in similar facilities and providing similar programs to those types of inmates in state-operated facilities.

(7)[~~(14)~~] The adult correctional facility shall be staffed twenty-four (24) hours per day seven (7) days per week. The staffing pattern shall be adequate to insure close inmate surveillance and maintenance of security within the facility. The staffing pattern shall address the program, transportation, and security needs of the facility. In determining security need, the proximity of the facility to neighborhood and schools shall be considered.

[~~(15) The adult correctional facility shall have a written personnel policy and employees shall be given a copy. The personnel policies shall include, at a minimum:~~

- ~~(a) Organization chart;~~
- ~~(b) Employment practices and procedures including in-service training and staff developing;~~
- ~~(c) Promotions;~~
- ~~(d) Job qualifications and job descriptions;~~
- ~~(e) Grievance and appeal procedures;~~
- ~~(f) Employee evaluation;~~

~~(g) Personnel records;~~

~~(h) Benefits;~~

~~(i) Holidays;~~

~~(j) Leave;~~

~~(k) Hours of work;~~

~~(l) Salaries (or the base for determining salaries);~~

~~(m) Disciplinary procedures;~~

~~(n) Termination; and~~

~~(o) Resignation.~~

~~(16) The adult correctional facility shall maintain written job descriptions and job qualifications for all positions in the facility including: job title, responsibilities of the positions, and required minimum experience and education. An affirmative action program shall be adopted by the governing authority. The correctional facility shall maintain a current, accurate, and confidential personnel record on each employee. The facility shall have written policy and procedures requiring an annual performance evaluation of all employees. This evaluation shall be reviewed and discussed with the employee.~~]

(8)[~~(17)~~] Prior to employment, ***the***[~~all~~] employees of the adult correctional facility shall be subject to[~~ thorough~~] background ***examination***[~~investigation~~] to include criminal, medical, and employment history. All security employees of the facility shall be at least twenty-one (21) years of age. The facility shall provide initial orientation for all new employees during the first week of employment. The facility shall comply with all governmental regulatory requirements related to employment and personnel practices. Personnel selection and assignments shall be based on merit.

(9)[~~(18)~~] The administrator of the adult correctional facility shall have a minimum of five (5) years experience in corrections or law enforcement and five (5) years experience in administration. The remaining staff of the facility shall have the same qualifications [~~and training~~]as the staff employed in similar positions in adult correctional facilities operated by the department. ***The staff of the facility shall receive training based on standards approved by the department.***

[~~(19) The adult correctional facility shall provide the following services and programs, the extent to which shall be set forth in the contract between the state and the private provider but shall be consistent with the standards of the American Correctional Association:~~

~~(a) Health and medical services;~~

~~(b) Food services;~~

~~(c) Mail, telephone use, and visitation;~~

~~(d) Access to legal services and legal materials;~~

~~(e) Vocational training;~~

~~(f) Educational programs;~~

~~(g) Counseling services including personal counseling;~~

~~(h) Drug and alcohol counseling; and~~

~~(i) Sanitation services.~~

~~(20) The adult correctional facility shall have a written fire and emergency plan for the facility which shall be communicated to all employees and inmates and updated, if needed. The facility's written emergency plan shall be conspicuously posted in the facility. The facility staff shall document the conduct of quarterly emergency drills.~~]

(10)[~~(21)~~] The adult correctional facility shall have a written policy restricting the use of physical force to instances of justifiable self-protection, prevention of property damage, and prevention of escapes, and only to the degree necessary. In compliance with applicable laws, the facility shall maintain and make public, written policies and procedures for conducting searches of residents and all areas of the facility, to control contraband and locate missing or stolen property. The facility shall have a written plan to control movement in and out of the facility. The facility shall have written procedures to account for the whereabouts of the residents at all times.

(11)[~~(22)~~] The adult correctional facility shall establish a procedure for inspecting all facility areas accessible to inmates for contraband and physical security at least weekly. Isolated security spot checks shall be conducted daily. Items considered as contraband or items permitted in the facility shall be clearly defined in the facility's rules.

(12)[~~(23)~~] The adult correctional facility shall report all suspected felonies to the Kentucky State Police for investigation[~~. A written report shall be made of all extraordinary or unusual occurrences within twenty-four (24) hours of the occurrence. This report shall be placed in the inmate's folder and a copy forwarded to the department. All these occurrences shall be promptly reported to the department verbally prior to submission of the written report. Extraordinary or unusual occurrences shall include, but not be limited to:~~

~~(a) Death of a resident;~~

~~(b) Attempted suicide or suicide;~~

~~(c) Serious injury, whether accidental or self inflicted;~~

~~(d) Attempted escape or escape from confinement;~~

~~(e) Fire;~~

~~(f) Riot;~~

~~(g) Battery, whether by a staff member or resident;~~

~~(h) Sexual assaults; and~~

~~(i) Occurrence of contagious or infectious disease, or illness within the facility.~~

~~(24) Each adult correctional facility shall have written policy and procedures for emergency situations including but not limited to:~~

~~(a) Escapes;~~

~~(b) Taking of hostages;~~

~~(c) Riots;~~

~~(d) Food poisoning;~~

~~(e) Civil disturbances in the community;~~

~~(f) Natural disaster;~~

~~(g) Suicides; and~~

~~(h) Other deaths and disorder.~~

~~(25) The adult correctional facility shall adopt a written policy and procedures which shall insure that the constitutional rights of inmates to voluntarily practice their own religious activities are protected, subject only to those limitations necessary to maintain order and security of the facility.~~

~~(26) The adult correctional facility shall adopt a written policy which shall be implemented to insure that no inmate or group of inmates is in a position of control or authority over other inmates.~~

~~(27) The adult correctional facility shall have a policy and procedure for recommending awarding of meritorious good time for inmates in accordance with policies and procedures of the department. The procedures shall include formation of a committee to include an administrator to screen all recommendations. The recommendations shall be sent to the department. Recommendations for restoration of good time shall be screened by the same committee and forwarded to the department~~].

(13)[~~(28)~~] If the adult correctional facility operates a canteen, all profits shall be spent for recreational programs for inmates. Prices shall be in accordance with those established by the Department of Corrections Inmate Canteen Board.

(14)[~~(29)~~] The department shall have the authority to conduct periodic, scheduled, and unannounced inspections of the adult correctional facility during the term of the contract. The department shall generally observe and monitor the operations of the adult correctional facility at least once per week.

(15)[~~(30)~~] The contract shall provide a hold harmless clause by which the private provider agrees to indemnify, defend, and hold harmless the Commonwealth, its officers, agents, and employees from:

(a) Any claims or losses for service rendered by the private provider, person, or firm performing or supplying services in connection with performance of the contract;

(b) Any claims or losses to any person or firm injured or damaged by the erroneous or negligent acts of the private provider, its officers, or employees in the performance of the contract;

(c) Any claims or losses resulting to any person or firm injured or damaged by the private provider, its officers, or employees by the publication, translation, reproduction, delivery, performance, use, or disposition of any data processed under the contract in a manner not authorized by the contract, or by federal or Commonwealth regulations or statutes; and

(d) Any failure of the private provider, its officers, or employees to observe Kentucky laws, including, but not limited to, labor laws and minimum wage laws.

(16)[~~(31)~~] The contract shall require that the private provider give ***an irrevocable letter of credit or a performance bond in a form satisfactory to the Commonwealth from a bank satisfactory to the Commonwealth or*** a performance bond to the Commonwealth as obligee, in form satisfactory to the Commonwealth, executed by a surety company authorized to do business in Kentucky and in the penal sum equal to: twenty percent (20%) multiplied by the maximum number of inmates to be housed in the adult correctional facility multiplied by three hundred sixty-five (365) and further multiplied by the rate to be paid the private provider per inmate per day.

(17)[~~(32)~~] The private provider shall provide public liability, property damage, and workers' compensation insurance, insuring, as they may appear, the interest of all parties of agreement against any and all claims which may arise out of the private provider's operations under the terms of this contract. If any carrier of the insurance exercises cancellation, notice shall be made immediately to the Commonwealth of the cancellation.

(18)[~~(33)~~] As set forth within the contract between the Department of Corrections and the private provider:

(a) Failure of the private provider to provide the required services, products, or facilities shall entitle the department to withhold from the contract an amount up to two (2) times the estimated value per day per inmate for the service, product, or facility during the entire length of time which the failure to provide exists.

(b) The department shall in writing notify the provider of any failure to provide services, products, or facilities as required. A copy of the written notice shall be sent to the Finance and Administration Cabinet. The private provider shall have fourteen (14) calendar days from its receipt of the notice to abate the failure to provide and to notify the department of the corrective action taken by the private provider.

(c) In the event the department determines that the failure to provide has not been abated within fourteen (14) calendar days after the initial notice, the commissioner of the Department of Corrections shall hold, or assign the matter to a hearing officer for, a hearing and issue findings of fact, conclusions of law, and a recommended order.

(d) Failure to provide services, products, or facilities as required in this agreement shall result in an order to withhold from the contract an amount up to two (2) times the estimated value, as determined after a hearing, per day per inmate for the service, product, or facility during the entire length of time which the failure to provide exists.

(e) The withholding shall continue until such time as the failure to provide is corrected in the manner stated in the order.

(f) The department and private provider shall in good faith negotiate the actual fair value of the omitted service, product, or facility which shall be subtracted from the amount withheld. The balance of the withholding, if any, shall be promptly returned to the private provider upon final agreement of the department and private provider. Additional withholding from the contract shall be made by the department if an additional amount is due.

(g) The provider may appeal, within thirty (30) days, any order of the department to the Franklin Circuit Court.

Section 132. The following KRS sections are repealed:

520.100 Resisting order to stop motor vehicle.

610.115 Circumstances permitting court to order further detention of child in custody of Department of Juvenile Justice or cabinet.

Section 133. (1) If the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by this 1998 Regular Session of the General Assembly, each reference to the Cabinet for Human Resources in the following sections shall be codified as the Cabinet for Health Services: Sections 7, 9, 11, 12, 13, 14, 16, 18, 19, 28, and 102 of this Act.

(2) If the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by this 1998 Regular Session of the General Assembly, the reference to the Cabinet for Human Resources appearing in subsection (1)(h) of Section 10 of this Act shall be codified as both the Cabinet for Families and Children and the Cabinet for Health Services.

(3) If the reorganization of the Department of Personnel into the Personnel Cabinet is confirmed by this 1998 Regular Session of the General Assembly, the reference to the Department of Personnel appearing in subsection (2) of Section 87 of this Act shall be codified as the Personnel Cabinet.

Section 134. Sections 87 to 98 of this Act take effect December 1, 1998.

The Committee Substitute to **HB 455** is as follows:

AN ACT relating to criminal justice matters.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

(1) The Department of Juvenile Justice or a local organization approved by the Department of Juvenile Justice may form local juvenile delinquency prevention councils for the purpose of encouraging the initiation of, or supporting ongoing, interagency cooperation and collaboration in addressing juvenile crime and juvenile status offenses.

(2) The membership of the local council shall be determined by the Department of Juvenile Justice and shall include representatives of law enforcement, the school system, the Department of Social Services, the Court of Justice, the Commonwealth's attorney, the county attorney, and the Department for Public Advocacy. The members of the

council shall be appointed as provided by the department by administrative regulation and shall be appointed for not longer than four (4) years, but members may be reappointed for a successive term. A member of the council shall receive no salary for service as a member of the council but may be reimbursed for expenses in the same manner as a state employee.

(3) The duties and responsibilities of a juvenile delinquency prevention council shall include but not be limited to:

- *(a) Developing a local juvenile justice plan based upon utilization of the resources of law enforcement, the school system, the Department of Juvenile Justice, the Department for Social Services, the Administrative Office of the Courts, and others in a cooperative and collaborative manner to prevent or discourage juvenile delinquency and to develop meaningful alternatives to incarceration;*
- *(b) Entering into a written local interagency agreement specifying the nature and extent of contributions that each signatory agency will make in achieving the goals of the local juvenile justice plan;*
- *(c) Sharing of information as authorized by law to carry out the interagency agreements;*
- *(d) Applying for and receiving public or private grants to be administered by one (1) of the participating cities or counties or other public agencies; and*
- *(e) Providing a forum for the presentation of interagency recommendations and the resolution of disagreements relating to the contents of the interagency agreement or the performance by the parties of their respective obligations under the agreement.*

(4) Training of council members shall be the responsibility of the department.

(5) The department of Juvenile Justice may provide grants to the councils to establish or enhance prevention programs.

(6) The department shall promulgate administrative regulations in accordance with KRS Chapter 13A that relate to:

- *(a) The formation of councils;*
- *(b) The operation of councils;*
- *(c) The duties of councils; and*
- *(d) The administration and operation of the grant program.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

(1) The Department of Juvenile Justice shall, with available funds, develop and administer a statewide detention program and, as each regional facility is constructed and ready for occupancy, shall, within appropriation limitations, provide for:

- *(a) The operation of pre-adjudication detention facilities for children charged with public offenses; and*
- *(b) The operation of post-adjudication detention facilities for children adjudicated delinquent or found guilty of public offenses.*

Funds appropriated for the purposes of this section shall only be used for facilities defined in KRS 15A.200.

(2) In each region in which the Department of Juvenile Justice operates or contracts for the operation of a detention facility, the department shall, within appropriation limitations, develop and administer a program for alternatives to detention that shall provide for:

- *(a) The operation of or contracting for the operation of pre-adjudication alternatives to detention and follow-up programs for children who are before the court and who enter pretrial diversion or informal adjustment programs; and*
- *(b) The operation of or contracting for the operation of post-adjudication alternatives to detention and follow-up programs, including but not limited to community-based programs, mentoring, counseling, and other programs designed to limit the unnecessary use of secure detention and ensure public safety.*

(3) The department shall charge counties and urban-county governments for lodging juveniles in state-owned or contracted pre-adjudication facilities or post-adjudication facilities.

(4) Detention rates charged by contracting detention facilities shall not exceed the rate in effect on July 1, 1997, subject to increases approved by the department.

(5) The Department of Juvenile Justice shall issue and enforce administrative regulations to govern the following:

- *(a) Administration;*
- *(b) Intake and classification;*
- *(c) Programs and services;*
- *(d) Record-keeping;*
- *(e) Rules and discipline;*

(f) Transfers;

(g) Reimbursement rates and conditions; and

(h) Detention facility rate increases.

Section 3. KRS 15A.067 is amended to read as follows:

(1) As used in this section, "facility" means any of the facilities specified in KRS 15A.200 operated by a political subdivision of the Commonwealth of Kentucky for the care of juveniles alleged to be delinquent, or adjudicated delinquent.

(2) There is established within the Department of Juvenile Justice, a Division of Educational Services, that shall be responsible for the delivery of appropriate educational programs to incarcerated youth. Each facility shall provide educational services to adjudicated delinquents who may be ordered by the court to remain in the juvenile detention facility for an indeterminate period.

(3) ***Any other statutes to the contrary notwithstanding, the Department of Juvenile Justice shall have access to all educational records, public or private, of any juvenile in a facility or program.***

(4) The Division of Educational Services shall ensure that all incarcerated youth be provided appropriate screening and educational programs as follows:

(a) For students identified before incarceration as having an educational disability, the Division of Educational Services shall make specially designed instruction and related services available as required by Kentucky Board of Education administrative regulations applicable to students with disabilities.

(b) For students incarcerated for more than fourteen (14) days, the division shall ensure that appropriate screening is provided to all youth. Screening shall include, but not be limited to, seeking the juvenile's educational record.

(c) For students incarcerated for more than thirty (30) days, the division shall ensure that all youth are provided an appropriate education.

(5)[~~(4)~~] The Department of Juvenile Justice shall be responsible for providing, in its contracts with private juvenile detention facilities and county jails, the specific obligations of those entities to provide educational services to incarcerated juveniles consistent with this section, including funding provisions.

(6)[~~(5)~~] The Department of Education and all local school district administrators shall cooperate with officials responsible for the operation of juvenile detention facilities and with the Division of Educational Services to ensure that all documents necessary to establish educational status and need shall follow the students who are being held in these facilities so the students can be afforded educational opportunities.

(7)[~~(6)~~] (a) Upon disposition by the juvenile court that an adjudicated juvenile shall stay in a juvenile detention facility for any period of time, the facility shall notify the juvenile's last resident school district of the student's whereabouts.

(b) Within five (5) days after the juvenile is released, the Division of Educational Services shall notify the district in which the student will reside of the youth's release and educational status and forward any educational records.

(8)[~~(7)~~] The Department of Juvenile Justice shall***, after consultation***[~~collaborate~~] with the Department of Education***,*** ***promulgate***[~~as it promulgates~~] an administrative regulation for the effective implementation of this section.

[~~(8) The Department of Education shall administer this program in cooperation with the Justice Cabinet for the 1996-97 fiscal year. Effective July 1, 1997, the Justice Cabinet shall be responsible for the implementation of this section.~~]

Section 4. KRS 610.265 is amended to read as follows:

(1) Any child who is accused of committing a status or public offense or of being in contempt of court may be detained in a secure juvenile detention facility or juvenile holding facility or, if neither is reasonably available, an intermittent holding facility, for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays.

(2) (a) Within twenty-four (24) hours of the start of the period of detention described in subsection (1) of this section, exclusive of weekends and holidays, a hearing shall be held by the judge or trial commissioner of the court for the purpose of determining whether the child shall be further detained. At the hearing held pursuant to this subsection, the court shall consider the nature of the offense, the child's background and history, and other information relevant to the child's conduct or condition.

(b) If the court orders the child detained further, ***and if the child is charged with a capital offense, Class A felony, or Class B felony,***[~~such~~] detention shall occur in either a secure juvenile detention facility or a juvenile holding facility pending the child's next court appearance subject to the court's review of the detention order prior to that court appearance. ***Any other child, ordered to be detained in a state-operated facility pursuant to the statewide detention plan, shall be referred to the Department of Juvenile Justice for a security assessment and placement in an approved detention facility or program pending the child's next court appearance. The security assessment shall be done at the facility where the juvenile is initially detained.***

(c) If the child is not released, the court designated worker shall notify the parent, person exercising custodial control or supervision, a relative, guardian or other responsible adult.

Section 5. KRS 610.280 is amended to read as follows:

(1) (a) If a child is detained pursuant to KRS 610.265 for the alleged commission of a public offense and not released, a hearing shall be held as soon as practical, but not to exceed twenty-four (24) hours, exclusive of weekends and holidays, of the commencement of detention if the child is detained in an intermittent holding facility. If the child is detained in a secure juvenile detention facility or a juvenile holding facility, then a hearing shall be held as soon as practical, but not to exceed forty-eight (48) hours, exclusive of weekends and holidays, of the commencement of detention.

(b) If a child is detained for the alleged commission of a status offense and not released, a hearing shall be held as soon as practical, but not to exceed twenty-four (24) hours, exclusive of weekends and holidays, of the commencement of detention.

(2) The hearing shall address the following issues:

(a) If there is probable cause to believe that an offense has been committed and that the accused child committed that offense. Probable cause may be established in the same manner as in a preliminary hearing in cases involving adults accused of felonies. The child shall be afforded the right to confront and cross-examine witnesses. The Commonwealth shall bear the burden of proof and if it should fail to establish probable cause, the child shall be released and the complaint or petition dismissed unless the court determines further detention is necessary to assure the appearance of the child in court on another pending case; and

(b) In determining detention, the court shall consider the seriousness of the alleged offense, the possibility that the child would commit an offense dangerous to himself or the community pending disposition of the alleged offense, the child's prior record, if any, and whether there are other charges pending against the child. ***Any child, ordered to be detained in a state-operated facility pursuant to the statewide detention plan, shall be referred to the Department of Juvenile Justice for a security assessment and placement in an approved detention facility or program pending the child's next court appearance. The security assessment shall be done at the facility where the juvenile is initially detained.***

(3) If, after completion of the detention hearing, the court is of the opinion that detention is necessary, the order shall state on the record the specific reasons for detention.

Section 6. KRS 635.060 is amended to read as follows:

If in its decree the juvenile court finds that the child comes within the purview of this chapter, the court, at the dispositional hearing may:

(1) Order the child or his parents, guardian, or person exercising custodial control to make restitution or reparation to any injured person to the extent, in the sum and upon the conditions as the court determines. However, no parent, guardian, or person exercising custodial control shall be ordered to make restitution or reparation unless the court has provided notice of the hearing, provided opportunity to be heard, and made a finding that the person's failure to exercise reasonable control or supervision was a substantial factor in the child's delinquency; or

(2) Place the child on probation, home incarceration, or under supervision in the child's own home or in a suitable home or boarding home, upon the conditions that the court shall determine. A child placed on probation, home incarceration, or supervision shall be subject to the visitation and supervision of a juvenile probation officer of the Department of Juvenile Justice. Except as provided in KRS 635.083, a child placed on probation, home incarceration, or supervision shall remain subject to the jurisdiction of the court until the child becomes eighteen (18) years of age, unless the child is discharged prior thereto by the court, except that if a person is placed on probation, home incarceration, or supervision after the person reaches the age of seventeen (17) years and six (6) months, the probation, home incarceration, or supervision shall be for a period not to exceed one (1) year; or

(3) Commit the child to the custody or guardianship of the Department of Juvenile Justice, a child-caring facility, a child-placing agency authorized to care for the child, or place the child under the custody and supervision of a suitable person. If the child is detained in an approved secure juvenile detention facility, juvenile holding facility, or intermittent holding facility in accordance with KRS 15A.200 to 15A.240 at the time the child is committed to the custody of the Department of Juvenile Justice, the Department of Juvenile Justice shall accept physical custody of the child, remove the child from the approved secure juvenile detention facility or juvenile holding facility, and secure appropriate placement ***as soon as possible but not to exceed thirty-five (35)***[~~within seven (7)~~] days of the time of commitment. All orders of commitment may include advisory recommendations the court may deem proper in the best interests of the child and of the public. The commitment or placement shall be until the age of eighteen (18), subject to ***KRS 635.070 and to*** the power of the court to terminate the order and discharge the child prior thereto, except that if the commitment or placement is after a person has reached the age of seventeen (17) years and six (6) months, the commitment or placement shall be for an indeterminate period not to exceed one (1) year. The court, in its discretion, upon motion by the child and with the concurrence of the Department of Juvenile Justice, may authorize an extension of commitment up to age twenty-one (21)

to permit the Department of Juvenile Justice to assist the child in establishing independent living arrangements; or

(4) [~~Effective July 1, 1997, ~~]If the child is fourteen (14) years of age but less than sixteen (16) years of age, order that the child be confined in an approved secure juvenile detention facility***,***[~~ or~~] juvenile holding facility***, or approved detention program as authorized by the Department of Juvenile Justice*** in accordance with KRS ***Chapter*** 15A[~~.200~~] for a period of time not to exceed forty-five (45) days; or

(5) [~~Effective July 1, 1997, ~~]If the child is sixteen (16) years of age or older, order that the child be confined in an approved secure juvenile detention facility***,***[~~ or~~] juvenile holding facility***, or approved detention program as authorized by the Department of Juvenile Justice*** in accordance with KRS ***Chapter*** 15A[~~.200~~] for a period of time not to exceed ninety (90) days; or

(6) Any combination of the dispositions listed above.

The Department of Juvenile Justice shall pay for the confinement of children confined pursuant to subsections (4) or (5) of this section ***in accordance with the statewide detention plan and administrative regulations implementing the plan***.[~~ The requirement that the Department of Juvenile Justice pay for confinement of persons confined pursuant to subsections (4) and (5) of this section shall apply only to juveniles confined on or after July 1, 1997.~~]

SECTION 7. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

(1) The Department of Juvenile Justice, the Cabinet for Human Resources, the Department of Corrections, the Administrative Office of the Courts, and the Kentucky State Police shall be responsible for the recording of those data elements for juveniles that are needed for the development of the centralized criminal history record information system.

(2) The database shall at a minimum contain the information required in KRS 27A.310 to 27A.440; and

(3) The Department of Juvenile Justice shall provide access to Commonwealth's attorneys, county attorneys, law enforcement agencies, the Kentucky State Police, the Department of Corrections, the Cabinet for Human Resources, and the Administrative Office of the Courts to its database.

SECTION 8. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

The Department of Juvenile Justice shall update its database within thirty (30) days of receipt of information. The update shall include information from the:

(1) Offender records;

(2) Institutional records; and

(3) Administrative records.

SECTION 9. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall update its database within thirty (30) days of receipt of information. The update shall include information from:

(1) Offender records;

(2) Institutional records; and

(3) Administrative records.

SECTION 10. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

(1) The following agencies shall, subject to restrictions imposed by state or federal law, disclose and share with each other all information they maintain on a juvenile in a facility or program:

  (a) All sheriff's offices, police departments, and any other law enforcement agency;

  (b) All Commonwealth's attorneys and county attorneys;

  (c) The Attorney General;

  (d) All jails and juvenile detention facilities, public and private;

  (e) All courts and clerks of courts;

  (f) The Administrative Office of the Courts;

  (g) All departments within the Justice Cabinet; and

  (h) All departments within the Cabinet for Human Resources.

(2) Except as provided in this section, all information shared by agencies specified above shall be subject to applicable confidentiality disclosure, redisclosure, and access restrictions imposed by federal or state law.

(3) All public or private elementary or secondary schools, vocational or business schools, or institutions of higher education shall provide all records specifically requested to any of the agencies listed in subsection (1) of this section upon written request. The records or information provided pursuant to this subsection shall be subject to:

(a) Access or other restrictions imposed by federal or state law;

(b) All confidentiality restrictions imposed by federal or state law; and

(c) All disclosure and redisclosure restrictions imposed by federal or state law.

(4) Any request for records, the provision of records, the sharing of records, the disclosure of records, or the redisclosure of records shall be done for official purposes only, on a bona fide need to know basis, and only in connection with a legitimate investigation, prosecution, treatment program, or educational program.

(5) Information and records relating to pending litigation in Circuit Court, District Court, or a federal court and information and records relating to an ongoing investigation are not subject to disclosure or sharing under this section.

(6) Obtaining or attempting to obtain a record relating to a minor or by sharing or attempting to share a record relating to a minor with an unauthorized person is a violation of this section.

Section 11. KRS 7.111 is amended to read as follows:

(1) The Kentucky State Police, Department of Corrections, ***the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Administrative Office of the Courts shall provide access to their databases and the centralized criminal history record information system and the data contained therein to other criminal justice agencies, including criminal justice statistical analysis centers, and to the Legislative Research Commission. The right of access granted herein shall not include the right to add to, delete, or alter data without permission of the agency holding the data.

(2) Criminal justice agencies and the Legislative Research Commission shall not make public information on an individual person's criminal history record where such record is protected by state or federal law or regulation.

(3) The Legislative Research Commission shall have access to information which does not identify an individual person when determined by the director of the Legislative Research Commission to be necessary for a legislative purpose.

(4) The Legislative Research Commission shall have access to individual persons' criminal history records subject to the following provisions:

(a) Access shall not include information on federal offenses or convictions;

(b) Access shall not include information on out-of-state convictions; and

(c) Requests for the release of the information shall be approved by the Legislative Research Commission by vote at a meeting of the Commission.

Section 12. KRS 17.151 is amended to read as follows:

The Kentucky State Police shall, in cooperation with the Administrative Office of the Courts***, the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Department of Corrections, be responsible for the recording of those data elements that are needed for development of the centralized criminal history record information system:

(1) The database shall at a minimum contain the information required in KRS 27A.310 to 27A.440;

(2) The Kentucky State Police shall provide access to the Administrative Office of the Courts***, the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Department of Corrections to its database; and

(3) The Kentucky State Police***, the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Department of Corrections shall assign the same identification number or other variable to each person whose name appears in the database.

Section 13. KRS 17.152 is amended to read as follows:

All data supplied to the centralized criminal history record information system by the Kentucky State Police, Administrative Office of the Courts, ***the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Department of Corrections shall be compatible with the system and shall contain both citation and personal identification numbers.

Section 14. KRS 17.150 is amended to read as follows:

(1) Every sheriff, chief of police, coroner, jailer, prosecuting attorney, probation officer, parole officer, warden or superintendent of a prison, reformatory, correctional school, mental hospital or institution for the retarded; State Police, state fire marshal, Board of Alcoholic Beverage Control; Cabinet for Human Resources; Transportation Cabinet; Department of Corrections; ***Department of Juvenile Justice;*** and every other person or criminal justice agency, except the Court of Justice, public or private, dealing with crimes or criminals or with delinquency or delinquents, when requested by the cabinet, shall:

(a) Install and maintain records needed for reporting data required by the cabinet;

(b) Report to the cabinet as and when the cabinet requests all data demanded by it, except that the reports concerning a juvenile delinquent shall not reveal his or his parents' identity;

(c) Give the cabinet or its accredited agent access for purpose of inspection; and

(d) Cooperate with the cabinet to the end that its duties may be properly performed.

(2) Intelligence and investigative reports maintained by criminal justice agencies are subject to public inspection if prosecution is completed or a determination not to prosecute has been made. However, portions of the records may be withheld from inspection if the inspection would disclose:

(a) The name or identity of any confidential informant or information which may lead to the identity of any confidential informant;

(b) Information of a personal nature, the disclosure of which will not tend to advance a wholesome public interest or a legitimate private interest;

(c) Information which may endanger the life or physical safety of law enforcement personnel; or

(d) Information contained in the records to be used in a prospective law enforcement action.

(3) When a demand for the inspection of the records is refused by the custodian of the record, the burden shall be upon the custodian to justify the refusal of inspection with specificity. Exemptions provided by this section shall not be used by the custodian of the records to delay or impede the exercise of rights granted by this section.

(4) Centralized criminal history records are not subject to public inspection. Centralized history records mean information on individuals collected and compiled by the Justice Cabinet from criminal justice agencies and maintained in a central location consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges and any disposition arising therefrom, including sentencing, correctional supervision and release. The information shall be restricted to that recorded as the result of the initiation of criminal proceedings or any proceeding related thereto. Nothing in this subsection shall apply to documents maintained by criminal justice agencies which are the source of information collected by the Justice Cabinet. Criminal justice agencies shall retain the documents and no official thereof shall willfully conceal or destroy any record with intent to violate the provisions of this section.

(5) The provisions of KRS Chapter 61 dealing with administrative and judicial remedies for inspection of public records and penalties for violations thereof shall be applicable to this section.

(6) The secretary of justice shall adopt the administrative regulations necessary to carry out the provisions of the criminal history record information system and to insure the accuracy of the information based upon recommendations submitted by the commissioner, Department of State Police.

(7) The Administrative Office of the Courts may, upon suitable agreement between the Chief Justice and the secretary of justice, supply criminal justice information and data to the cabinet. No information, other than that required by KRS 27A.350 to 27A.420 and 27A.440, shall be solicited from a circuit clerk, justice or judge, court, or agency of the Court of Justice unless the solicitation or request for information is made pursuant to an agreement which may have been reached between the Chief Justice and the secretary of justice.

SECTION 15. A NEW SECTION OF KRS CHAPTER 27A IS CREATED TO READ AS FOLLOWS:

The Department of Juvenile Justice shall have access to all court records, active and closed, relating to or in the custody of the juvenile session of the District Court or the Administrative Office of the Courts, or both.

Section 16. KRS 27A.300 is amended to read as follows:

The Administrative Office of the Courts shall, in cooperation with the Kentucky State Police***, the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Department of Corrections, be responsible for the recording of those data elements that are needed for development of the centralized criminal history record information system:

(1) The database shall at a minimum contain the information contained in KRS 27A.310 to 27A.440;

(2) The Administrative Office of the Courts shall provide access to the Kentucky State Police***, the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Department of Corrections to its database; and

(3) The Administrative Office of the Courts shall, where the number is known, assign the same identification number or other variable to each person whose name appears in the database.

Section 17. KRS 164.283 is amended to read as follows:

(1) As used in this section unless the context otherwise requires:

(a) "Academic" means a student's official record of academic performance, including, but not limited to transcript of grades or other action taken by the institution directly related to academic performance. The term "academic" does not include any nonacademically-related action the institution may take.

(b) "Universities and colleges" means all state supported postsecondary educational institutions in Kentucky.

(c) "Institution" means all public supported institutions of higher learning in Kentucky.

(2) All student academic records shall be confidential and shall not require a student's Social Security number to identify the student, with the exception of the exemptions stated in subsections (3) to (9) of this section, and shall not be released by any public supported institution of higher education in Kentucky, to any person, organization, institution, group or agency, except with the express consent of the individual student. This confidentiality shall apply only to student

academic records, including, but not limited to official transcript of grades.

(3) All student academic records shall be made available upon request to any agency of the federal or state government for the purpose of determining a student's eligibility for military service, and shall include making such records available to local draft boards. This authority shall be limited only to determining the student's eligibility for military service and shall not be extended, except with the individual student's consent as specified in subsection (2) of this section.

(4) Any institution may provide the legal parents of any student under twenty-one (21) years of age with a copy of the student's academic record.

(5) All student academic records shall be made available to any federal, state, or local law enforcement agency***, the Department of Juvenile Justice,*** and any court of law upon ***written*** request~~[or issuance of a subpoena]~~.

(6) All student academic records shall be made available upon request to any grantor of scholarships or loans based upon the maintenance of a satisfactory level of scholarship, but shall be for the official use of the grantors only.

(7) All student academic records shall be made available upon request to a public or private junior college from which the individual student was graduated or to a public or private secondary school from which the individual student was graduated.

(8) All student academic records shall be made available upon request to the Council on Postsecondary Education for professional academic research.

(9) All student academic records shall be made available upon request to any official of the university or college in which the student is enrolled who is directly concerned with the student's academic progress. This authority shall include but is not limited to the individual student's academic adviser.

(10) This section shall be applicable to all academic records maintained by all public postsecondary educational institutions in Kentucky.

SECTION 18. A NEW SECTION OF KRS CHAPTER 194 IS CREATED TO READ AS FOLLOWS:

(1) The Cabinet for Human Resources, the Department of Juvenile Justice, the Department of Corrections, the Administrative Office of the Courts, and the Kentucky State Police, shall be responsible for the recording of those data elements that are needed for the development of the centralized criminal history record information system.

(2) The database shall at a minimum contain the information required in KRS 27A.310 to 27A.440.

(3) The Cabinet for Human Resources shall provide access to the Kentucky State Police, the Department of Corrections, the Department of Juvenile Justice, and the Administrative Office of the Courts to its database.

Section 19. KRS 196.093 is amended to read as follows:

The Department of Corrections shall, in cooperation with the Kentucky State Police***, the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Administrative Office of the Courts, be responsible for the recording of those data elements that are needed for the development of the centralized criminal history record information system:

(1) The database shall at a minimum contain the information required in KRS 27A.310 to 27A.440;

(2) The Department of Corrections shall provide access to the Kentucky State Police***, the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Administrative Office of the Courts to its database; and

(3) The Department of Corrections shall assign the same identification number or other variable to each person whose name appears in the database.

Section 20. KRS 605.090 is amended to read as follows:

(1) Unless precluded by law, any child committed to the Department of Juvenile Justice or the cabinet may by the decision of the Department of Juvenile Justice or the cabinet or its designee, at any time during the period of his commitment, be:

(a) Upon fourteen (14) days' prior written notice to the court, discharged from commitment. Written notice of discharge shall be given to the committing court and to any other parties as may be required by law;

(b) Placed in the home of his parents, a suitable foster home, or boarding home, upon such conditions as the Department of Juvenile Justice or the cabinet may prescribe and subject to visitation and supervision by a family service worker or juvenile probation and parole officer. At the time a committed child is placed in the home of his parents by the Department of Juvenile Justice or the cabinet, the parents shall be informed in writing of the conditions of the placement and the criteria that will be used to determine whether removal is necessary;

(c) Placed in one (1) of the facilities or programs operated by the Department of Juvenile Justice or the cabinet, except that***:*** No child committed under the provisions of KRS 610.010(1)(b), (c), or (d) ***shall be placed in a facility operated by the Department of Juvenile Justice for children adjudicated as a public offender unless the cabinet and the department agree, and the court consents, that the placement is in the best interest of the child and that the placement does not exceed a group home level;***

(d) Placed in a child-caring facility operated by a local governmental unit or by a private organization willing to receive the child, upon such conditions as the cabinet may prescribe;

(e) Treated as provided in KRS Chapter 645;

(f) Following the transfer or placement of a child pursuant to subsections (b), (c), (d), or (e) of this section, the Department of Juvenile Justice or the cabinet shall, within fourteen (14) days, excluding weekends and holidays, give written notice to the court of the transfer, the placement, and the reasons therefor.

(2) *No*[~~or any~~] child ten (10) years of age or under shall be placed in a facility operated by the Department of Juvenile Justice for children adjudicated as public offenders;

(3) If a child committed to the cabinet as dependent, neglected, or abused is placed in the home of his parents, the child shall not be removed except in accordance with the following standards and procedures:

(a) If the family service worker believes that the committed child continues to be dependent, neglected, or abused, but immediate removal is unnecessary to protect the child from imminent death or serious physical injury, the casework situation and evidence shall be reviewed with his supervisor to determine whether to continue work with the family intact or to remove the child. There shall be documentation that the family service worker, prior to the court hearing, made an effort to contact the parents to inform them of the specific problems that could lead to removal so they have an opportunity to take corrective action. If the parents are unavailable or do not respond to attempts to communicate, the specific circumstances shall be documented;

(b) If it appears that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm and there is not reasonably available an alternative less drastic than removal of the child from the home, the cabinet shall petition the District Court to review the commitment pursuant to KRS 610.120 in relation to the cabinet's intention to remove the child from the parent's home. The petition shall set forth the facts which constitute the need for removal of the child. The court shall serve notice of the petition and the time and place of the hearing on the parents; however, the family service worker shall also contact the parents to ensure that they received the notice and are aware of the right to be represented by counsel. If the parents' whereabouts are unknown, notice may be mailed to the last known address of an adult who is a near relative. If the court fails to find that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall not be removed from the parents' home;

(c) If a family service worker finds a committed, unattended child who is too young to take care of himself, the family service worker shall make reasonable efforts to arrange for an emergency caretaker in the child's home until the parents return or fail to return within a reasonable time. If no in-home caretaker is available for the child, the family service worker shall request any appropriate law enforcement officer to take the child into protective custody. If, after a reasonable time, it appears the child has been abandoned, the cabinet shall petition the District Court to review the case; or

(d) If there exist reasonable grounds to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents are unable or unwilling to protect the child, the family service worker shall, with the assistance of a law enforcement officer, immediately remove the child prior to filing a petition for review. Within seventy-two (72) hours after the removal, the cabinet shall file a petition for review in District Court pursuant to KRS 610.120 with a request for an expeditious hearing. If the court fails to find that the child's health or welfare or physical, mental or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall be returned to the parents' home.

(4)[~~(3)~~] The cabinet or the Department of Juvenile Justice, as appropriate, shall notify the juvenile court of the county of placement with the conditions of supervised placement of each child placed in that county from one (1) of the residential treatment facilities operated by the Department of Juvenile Justice or the cabinet. Notice of the conditions of such placement may be made available by the court to any law enforcement agency.

(5)[~~(4)~~] The person in charge of any home to which a child is probated, and the governing authority of any private facility or agency to which a child is committed, shall make such reports to the court as the court may require, and such reports as the Department of Juvenile Justice or the cabinet may require in the performance of its functions under the law. The Department of Juvenile Justice or the cabinet shall have the power to make such visitations and inspections of the homes, facilities, and agencies in which children who have committed public offenses have been placed as it deems necessary to carry out its functions under the law.

(6)[~~(5)~~] The Department of Juvenile Justice may assist the courts in placing children who have committed public offenses in boarding homes, and, under agreements with the individual courts, may assume responsibility for making such placements. Counties may pay or contribute towards the expenses of maintaining such children and, to the extent authorized by the fiscal court, the Department of Juvenile Justice may incur obligations chargeable to the county for such expenses.

Section 21. KRS 610.110 is amended to read as follows:

(1) The disposition shall determine the action to be taken by the court on behalf of, and in the best interest of, the child under the provisions of KRS Chapter 630 or 635.

(2) At the disposition, all information helpful in making a proper disposition, including oral and written reports, shall be received by the court in compliance with subsection (1) of this section and relied upon to the extent of their probative value, provided that the parties or their counsel shall be afforded an opportunity to examine and controvert the reports.

(3) The court shall***, and the Department of Juvenile Justice may upon request,*** notify the law enforcement agency of the child's ***city,*** county***, or urban county*** of residence ***as appropriate*** and the law enforcement agencies where any offense was committed of the disposition of each case and of each child committed by the court who is placed in a residential treatment facility by the Department of Juvenile Justice or the cabinet.

(4) If any court commits a child to the Department of Juvenile Justice or the cabinet, a child-caring facility, or child-placing agency, the court shall cause to be transmitted to the Department of Juvenile Justice or the cabinet, facility, or agency, as appropriate, a certified copy of the commitment order, together with a summary of the court's information concerning the child. A certified copy of the court order shall be proof of the authority of the Department of Juvenile Justice or the cabinet, facility, or agency to hold the child. Such certified order shall be sufficient authority for any law enforcement officer to take into custody any person named therein and deliver him to such a place as shall be directed by the Department of Juvenile Justice or the cabinet, facility, or agency given custody of him in the order.

(5) In placing a child on probation in a home or boarding home, or in committing a child to a child-caring facility or child-placing agency, the court shall as far as practicable select a home, facility, or agency operated or governed by persons of a similar religious faith as the parents of the child.

(6) Upon motion of the child and agreement of the Department of Juvenile Justice or the cabinet, as appropriate, the court may authorize an extension of commitment up to age twenty-one (21) for the purpose of permitting the Department of Juvenile Justice or the cabinet, as appropriate, to assist the child in establishing independent living arrangements if a return to the child's home is not in his best interest.

Section 22. KRS 610.320 is amended to read as follows:

(1) A special record book shall be kept by the court for all cases, to be known as the "juvenile record," and the docket or calendar of such cases shall be called the "juvenile docket."

(2) No probation officer, nor employee of a probation officer, shall, without the consent of the District Judge sitting in juvenile session, divulge or communicate to any persons other than the court, ***law enforcement, the Department of Juvenile Justice,*** an officer of the court interested in the case, a member of the advisory board of the court, or a representative of the cabinet, any information obtained pursuant to the discharge of his duties, nor shall any record of the action of the probation officer be made public except by leave of the District Judge; provided, that nothing in this subsection shall prohibit the probation officer from divulging or communicating such information to the court, to his colleagues or superiors in his own department, or to another probation officer having a direct interest in the record or social history of the child.

(3) All law enforcement and court records regarding children who have not reached their eighteenth birthday shall not be opened to scrutiny by the public, except court records, limited to the petition, order of the adjudication, and disposition in juvenile delinquency proceedings concerning a child who is adjudicated a juvenile delinquent for the commission of an offense that would constitute a capital offense or a Class A, B, or C felony if the juvenile were an adult, or any offense involving a deadly weapon, or an offense wherein a deadly weapon is used or displayed. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Release of any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the Federal Social Security Act is also prohibited. Otherwise, the law enforcement records shall be made available to the child, family, guardian, or legal representative of the child involved. The records shall also be made available to the court, probation officers, ***prosecutors, the Department of Juvenile Justice, and law enforcement agencies*** or representatives of the cabinet. Records, limited to the child's adjudication of delinquency, and disposition of a criminal activity covered by KRS 610.345, shall also be made available to public or private elementary and secondary school administrative and counseling personnel, and to any teacher to whose class the student has been assigned for instruction, subject to the provisions of KRS 610.340 and 610.345.

(4) Subject to the Kentucky Rules of Evidence, juvenile court records of adjudications of guilt of a child for an offense which would be a felony if committed by an adult shall be admissible in court at any time the child is tried as an adult, or after the child becomes an adult, at any subsequent criminal trial relating to that same person. Juvenile court records made available pursuant to this section may be used for impeachment purposes during a criminal trial, and may be used during the sentencing phase of a criminal trial. However, the fact that a juvenile has been adjudicated delinquent of an offense which would be a felony if the child had been an adult shall not be used in finding the child to be a persistent felony offender based upon that adjudication.

(5) This section shall not relieve the probation officer or peace officer from divulging such facts as a witness in a trial or hearing involving any cases falling under KRS Chapters 600 to 645 or the production of juvenile records for use in the

trial or proceedings.

(6) This section shall not prohibit release of information regarding juvenile proceedings in the District Court which do not reveal the identity of the child or its parents or guardians, or which relate to the child's eligibility for services under Title IV-E or IV-B of the Federal Social Security Act. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court.

Section 23. KRS 610.340 is amended to read as follows:

(1) Unless a specific provision of KRS Chapters 600 to 645 specifies otherwise, all juvenile court records of any nature generated pursuant to KRS Chapters 600 to 645 by any agency or instrumentality, public or private, shall be deemed to be confidential and shall not be disclosed except to the child, parent, and to the extent necessary at the proceeding to victims, or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070 unless ordered by the court for good cause. Juvenile court records which contain information pertaining to arrests, petitions, adjudications, and dispositions of a child may be disclosed to victims or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the Federal Social Security Act shall not be disclosed to victims or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070.

(2) The provisions of this section shall not apply to public officers or employees engaged ***in the investigation of and*** in the prosecution of cases under KRS Chapters 600 to 645 or other portions of the Kentucky Revised Statutes~~[provided that the inspection of the records and the disclosure of the information contained therein is limited to that required in the investigation and the prosecution of the case]~~.

(3) The provisions of this section shall not apply to employees of the ***Department of Juvenile Justice or*** cabinet or its designees responsible for any services under KRS Chapters 600 to 645 or to attorneys for parties involved in actions relating to KRS Chapters 600 to 645 or other prosecutions authorized by the Kentucky Revised Statutes~~[provided that the inspection of the records and the disclosure of the information contained therein is limited to that required in the investigation and the representation of the client in the case]~~.

(4) The provisions of this section shall not apply to records disclosed pursuant to KRS 610.320 or to public or private elementary and secondary school administrative and counseling personnel, to any teacher to whose class the student has been assigned for instruction, or to persons entitled to have juvenile records under KRS 610.345, if the possession and use of the records is in compliance with the provisions of KRS 610.345 and this section.

(5) No person, including school personnel, shall disclose any record or any information contained therein except as permitted by this section or other specific section of KRS Chapters 600 to 645, or except as permitted by specific order of the court.

(6) No person, including school personnel, authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain records to which he is not entitled or for purposes for which he is not permitted to obtain them pursuant to KRS Chapters 600 to 645.

(7) No person, including school personnel, not authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain records which are made confidential pursuant to KRS Chapters 600 to 645 except upon proper motion to a court of competent jurisdiction.

(8) No person shall destroy or attempt to destroy any record required to be kept pursuant to KRS Chapters 600 to 645 unless the destruction is permitted pursuant to KRS Chapters 600 to 645 and is authorized by the court upon proper motion and good cause for the destruction being shown.

(9) As used in this section the term "KRS Chapters 600 to 645" includes any administrative regulations which are lawfully promulgated pursuant to KRS Chapters 600 to 645.

Section 24. KRS 197.045 is amended to read as follows:

(1) Any person convicted and sentenced to a state penal institution may receive a credit on his sentence of not exceeding ten (10) days for each month served, except as otherwise provided in this section, to be determined by the department from the conduct of the prisoner. In addition, the department shall provide an educational good time credit of sixty (60) days to any prisoner who successfully receives a graduate equivalency diploma or a high school diploma, a two (2) or four (4) year college degree, or a two (2) year or four (4) year certification in applied sciences, or who receives a technical education diploma as provided and defined by the department; prisoners may earn additional credit for each program completed. The department may forfeit any good time previously earned by the prisoner, or deny the prisoner the right to earn good time in any amount, if, during the term of imprisonment, a prisoner commits any offense or violates the rules of the institution.

(2) When two (2) or more consecutive sentences are to be served, the several sentences shall be merged and served in the aggregate for the purposes of the good time credit computation or in computing dates of expiration of sentence.

(3) An inmate may, at the discretion of the commissioner, be allowed a deduction from a sentence not to exceed five (5) days per month for performing exceptionally meritorious service or performing duties of outstanding importance in connection

with institutional operations and programs. The allowance shall be an addition to commutation of time for good conduct and under the same terms and conditions and without regard to length of sentence.

(4) ***Until successful completion of the sex offender treatment program, a sex offender may earn good time. However, the good time shall not be credited to the sex offender's sentence. Upon the successful completion of the sex offender treatment program, as determined by the program director, the offender shall be eligible for all good time earned but not otherwise forfeited under administrative regulations promulgated by the Department of Corrections. After successful completion of the sex offender treatment program, a sex offender may continue to earn good time in the manner provided by administrative regulations promulgated by the Department of Corrections. Any sex offender, as defined in KRS 197.410, who has not successfully completed the sex offender treatment program as determined by the program director shall not be entitled to the benefit of any credit on his sentence. The provisions of this section shall not apply to any sex offender convicted before the effective date of this section or to any mentally retarded sex offender.***

(5) (a) The Department of Corrections shall, by administrative regulation, specify the length of forfeiture of good time and the ability to earn good time in the future for those inmates who have civil actions dismissed because the court found the action to be malicious or harassing, or if satisfied that the action is legally without merit or factually frivolous.

(b) Penalties set by administrative regulation pursuant to this subsection shall be as uniform as practicable throughout all institutions operated by, under contract to, or under the control of the department and shall specify a specific number of days or months of good time forfeited as well as any prohibition imposed on the future earning of good time.

SECTION 25. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

(1) In addition to the penalties authorized by law, any person convicted of, pleading guilty to, or entering an Alford plea to a felony offense under KRS Chapter 510, 530.020, 530.064, or 531.310 shall be sentenced to a period of conditional discharge following release from:

(a) Incarceration upon expiration of sentence; or

(b) Completion of parole.

(2) The period of conditional discharge shall be three (3) years.

(3) During the period of conditional discharge, the defendant shall:

(a) Be subject to all orders specified by the Department of Corrections; and

(b) Comply with all education, treatment, testing, or combination thereof required by the Department of Corrections.

(4) Persons under conditional discharge pursuant to this section shall be subject to the supervision of the Division of Probation and Parole.

(5) If a person violates a provision specified in subsection (3) of this section, the violation shall be reported in writing to the Commonwealth's attorney in the county of conviction. The Commonwealth's attorney may petition the court to revoke the defendant's conditional discharge and reincarcerate the defendant for no longer than the time remaining on the conditional discharge.

(6) The provisions of this section shall apply only to persons convicted, pleading guilty, or entering an Alford plea after the effective date of this Act.

Section 26. KRS 15A.030 is amended to read as follows:

The Justice Cabinet, in addition to the departments set forth in KRS 15A.020, shall consist of the following organizational units which are hereby created or reestablished:

(1) Office of secretary of justice comprised of the secretary of justice, the Commission on Correction and Community Service, the Kentucky State Corrections Commission, and the ***Criminal Justice Council***[~~Kentucky Crime Commission~~]. The Parole Board shall be attached to the Office of the Secretary for administrative ***and support*** purposes only.

(2) Offices of deputy secretaries of justice.

(3) Office of the general counsel.

(4) Medical examiner service program.

Section 27. KRS 15A.040 is amended to read as follows:

(1) The ***Criminal Justice Council***[~~Kentucky Crime Commission~~] shall advise and recommend to the ***Governor and the General Assembly***[~~secretary~~] policies and direction for[~~ departmental~~] long-range planning regarding all elements of the criminal justice system***. The Council shall review and make written recommendations on subjects including but not limited to administration of the criminal justice system, the rights of crime victims, sentencing issues, capital litigation, and the Penal Code. Recommendations for these and all other issues shall be submitted to the Governor***

and the Legislative Research Commission at least six (6) months prior to every regular session of the Kentucky General Assembly. The council shall:

(a) Make recommendations to the Justice secretary with respect to the award of state and federal grants and ensure that the grants are consistent with the priorities adopted by the Governor, the General Assembly, and the council;

(b) Conduct comprehensive planning to promote the maximum benefits of grants;

(c) Develop model criminal justice programs;

(d) Disseminate information on criminal justice issues and crime trends;

(e) Provide technical assistance to all criminal justice agencies; and

(f) Review and evaluate proposed legislation effecting criminal justice[~~and shall exercise supervisory authority with respect to federal and state grants as required by federal or state law~~].

(2) [~~Total ~~]Membership of the ***Criminal Justice Council shall consist of the following:***

(a) The secretary of the Justice Cabinet or his designee;

(b) The director of the Administrative Office of the Courts;

(c) The Attorney General or his designee;

(d) Two (2) members of the House of Representatives as designated by the Speaker of the House;

(e) Two (2) members of the Senate as designated by the President of the Senate;

(f) A crime victim, as defined in KRS Chapter 346, to be selected and appointed by the Governor;

(g) A victim advocate, as defined in KRS 421.570, to be selected and appointed by the Governor;

(h) A Kentucky college or university professor specializing in law, criminology, corrections, or a similar discipline to be selected and appointed by the Governor;

(i) The public advocate or his designee;

(j) The president of the Kentucky Sheriff's Association;

(k) The Commissioner of State Police or his designee;

(l) A person selected by the Kentucky State Lodge of the Fraternal Order of Police;

(m) The president of the Kentucky Association of Chiefs of Police;

(n) A member of the Prosecutors Advisory Council as chosen by the council;

(o) The Chief Justice or a justice or judge designated by him; and

(p) One (1) member of the Kentucky Association of Criminal Defense Lawyers, appointed by the president of the organization[~~Kentucky Crime Commission and the appointment of members thereto shall be determined and made by the Governor~~].

(3) The secretary of justice shall serve ex officio as chairman of the ***council***[~~commission~~]. ***Each member of the council shall have one (1) vote.*** Members of the ***council***[~~commission~~] shall serve without compensation, but shall be reimbursed for their expenses actually and necessarily incurred in the performance of their duties.

(4) The council shall meet at least once every three (3) months.

(5) The council may hold additional meetings:

(a) On the call of the chairman;

(b) At the request of the Governor to the chairman; or

(c) At the written request of the members to the chairman, signed by a majority of the members.

(6) Two-thirds (2/3) members of the council shall constitute a quorum for the conduct of business at a meeting.

(7) Failure of any member to attend two (2) meetings within a six (6) month period shall be deemed a resignation from the council and a new member shall be named by the appointing authority.

(8) The council is authorized to establish committees and appoint additional persons who may not be members of the council as necessary to effectuate its purposes, including but not limited to:

(a) Uniform Criminal Justice Information System committee;

(b) Committee on sentencing; and

(c) Penal Code committee.

(9) The council's administrative functions shall be performed by a full-time executive director appointed by the secretary of the Justice Cabinet and supported by the administrative, clerical, and other staff as allowed by

budgetary limitations and as needed to fulfill the council's role and mission and to coordinate its activities.

SECTION 28. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby established the Kentucky unified criminal justice information system, referred to in this chapter as the "system." The system shall be a joint effort of the criminal justice agencies and the courts. The administrative regulations promulgated by the secretary of justice relating to the system shall be exempt from other statutes and administrative regulations relating to information systems. Nothing in this section shall be construed to hamper any public officer or official, agency, or organization of state or local government from furnishing information or data that they are required or requested to furnish and which they are allowed to procure by law, to the General Assembly, the Legislative Research Commission, or a committee of either. These administrative regulations may include, but shall not be limited to, enterprise standards or specifications set forth for the procurement, maintenance, operation, and development of the system. For the purposes of this section, "criminal justice agencies" include all departments of the Justice Cabinet, the Unified Prosecutorial System, Commonwealth's attorneys, county attorneys, the Transportation Cabinet, the Cabinet for Human Resources, and any agency with the authority to issue a citation or make an arrest.

(2) The program to design, implement, and maintain the system shall be under the supervision of the uniform criminal justice information system committee of the Criminal Justice Council. The membership of this committee shall be determined by the council, upon the recommendation of the Governor's chief information officer, who shall chair the committee.

(3) The committee shall be responsible for recommending standards, policies, and other matters to the secretary of justice for promulgation of administrative regulations in accordance with KRS Chapter 13A to implement the policies, standards, and other matters relating to the system and its operation.

(4) The committee shall submit recommendations to the Criminal Justice Council and the secretary of justice for administrative regulations to implement the uniform policy required to operate the system. The committee shall implement the uniform policy.

(5) The uniform policy shall include a system to enable the criminal justice agencies and the courts to share data stored in each other's information systems. Initially, the uniform policy shall maximize the use of existing databases and platforms through the use of a virtual database created by network linking of existing databases and platforms among the various departments. The uniform policy shall also develop plans for the new open system platforms before the existing platforms become obsolete.

(6) The committee shall be responsible for recommending to the Criminal Justice Council and the secretary of justice any necessary changes in administrative regulations necessary to implement the system. The committee shall also recommend to the Criminal Justice Council, the Chief Justice, and the secretary of justice recommendations for statutory additions or changes necessary to implement and maintain the system. The secretary shall be responsible for reporting approved statutory recommendations to the Governor, the Chief Justice, the Legislative Research Commission, and appropriate committees of the General Assembly.

(7) The chair of the committee shall report annually to the Criminal Justice Council on the status of the system.

(8) All criminal justice agencies shall follow the policies established by administrative regulation for the exchange of data and connection to the system.

(9) The committee shall review how changes to existing criminal justice agency applications impact the new integrated network. Changes to criminal justice agency applications that have an impact on the integrated network shall be coordinated through and approved by the committee.

(10) Any future state-funded expenditures by a criminal justice agency for computer platforms in support of criminal justice applications shall be reviewed by the committee.

(11) Any criminal justice agency or officer that does not participate in the criminal justice information system may be denied access to state and federal grant funds.

SECTION 29. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky State Police shall design, implement, and maintain an automated fingerprint identification system.

(2) The automated fingerprint identification system shall be compatible with any similar system required by the federal government for inclusion of state information in federal criminal justice databases.

(3) The Commonwealth shall provide and maintain in every detention center the automated fingerprint identification system equipment and programs required by the Kentucky State Police through administrative regulation.

SECTION 30. A NEW SECTION OF KRS CHAPTER 441 IS CREATED TO READ AS FOLLOWS:

(1) All persons arrested or detained in any adult or juvenile detention facility shall be fingerprinted.

(2) The jailer may fingerprint persons for other law enforcement agencies.

(3) The jailer shall submit the fingerprints to the Kentucky State Police in the manner and at the time required by the Kentucky State Police through administrative regulation.

Section 31. KRS 610.300 is amended to read as follows:

(1) Physical evidence shall be obtained and utilized in the investigation of public offenses involving children in the same manner as it is obtained and utilized in the investigation of public offenses involving adults.

(2) ***Except for fingerprint records,*** all records and physical evidence so obtained shall be surrendered to the court upon motion for good cause shown[~~ or upon elimination of the child as a suspect in the case~~]. ***All records, including fingerprint records, shall be subject to expungement in the manner provided in KRS 431.076 for circumstances specified therein.***

(3) The court shall, upon receipt of physical evidence, return any evidence, which is not contraband and is not needed for further prosecution, to its lawful owner. ***The fingerprint cards created pursuant to KRS Chapters 600 to 645 shall be transferred pursuant to KRS 17.110.***

Section 32. KRS 431.520 is amended to read as follows:

Any person charged with an offense shall be ordered released by a court of competent jurisdiction pending trial on his personal recognizance or upon the execution of an unsecured bail bond in an amount set by the court or as fixed by the Supreme Court as provided by KRS 431.540, unless the court determines, in the exercise of its discretion that such a release will not reasonably assure the appearance of the person as required. When such a determination is made, the court shall, either in lieu of or in addition to the above methods of release, impose any of the following conditions of release:

(1) Place the person in the custody of a designated person or organization agreeing to supervise him;

(2) Place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) Require the execution of a bail bond:

  (a) With sufficient personal surety or sureties acceptable to the court; in determining the sufficiency of such surety, or sureties, the court shall consider his character, his place of residence, his relationship with the defendant and his financial and employment circumstances; or

  (b) With the 10% deposit as provided in KRS 431.530; or

  (c) With the deposit of cash equal to the amount of the bond or in lieu thereof acceptable security as provided in KRS 431.535;

(4) ***If the person's record indicates a history of controlled substance or alcohol abuse, order the person to submit to periodic testing for use of controlled substances or alcohol and pay a reasonable fee, not to exceed the actual cost of the test and analysis, as determined by the court with the fee to be collected by the circuit clerk, held in an agency account, and disbursed, on court order, solely to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis performed under this subsection. If the person is declared indigent, the testing fee may be waived by the court. The Administrative Office of the Courts shall establish pilot projects to implement the provisions of this subsection;***

(5) Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours;

(6)[~~(5)~~] A court authorizing the release of a person pursuant to this section shall cause the issuance of an appropriate order containing a statement of the conditions imposed, if any, shall cause such person to be informed of the penalties applicable to violations of the conditions of his release, and shall cause him to be informed that a warrant for his arrest will be issued immediately upon any such violation;

(7)[~~(6)~~] A person for whom conditions of release are imposed and who after twenty-four (24) hours from the time of the imposition of said conditions continues to be detained as a result of his inability to meet the conditions of release, shall, upon written application or upon the court's own motion, be entitled to have the conditions reviewed by the court which imposed them. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon written application or upon the court's own motion, be entitled to a review by the court which imposed the condition;

(8)[~~(7)~~] If at any time following release of a defendant and before he is required to appear for trial, the court is advised of a material change in the defendant's circumstances or that he has not complied with all conditions imposed upon his release, the court having jurisdiction may: (a) order the arrest of the defendant, (b) enter an order requiring the defendant, his surety or sureties to appear and show cause why the bail bond should not be forfeited or the conditions of his release be changed, or (c) both. A copy of said order shall be served upon the defendant, his surety or sureties. If the defendant fails to appear before the court as ordered or if, after hearing, the court finds the conditions of release have not been complied with, the court may change the conditions imposed or forfeit the bail bond or any portion thereof and enter a judgment for the Commonwealth against the defendant and his surety or sureties for the amount of the bail bond or any portion thereof and cost of the proceedings.

Section 33. KRS 431.525 is amended to read as follows:

(1) The amount of the bail shall be:

(a) Sufficient to insure compliance with the conditions of release set by the court;

(b) Not oppressive;

(c) Commensurate with the nature of the offense charged;

(d) Considerate of the past criminal acts and the reasonably anticipated conduct of the defendant if released; and

(e) Considerate of the financial ability of the defendant.

(2) When a person is charged with an offense punishable by fine only***,*** the amount of the bail bond set shall not exceed the amount of the maximum penalty and costs***.***[~~;~~]

(3) When a person has been convicted of an offense and only a fine has been imposed***,*** the amount of the bail shall not exceed double the amount of the fine.

(4) The Administrative Office of the Courts shall establish pilot projects to implement controlled substance or alcohol abuse testing as specified under this subsection. If the person's record indicates a history of controlled substance or alcohol abuse, the court may order the person to submit to periodic testing for use of controlled substances or alcohol and to pay a reasonable fee, not to exceed the actual cost of the test and analysis, as determined by the court, with the fee to be collected by the circuit clerk, held in an agency account, and disbursed, on court order, solely to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis performed under this subsection. If the person is declared indigent, the testing fee may be waived by the court. If the court finds the conditions of release have not been complied with, the court may change the conditions imposed or forfeit the bail bond or any portion thereof and enter a judgment for the Commonwealth against the person and his surety or sureties for the amount of the bail bond or any portion thereof and the cost of the proceedings.

SECTION 34. A NEW SECTION OF KRS CHAPTER 30A IS CREATED TO READ AS FOLLOWS:

(1) The council shall direct the design of, and the Kentucky State Police shall operate and maintain, an automated warrant system.

(2) The automated warrant system shall be compatible with any similar system required by the federal government for inclusion of state information in federal criminal justice databases.

(3) When a warrant is issued and sent to the circuit clerk, the circuit clerk shall enter the data into the automated warrant system equipment and programs required by the council by administrative regulation of the Justice Cabinet.

(4) When a warrant is issued to a peace officer or other public officer, that officer shall enter, or cause to be entered, the data into the automated warrant system equipment and programs required by the council by administrative regulation of the Justice Cabinet.

(5) When a warrant is served, the officer serving the warrant shall forthwith enter the fact that the warrant was served and other required data into the automated warrant system equipment and programs required by the council by administrative regulation of the Justice Cabinet.

(6) When the conditions for which a warrant has been issued to the circuit clerk have been satisfied, the circuit clerk shall enter that fact and other required data into the automated warrant equipment and programs required by the council by administrative regulation of the Justice Cabinet.

(7) As used in this section and Section 35 of this Act, a "warrant" means an arrest warrant, a juvenile pickup order, a probation or parole violation warrant, or a warden's warrant for escape.

Section 35. KRS 30A.080 is amended to read as follows:

(1) Every clerk shall maintain ***all warrants,***[~~such~~] records, files, dockets***,*** and indexes as are prescribed by statute or rule.

(2) All necessary record books and all necessary supplies required by the clerk's office shall be procured through the Administrative Office of the Courts and paid for by the Court of Justice.

(3) No clerk shall permit the records or papers of his office to be taken out of his office except in case of invasion or insurrection, or other catastrophe, or pursuant to rule or order of court, and then he shall cause them to be returned as soon as the necessity for the removal ceases to exist.

(4) Records may be permanently transferred from the clerk's office by rule or order of the Supreme Court.

Section 36. KRS 346.030 is amended to read as follows:

(1) There is hereby created a board, to be known as the Crime Victims Compensation Board. ***The***[~~Such~~] board shall consist of five (5) members not all of whom shall be engaged in the same occupation or profession***, at least one (1) of whom shall be a victim as defined in KRS 421.500(1) or a victim advocate as defined in KRS 421.570(1),*** and the[~~ said~~] board shall be appointed by the Governor.

(2) The term of office of each such member shall be four (4) years, except that of the members first appointed two (2) shall serve for terms of four (4) years, two (2) shall serve for terms of three (3) years and one (1) shall serve for a term of two (2) years, respectively. Any member appointed to fill a vacancy occurring otherwise than by expiration of a term shall be appointed for the remainder of the unexpired term.

(3) The Governor shall designate one (1) member of the board as chairman thereof, to serve as such at the pleasure of the Governor.

(4) The Governor shall establish the compensation of the members of the board pursuant to the provisions of KRS 64.640.

(5) Each new board member shall receive training on the dynamics of domestic violence, child abuse, sexual assault, homicide, and other violent crimes and the criminal justice process.

Section 37. KRS 346.060 is amended to read as follows:

(1) A claim form may be filed by a person eligible to receive an award, as provided in KRS 346.050, or, if such person is a minor, by his parent or guardian.

(2) A claim form must be filed by the claimant not later than ***five (5) years***[~~one (1) year~~] after the occurrence of the criminally injurious conduct upon which such claim is based, or not later than ***five (5) years***[~~one (1) year~~] after the death of the victim, provided, however, that upon good cause shown, the board may extend the time for filing if, in a particular case, the interest of justice so requires.

(3) Claims shall be filed in the office of the board in person or by mail. Only printed claim forms supplied by the board shall be accepted. The board shall accept for filing all claims submitted by persons eligible under subsection (1) of this section and alleging the jurisdiction requirements set forth in this chapter and meeting the requirements as to form in the rules and regulations of the board.

(4) Upon filing of a claim pursuant to this chapter, the board shall promptly notify the United States attorney (if a federal offense is involved), the Commonwealth's attorney or county attorney of the county wherein the crime is alleged to have occurred. If, within ten (10) days after such notification, such United States attorney, Commonwealth's attorney or county attorney advises the board that a criminal prosecution is pending upon the same alleged crime and requests that action by the board be deferred, the board shall defer all proceedings under this chapter until such time as such criminal prosecution has been concluded and shall so notify such United States attorney, Commonwealth's or county attorney, and the claimant. When such criminal prosecution has been concluded such United States attorney, Commonwealth's or county attorney shall promptly so notify the board. Nothing in this section shall limit the authority of the board to grant emergency awards pursuant to KRS 346.120.

Section 38. KRS 346.130 is amended to read as follows:

(1) No award shall be made unless the board or board member, as the case may be, finds that:

(a) Criminally injurious conduct occurred;

(b) Such criminally injurious conduct resulted in personal physical or psychological injury to, or death of, the victim; and

(c) Police records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the police records show that such report was made more than forty-eight (48) hours after the occurrence of such crime unless the board, for good cause shown, finds the delay to have been justified.

(2) The board upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies shall deny, reconsider, or reduce an award.

(3) Any award made pursuant to this chapter shall be in an amount not exceeding out-of-pocket expenses, including indebtedness reasonably incurred for medical or other services, including mental health counseling, necessary as a result of the injury upon which the claim is based, together with loss of earnings or support resulting from such injury. Mental health counseling shall be paid for a maximum of two (2) years, but only after proper documentation is submitted to the board stating what treatment is planned and for what period of time.[~~ A six (6) months' progress report will also be required by the board.~~] The board shall have the power to discontinue mental health counseling at any time within the two (2) year period. Replacement of eyeglasses and other corrective lenses shall be included in an award, provided they were broken or damaged during the crime.

(4) Any award made for loss of earnings or support shall, unless reduced pursuant to other provisions of this chapter be in an amount equal to the actual loss sustained; provided, however, that no such award shall exceed one hundred fifty dollars ($150) for each week of lost earnings or support. The claimant or victim must have been employed at the time the crime occurred. Said employment shall be verified by the staff of the board after information is provided by the claimant or victim. Should the claimant or victim fail to supply the board with the information requested, the portion of the claim for lost wages or support shall be denied. If there are two (2) or more persons entitled to an award as a result of the injury or death of a person which is the direct result of criminally injurious conduct, the award shall be apportioned by the board among the claimants.

(5) The board is authorized to set a reasonable limit for the payment of funeral and burial expenses which shall include

funeral costs, a monument, and grave plot. In no event shall an award for funeral expenses exceed ***five thousand***[~~thirty-five hundred~~] dollars ***($5,000)***[~~($3,500)~~].

(6) Any award made under this chapter shall not exceed twenty-five thousand dollars ($25,000).

(7) No award shall be made for any type of property loss or damage.

SECTION 39. A NEW SECTION OF KRS 421.500 TO 421.575 IS CREATED TO READ AS FOLLOWS:

(1) In order to establish the minimum conduct of criminal justice professionals with respect to crime victims and to communicate the intent of the General Assembly that victims of crime play an integral role in the criminal justice process, KRS 421.500 to 421.575 is hereby named the Kentucky Crime Victim Bill of Rights.

(2) The rights established by KRS 421.500 to 421.575 shall apply in all felony and misdemeanor proceedings in a District or Circuit Court of the Commonwealth.

(3) Nothing in KRS 421.500 to 421.575 shall provide grounds for the victim to challenge a charging decision or a conviction, to obtain a stay of trial, or to compel a new trial. Law enforcement agencies, county attorneys, and Commonwealth's attorneys and courts shall make every reasonable effort to ensure that victims of crime receive the benefits of the rights set out in KRS 421.500 to 421.575.

Section 40. KRS 421.500 is amended to read as follows:

(1) As used in KRS ***421.500 to 421.575***[~~421.510 to 421.550~~], "victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime classified as ***stalking, unlawful imprisonment, use of a minor in a sexual performance, unlawful transaction with a minor in the first degree, terroristic threatening, menacing, harassing communications, intimidating a witness,*** criminal homicide, robbery, rape, assault, sodomy, kidnapping, burglary in the first or second degree, sexual abuse, wanton endangerment, criminal abuse, or incest. If the victim is a minor or legally incapacitated, "victim" means a parent, guardian, custodian or court-appointed special advocate. If the victim is deceased and the relation is not the defendant, the following relations shall be designated as "victim" for the purpose of exercising those rights contained in KRS ***421.500 to 421.575***[~~421.510 to 421.540~~]:

- (a) The spouse;
- (b) An adult child if paragraph (a) of this subsection does not apply;
- (c) A parent if paragraphs (a) and (b) of this subsection do not apply;
- (d) A sibling if paragraphs (a) through (c) of this subsection do not apply; and
- (e) A grandparent if paragraphs (a) through (d) of this subsection do not apply.

(2) If any court believes that the health, safety, or welfare of a victim who is a minor or is legally incapacitated would not otherwise adequately be protected, the court may appoint a special advocate to represent the interest of the victim and to exercise those rights provided for by KRS ***421.500 to 421.575***[~~421.510 to 421.540~~]. Communication between the victim and the special advocate shall be privileged.

(3) Law enforcement personnel shall ensure that victims receive information on available ***protective,*** emergency, social, and medical services upon initial contact with the victim and are given information on the following as soon as possible:

- (a) Availability of crime victim compensation where applicable;
- (b) Community based treatment programs;
- (c) The criminal justice process as it involves the participation of the victim or witness;
- (d) The arrest of the accused; and
- (e) How to ***register to be notified when***[~~find out if~~] a person has been released from ***prison,*** jail***,***[~~, or~~] a juvenile detention facility***, or a psychiatric facility or forensic psychiatric facility if the case involves a violent crime as defined in KRS 439.3401 and the person charged with or convicted of the offense has been involuntarily hospitalized pursuant to KRS Chapter 202A***.

(4) Law enforcement officers and attorneys for the Commonwealth shall provide information to victims and witnesses on how they may be protected from intimidation, harassment, and retaliation as defined in KRS 524.040, 524.045 or 524.055.

(5) Attorneys for the Commonwealth shall make a reasonable effort to insure that:

- (a) All victims and witnesses who are required to attend criminal justice proceedings are notified promptly of any scheduling changes that affect their appearances;
- (b) If victims so desire and if they provide the attorney for the Commonwealth with a current address and telephone number, they shall receive prompt notification, if possible, of judicial proceedings relating to their case, including the defendant's release on bond ***and any special conditions of release***; of the charges against the defendant, the defendant's pleading to the charges, and the date set for the trial; of notification of changes in the custody of the

defendant and changes in trial dates; of the verdict, the victim's right to make an impact statement for consideration by the court at the time of sentencing of the defendant, the date of sentencing, the victim's right to receive notice of any parole board hearing held for the defendant, and that the office of Attorney General will notify the victim if an appeal of the conviction is pursued by the defendant; and

(c) The victim knows how to ***register to be notified when***[~~find out if~~] a person has been released from ***a prison,*** jail***,***[~~ or~~] a juvenile detention facility***, or a psychiatric facility or forensic psychiatric facility if the case involves a violent crime as defined in KRS 439.3401 and the person charged with or convicted of the offense has been involuntarily hospitalized pursuant to KRS Chapter 202A;***

(d) The victim receives information on available:

1. Protective, emergency, social, and medical services;

2. Crime victim compensation, where applicable;

3. Restitution, where applicable;

4. Assistance from a victim advocate; and

5. Community-based treatment programs; and

(e) The victim of crime may pursuant to Section 51 of this Act receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts.

(6) The victim shall be consulted by the attorney for the Commonwealth on the disposition of the case including dismissal, release of the defendant pending judicial proceedings, ***any conditions of release,*** a negotiated plea, and entry into a pretrial diversion program.

(7) In prosecution for offenses listed in this section for the purpose of defining "victim," law enforcement agencies and attorneys for the Commonwealth shall promptly return a victim's property held for evidentiary purposes unless there is a compelling reason for retaining it. Photographs of such property shall be received by the court as competent evidence in accordance with the provisions of KRS 422.350.

(8) A victim or witness who so requests shall be assisted by law enforcement agencies and attorneys for the Commonwealth in informing employers that the need for victim or witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work.

(9) The Attorney General, where possible, shall provide technical assistance to law enforcement agencies and attorneys for the Commonwealth if such assistance is requested for establishing a victim assistance program.

(10) If a defendant seeks appellate review of a conviction and the Commonwealth is represented by the Attorney General, the Attorney General shall make a reasonable effort to notify victims promptly of the appeal, the status of the case, and the decision of the appellate court.

Section 41. KRS 421.510 is amended to read as follows:

(1) Where the victim is less than sixteen (16) years old and the crime is a sexual offense including violations of KRS 510.040 to 510.150, 530.020, ***530.064***[~~530.065~~], 530.070, 531.310, 531.320, and 531.370, a speedy trial may be scheduled as provided in subsection (2) of this section.

(2) The court, upon motion by the attorney for the Commonwealth for a speedy trial, shall set a hearing date on the motion within ten (10) days of the date of the motion. If the motion is granted, the trial shall be scheduled within ninety (90) days from the hearing date.

(3) In ruling on any motion or other request for a delay or continuance of the proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

Section 42. KRS 346.185 is amended to read as follows:

(1) There is established in the State Treasury the "Crime Victims' Compensation Fund," hereinafter referred to as the "fund," to be administered by the Crime Victims' Compensation Board. In all cases in which defendants plead or are found guilty of a crime as defined in KRS 500.080(2), there shall be imposed as an additional cost the sum of ***twenty***[~~ten~~] dollars ***($20)***[~~($10)~~]. This sum shall not be suspended or probated. This sum shall be collected in its entirety and shall not be prorated. The clerk of the court shall collect the cost and forward it monthly to the State Treasurer, to be deposited in the fund. Nothing herein shall be construed to limit the power of the court to order additional forms of restitution including public or charitable work or reparation to the victim, to the fund, or otherwise as authorized by law.

(2) The fund shall consist of moneys from the following: appropriations by the General Assembly; the federal government; payments by the defendant pursuant to subsection (1) of this section and any other public or private source. Any unexpended balance remaining in the fund at the end of the biennium shall not lapse and be transferred to the general fund, but shall remain in the crime victims' compensation fund. Any funds not utilized by the board shall be used to provide assistance to programs for victims and the board shall allocate such funds to any agency providing services to victims. In the event there are insufficient funds in the fund to pay all claims in full, all claims shall be paid at seventy

percent (70%). If there are no moneys in the fund, then no claim shall be paid until moneys have again accumulated. In addition to payment of claims, moneys in the fund shall be used to pay all the necessary and proper expenses of the Crime Victims' Compensation Board.

(3) When judgment is entered against a defendant as provided in this section and each sum, or any part thereof, remains unpaid, there shall be withheld from any disbursement, payment, benefit, compensation, salary, or other transfer of money from the State of Kentucky to such defendant an amount equal to the unpaid amount of the judgment. The amount shall be paid to the crime victims' compensation fund and satisfaction of the judgment shall be entered on the court record. Under no circumstances shall the general revenue fund be used to reimburse court costs or pay for judgment.

Section 43. KRS 23A.205 is amended to read as follows:

(1) Court costs for a criminal case in the Circuit Court shall be ***seventy-five***[~~fifty-five~~] dollars ***($75), which shall include the fee mandated in KRS 346.185***[~~($55)~~].

(2) ***Except as provided in KRS 346.185,*** taxation of costs against a defendant, upon conviction, may be probated or suspended at the discretion of the court.

(3) Additional fees shall be charged in Circuit Court criminal matters as follows:

(a) Preparing a certification $1.00

(b) Preparing a copy of a document (per page) . $0.15

(4) The additional fees required by subsection (3) of this section shall be paid to the clerk at the time the service is requested.

(5) The circuit clerk shall monthly pay five dollars ($5) from each court cost collected pursuant to subsection (1) of this section to the sheriff for use by the sheriff for providing security services and related activities to the court as provided for in KRS 64.092. The clerk shall include among his reports to the Administrative Office of the Courts the amounts paid to the sheriff.

Section 44. KRS 24A.175 is amended to read as follows:

(1) Court costs for a criminal case in the District Court shall be:

(a) For an offense for which prepayment is permitted
under KRS 189.394, 431.451, or 431.452 and for which
prepayment has been made prior to trial as required by law $42.00

(b) For an offense for which prepayment is not permitted or
has not been made .... ***$67.00***[~~$47.00~~]

(c) Court costs designated in paragraph (b) of this subsection shall include the fee mandated in KRS 346.185.

(2) There shall be no court costs for a parking citation when:

(a) The fine is paid to the clerk before the trial date in the same manner as provided for speeding citations under KRS 189.394(3); and

(b) The citation does not involve parking in a fire lane or blocking the traveled portion of the highway.

(3) Additional costs shall be assessed in District Court criminal matters as follows:

(a) Preparing an attestation $0.50

(b) Preparing a certification $1.00

(c) Preparing a copy of a document (per page) $0.25

(4) Taxation of costs against a defendant, upon conviction, including persons sentenced to state traffic school as provided under KRS 186.574, shall be mandatory and shall not be probated or suspended.

(5) The circuit clerk shall, at the time fines and costs are paid over to the state, pay five dollars ($5) from each court cost collected pursuant to subsection (1) of this section to the county treasurer for use by the fiscal court for the sole purpose of defraying the costs of operation of the county jail and the transportation of prisoners and shall include among his reports to the Administrative Office of the Courts the amounts paid to the county.

(6) The circuit clerk shall, at the time fines and costs are paid over to the state, pay ten dollars ($10) from each court cost collected pursuant to subsection (1) of this section to the State Treasury for the benefit and use of the Kentucky Local Correctional Facilities Construction Authority pursuant to KRS 441.625 to 441.695.

(7) The circuit clerk shall monthly pay five dollars ($5) from each court cost collected pursuant to subsection (1) of this section to the sheriff for use by the sheriff for providing security services and related activities to the court as provided for in KRS 64.092. The clerk shall include among his reports to the Administrative Office of the Courts the amounts paid to the sheriff.

SECTION 45. A NEW SECTION OF KRS CHAPTER 26A IS CREATED TO READ AS FOLLOWS:

(1) The Court shall collect the crime victim compensation fee specified in KRS 346.185 when court costs are collected. The fee shall be forwarded by the Circuit Clerk to the State Treasurer at the time costs are transferred to the State Treasurer.

(2) The collection of crime victim compensation fees shall be accounted for as a separate item to the State Treasurer and the Administrative Office of the Courts.

SECTION 46. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

(1) Restitution to a named victim, if there is a named victim, shall be ordered in a manner consistent, insofar as possible, with the provisions of this section and Sections 47, 48, 49, and 50 of this Act in addition to any other part of the penalty for any offense under this chapter. The provisions of this section shall not be subject to suspension or nonimposition.

(2) If pretrial diversion is granted, restitution shall be a part of the diversion agreement.

(3) If probation, shock probation, conditional discharge, or other alternative sentence is granted, restitution shall be a condition of the sentence.

(4) If a person is sentenced to incarceration and paroled, restitution shall be made a condition of parole.

SECTION 47. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

When a judge orders restitution, the judge shall:

(1) Order the restitution to be paid to a specific person or organization through the circuit clerk, who shall disburse the moneys as ordered by the court;

(2) Be responsible for overseeing the collection of restitution;

(3) Set the amount of restitution to be paid;

(4) Set the amount and frequency of each restitution payment or require the payment to be made in a lump sum;

(5) Monitor the payment of the restitution to assure that payment is being made;

(6) If restitution is not being paid as ordered, hold a hearing to determine why the restitution is not being paid;

(7) If the restitution is not being paid and no good reason exists therefore institute sanctions against the defendant; and

(8) Not release the defendant from probation supervision until restitution has been paid in full and all other aspects of the probation order have been successfully completed.

SECTION 48. A NEW SECTION OF KRS CHAPTER 439 IS CREATED TO READ AS FOLLOWS:

(1) When there is an identified victim of a defendant's crime to whom restitution has been ordered but not yet paid in full, or restitution has been ordered paid to a government agency and has not yet been paid in full, the Parole Board shall order the defendant to pay restitution as a condition of parole.

(2) When the Parole Board orders restitution, the board shall:

- *(a) Order the restitution to be paid to a specific person or organization through the Division of Probation and Parole, which shall disburse the moneys as ordered by the board;*
- *(b) The Division of Probation and Parole shall be responsible for overseeing the collection of the restitution;*
- *(c) Set the amount of restitution to be paid, if not already set;*
- *(d) Set the amount and frequency of each restitution payment or require the payment to be made in a lump sum;*
- *(e) Monitor the payment of the restitution to assure that payment is being made;*
- *(f) If restitution is not being paid as ordered, institute parole violation proceedings to determine why the restitution is not being paid;*
- *(g) If the restitution is not being paid and no good reason exists therefor, institute sanctions against the defendant; and*
- *(h) Not release the defendant from parole supervision until restitution has been paid in full.*

(3) The board, in addition to any other sanctions which may be imposed on the defendant, ask a court to hold a defendant who is not paying restitution in the manner or amount prescribed in contempt of court.

(4) Any statute relating to the length of parole supervision notwithstanding, the parole for a person owing restitution shall be until the restitution is paid in full, even if this would lengthen the period of supervision beyond the statutory limit of parole supervision or the statutory limit for serving out the sentence imposed.

(5) Payment of restitution in full prior to the end of the period of parole supervision shall not shorten the period of parole supervision.

Section 49. KRS 533.020 is amended to read as follows:

(1) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court shall place him on probation if he is in need of the supervision, guidance, assistance, or direction that the probation service can provide. Conditions of probation shall be imposed as provided in KRS 533.030, but the court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the period of probation.

(2) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court may sentence him to probation with an alternative sentence if it is of the opinion that the defendant should conduct himself according to conditions determined by the court and that probationary supervision alone is insufficient. The court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the alternative sentence.

(3) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court may sentence him to conditional discharge if it is of the opinion that the defendant should conduct himself according to conditions determined by the court but that probationary supervision is inappropriate. Conditions of conditional discharge shall be imposed as provided in KRS 533.030, but the court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the period of conditional discharge.

(4) The period of probation, probation with an alternative sentence, or conditional discharge shall be fixed by the court and at any time may be extended or shortened by duly entered court order. Such period, with extensions thereof, shall not exceed five (5) years***, or the time necessary to complete restitution, whichever is longer,*** upon conviction of a felony nor two (2) years***, or the time necessary to complete restitution, whichever is longer,*** upon conviction of a misdemeanor. Upon completion of the probationary period, probation with an alternative sentence, or the period of conditional discharge, the defendant shall be deemed finally discharged, provided no warrant issued by the court is pending against him, and probation, probation with an alternative sentence, or conditional discharge has not been revoked.

(5) Notwithstanding the fact that a sentence to probation, probation with an alternative sentence, or conditional discharge can subsequently be modified or revoked, a judgment which includes such a sentence shall constitute a final judgment for purposes of appeal.

Section 50. KRS 533.030 is amended to read as follows:

(1) The conditions of probation and conditional discharge shall be such as the court, in its discretion, deems reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so. The court shall provide as an explicit condition of every sentence to probation or conditional discharge that the defendant not commit another offense during the period for which the sentence remains subject to revocation.

(2) When imposing a sentence of probation or conditional discharge, the court may, in addition to any other reasonable condition, require that the defendant:

(a) Avoid injurious or vicious habits;

(b) Avoid persons or places of disreputable or harmful character;

(c) Work faithfully at suitable employment as far as possible;

(d) Undergo available medical or psychiatric treatment and remain in a specific institution as required for that purpose;

(e) Post a bond, without surety, conditioned on performance of any of the prescribed conditions;

(f) Support his dependents and meet other family responsibilities;

(g) Pay the cost of the proceeding as set by the court;

(h) Remain within a specified area;

(i) Report to the probation officer as directed;

(j) Permit the probation officer to visit him at his home or elsewhere;

(k) Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment; and

(l) If the defendant's record indicates a controlled substance or alcohol problem, submit to periodic testing for use of controlled substances or alcohol and pay a reasonable fee, not to exceed the actual cost of the test and analysis, as determined by the court, said fee to be collected by the circuit clerk, held in an agency account, and disbursed, on court order, solely to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis performed under this subsection. For good cause shown, the testing fee may be waived by the court.

(3) When imposing a sentence of probation or conditional discharge in a case where a victim of a crime has suffered monetary damage as a result of the crime due to his property having been converted, stolen, or unlawfully obtained, or its

value substantially decreased as a result of the crime, or where the victim suffered actual medical expenses, direct out-of-pocket losses, or loss of earning as a direct result of the crime, or if as a direct result of the crime the victim incurred medical expenses that were paid by the Cabinet for Human Resources, the Crime Victims Compensation Board, or any other governmental entity, the court shall order the defendant to make restitution in addition to any other penalty provided for the commission of the offense. Payment of restitution to the victim shall have priority over payment of restitution to any government agency. Restitution shall be ordered in the full amount of the damages, unless the damages exceed one hundred thousand dollars ($100,000) or twice the amount of the gain from the commission of the offense, whichever is greater, in which case the higher of these two (2) amounts shall be awarded. The court may, in lieu of ordering monetary restitution, order the defendant to make restitution by working for or on behalf of the victim. The court shall determine the number of hours of work necessary by applying the then prevailing federal minimum wage to the total amount of monetary damage caused by or incidental to the commission of the crime. The court may, with the consent of the agency, order the defendant to work as specified in KRS 533.070. Any work ordered pursuant to this section shall not be deemed employment for any purpose, nor shall the person performing the work be deemed an employee for any purpose. Where there is more than one (1) defendant or more than one (1) victim, restitution may be apportioned. Restitution shall be subject to the following additional terms and conditions:

(a)[~~Restitution by payment may be ordered in a lump sum or in specified payments;~~

~~(b) Restitution by payment may be ordered paid through the circuit clerk who shall disburse the moneys as ordered by the court;~~

~~(c)~~] Where property which is unlawfully in the possession of the defendant is in substantially undamaged condition from its condition at the time of the taking, return of the property shall be ordered in lieu of monetary restitution;

[~~(d) Restitution by payment to governmental agencies shall be made through payments to and disbursement by the circuit clerk;~~]

(b)[~~(e)~~]The circuit clerk shall assess an additional fee of ***five***[~~two~~] percent ***(5%)***[~~(2%)~~] to defray the administrative costs of collection of payments or property. This fee shall be paid by the defendant and shall enure to ***a trust and agency account which shall not lapse and which shall be used to hire additional deputy clerks and office personnel or increase deputy clerk and office personnel salaries, or combination thereof***[~~the general fund of the State Treasury~~];

(c)[~~(f)~~] When a defendant fails to make restitution ordered to be paid through the circuit clerk, the circuit clerk shall notify the court.[~~ The court shall hold a hearing to determine if the defendant is in contempt of the court or has violated the terms of his probation~~]; and

(d)[~~(g)~~] An order of restitution shall not preclude the owner of property or the victim who suffered personal physical or mental injury or out-of-pocket loss of earnings or support or other damages from proceeding in a civil action to recover damages from the defendant. A civil verdict shall be reduced by the amount paid under the criminal restitution order.

(4) In addition to any other terms and conditions imposed under this section, the court may require the probationer, as a condition of his probation, to make one (1) payment to a crime stoppers organization in an amount not to exceed the amount of the reward paid by a crime stoppers organization, as defined by KRS 431.570, relative to the probationer.

(5) When a defendant is sentenced to probation or conditional discharge, he shall be given a written statement explicitly setting forth the conditions under which he is being released.

(6) When imposing a sentence of probation or conditional discharge, the court, in addition to conditions imposed under this section, may require as a condition of the sentence that the defendant submit to a period of imprisonment in the county jail or to a period of home incarceration at whatever time or intervals, consecutive or nonconsecutive, the court shall determine. The time actually spent in confinement or home incarceration pursuant to this provision shall not exceed six (6) months or the maximum term of imprisonment assessed pursuant to KRS Chapter 532, whichever is the shorter. Time spent in confinement or home incarceration under this subsection shall be credited against the maximum term of imprisonment assessed for the defendant pursuant to KRS Chapter 532, if probation or conditional discharge is revoked and the defendant is sentenced to imprisonment. Any prohibitions against probation, shock probation, or conditional discharge under KRS 533.060(2), or 532.045 shall not apply to persons convicted of a misdemeanor or Class D felony and sentenced to a period of confinement or home incarceration under this section.

SECTION 51. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

(1) The Attorney General shall develop and administer a program for the protection of crime victims and witnesses and their immediate families.

(2) Within the limits of the administrative regulations, guidelines, and appropriations for this purpose, the program shall provide funding to the State Police or to a sheriff's office or city, county, or urban-county police department agreeing to provide protection to crime victims and witnesses and their families.

(3) Any Commonwealth's attorney or county attorney may apply to the Attorney General for funding for protection of

crime victims, witnesses, and their families.

(4) No protective service shall be rendered to the same person for more than six (6) months.

(5) Protective services funded by this program shall be limited to:

(a) Physical protection of the person;

(b) Physical security measures for the person's residence, vehicle, workplace, or combination thereof; or

(c) Short-term relocation.

(6) The Attorney General shall promulgate administrative regulations under KRS Chapter 73A for the operation of the program.

(7) Nothing in this statute shall be construed to create a cause of action for money damages against the state, a county, a municipality, or any of their agencies, public officials, or employees.

(8) No court shall order a law enforcement agency to protect crime victim witnesses or their immediate families.

(9) No record that may lead to the identity of a person seeking or given protection under this section shall be an open record. This protection shall extend even to the question of whether such a record exists.

SECTION 52. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of ethnic intimidation who intentionally because of race, color, religion, or national origin of another individual or group of individuals, violates a provision of any one (1) of the following:

(a) KRS 508.010, 508.020, or 508.025;

(b) KRS 508.050 or 508.060;

(c) KRS 508.100 or 508.110;

(d) KRS 509.020;

(e) KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.100, or 510.110;

(f) KRS 512.020, 512.050, or 512.060;

(g) KRS 513.020, 513.030, or 513.040; or

(h) KRS 525.020, 525.050, 525.060, 525.070, or 525.080.

(2) Unless the underlying offense is a Class A felony, the range of punishment for the crime of ethnic intimidation shall be determined by the underlying statutory violation referenced in subsection (1) of this section, with the punishment being set at one (1) degree higher than that for the underlying statutory violation. If the underlying offense is a Class A felony, the punishment shall be the same as that for a Class A felony.

SECTION 53. A NEW SECTION OF KRS CHAPTER 525 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of institutional vandalism when he, because of race, color, religion, or national origin of another individual or group of individuals, knowingly vandalizes, defaces, damages, or desecrates objects defined in KRS 525.110.

(2) Institutional vandalism is a Class D felony.

SECTION 54. A NEW SECTION OF KRS CHAPTER 346 IS CREATED TO READ AS FOLLOWS:

A person who suffers personal injury as a result of conduct in violation of Section 52 of this Act is a victim of criminally injurious conduct as defined in KRS 346.020 and is eligible for awards pursuant to KRS Chapter 346.

SECTION 55. A NEW SECTION OF KRS CHAPTER 434 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of filing an illegal lien when he files a document or lien that he knows or should have known was forged, groundless, contained a material misstatement, or was a false claim. It shall be an affirmative defense that any material misstatement was not intentional.

(2) Filing an illegal lien is a Class D felony for the first offense, a Class C felony for any second offense, and a Class B felony for any subsequent offense.

Section 56. KRS 15.420 is amended to read as follows:

As used in KRS 15.410 to 15.510, unless the context otherwise requires:

(1) "Local unit of government" means any city or county, or any combination of cities and counties, of the Commonwealth.

(2) "Police officer" means a full-time member of a lawfully organized police ***or sheriff's*** department of county***, urban-county*** or city government ***or state university safety and security department*** who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of the state, but does not include Kentucky State Police, any elected officer ***except the***~~[,]~~ sheriff,~~[deputy sheriff]~~, constable, deputy constable, district detective, deputy district detective, special local peace officer, auxiliary police officer or any other peace officer not specifically authorized

in KRS 15.410 to 15.510.

(3) "Council" means the Kentucky Law Enforcement Council.

Section 57. KRS 15.460 is amended to read as follows:

(1) Beginning July ***15***[~~1~~], ***1998***[~~1982~~], an eligible local unit of government shall be entitled to receive annually a supplement of two thousand ***seven***[~~five~~] hundred ***fifty*** dollars ***($2,750)***[~~($2,500)~~] for each qualified police officer it employs, plus an amount equal to the required employer's contribution on the supplement to the defined benefit pension plan to which the officer belongs, but no more than the required employer's contribution to the County Employees Retirement System hazardous duty category. ***Beginning July 1, 1999, an eligible local unit of government shall be entitled to receive annually a supplement of three thousand dollars ($3,000) for each qualified police officer it employs, plus an amount equal to the required employer's contribution on the supplement to the defined benefit pension plan to which the officer belongs but no more than the required employer's contribution to the County Employees Retirement System hazardous duty category.*** In the case of County Employees Retirement System membership, the pension contribution on the supplement shall be paid whether the officer enters the system under hazardous duty coverage or nonhazardous coverage. The local unit of government shall pay the amount received for retirement coverage to the appropriate retirement system to cover the required employer contribution on the pay supplement. Should the foundation program funds be insufficient to pay employer contributions to the system, then the total amount available for pension payments shall be prorated to each eligible government so that each receives the same percentage of required pension costs attributable to the cash salary supplement.

(2) Each qualified police officer, whose local government receives a supplement pursuant to subsection (1) of this section, shall be paid by the local government the supplement which his qualifications brought to the local government. The supplement paid each police officer shall be in addition to his regular salary.

Section 58. KRS 70.030 is amended to read as follows:

(1) The sheriff may appoint his own deputies, and may revoke the appointment at his pleasure except where that revocation is prohibited by the provisions of KRS 70.260 to 70.273. In a county containing a city of the first class with a deputy sheriff merit board, the term of office of a deputy shall continue from sheriff to sheriff unless a deputy is removed according to the provisions of KRS 70.260 to 70.273. Before any deputy executes the duties of his office, he shall take the oath required to be taken by the sheriff.

(2) The sheriff may appoint nonsworn clerical, technical, professional, and support personnel to assist him in the performance of the duties of his office. All nonsworn personnel shall serve at the pleasure of the sheriff.

(3) No sheriff whose county has adopted a deputy sheriff merit board under KRS 70.260 shall appoint a deputy who is a member of the immediate family of the sheriff. The term "member of the immediate family" has the meaning given in KRS 70.260.

(4) Upon the request of a sheriff to participate in the Kentucky Law Enforcement Foundation Program fund authorized by KRS 15.410 to 15.510, the county shall establish a deputy sheriffs' merit board as provided in this statute.

SECTION 59. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

As used in Sections 59 to 62 of this Act, the following definitions apply:

(1) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of methamphetamine, or possession with intent to manufacture, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, except that this term does not include activities:

- ***(a) By a practitioner incident to administering or dispensing of a controlled substance in the course of his professional practice; or***
- ***(b) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or incident to, research, teaching, or chemical analysis; or***
- ***(c) By a pharmacist incident to dispensing of a controlled substance in the course of his professional practice.***

(2) "Methamphetamine" means any substance that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

(3) "Traffic" means to distribute, dispense, sell, transfer, or possess with intent to distribute, dispense, or sell methamphetamine.

SECTION 60. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of manufacturing methamphetamine when he knowingly and unlawfully:

- ***(a) Manufactures methamphetamine; or***
- ***(b) Possesses the chemicals or equipment for the manufacture of methamphetamine with the intent to manufacture methamphetamine.***

(2) Manufacture of methamphetamine is a Class B felony for the first offense and a Class A felony for a second or subsequent offense.

SECTION 61. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of trafficking in methamphetamine when he knowingly and unlawfully sells, transfers, distributes, dispenses, or possesses with intent to distribute methamphetamine.

(2) Trafficking in methamphetamine is a Class C felony for the first offense and a Class B felony for a second or subsequent offense.

SECTION 62. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) Any person convicted of, pleading guilty to, or entering an Alford plea to any offense involving trafficking in a controlled substance or trafficking in marijuana shall, in addition to any other penalty authorized by law, be sentenced to:

(a) Pay the costs of disposal of the controlled substances;

(b) Pay the costs of disposal of all equipment, chemicals, materials, or other items used in or in furtherance of the trafficking offense;

(c) Pay the costs involved with environmental clean-up and remediation required for the real property and personal property used for or in furtherance of the trafficking offenses; and

(d) Pay the costs of protecting the public from dangers from chemicals, materials, and other items used for or in furtherance of the trafficking offense from the time of the arrest until the time that the clean-up or remediation of the real and personal property is concluded. The Commonwealth shall have a lien on all of the assets of the defendant until the amount specified by the court under this subsection is paid in full. The Commonwealth's attorney shall file the lien.

(2) No court shall stay, waive, delay, or otherwise fail to impose the penalty required by this section.

Section 63. KRS 218A.010 is amended to read as follows:

As used in this chapter:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) A practitioner or by his authorized agent under his immediate supervision and pursuant to his order; or

(b) The patient or research subject at the direction and in the presence of the practitioner.

(2) "Anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone that promotes muscle growth and includes those substances listed in KRS 218A.090(5) but does not include estrogens, progestins, and anticosteroids.

(3) "Controlled substance" means ***methamphetamine, or*** a drug, substance, or immediate precursor in Schedules I through V and includes a controlled substance analogue.

(4) (a) "Controlled substance analogue", except as provided in subparagraph (b), means a substance:

1. The chemical structure of which is substantially similar to the structure of a controlled substance in Schedule I or II; and

2. Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or

3. With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.

(b) Such term does not include:

1. Any substance for which there is an approved new drug application;

2. With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent conduct with respect to such substance is pursuant to such exemption; or

3. Any substance to the extent not intended for human consumption before the exemption described in subparagraph 2. of this paragraph takes effect with respect to that substance.

(5) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the

substance.

(6) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery.

(7) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(8) "Drug" means:

(a) Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(b) Substances intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man or animals;

(c) Substances (other than food) intended to affect the structure or any function of the body of man or animals; and

(d) Substances intended for use as a component of any article specified in this subsection.

It does not include devices or their components, parts, or accessories.

(9) "Immediate precursor" means a substance which is the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(10) "Isomer" means the optical isomer, except as used in KRS 218A.050(3) and 218A.070(1)(d). As used in KRS 218A.050(3), the term "isomer" means the optical, positional, or geometric isomer. As used in KRS 218A.070(1)(d), the term "isomer" means the optical or geometric isomer.

(11) "Manufacture"***, except as provided in Section 59 of this Act,*** means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include activities:

(a) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(b) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or

(c) By a pharmacist as an incident to his dispensing of a controlled substance in the course of his professional practice.

(12) "Marijuana" means all parts of the plant Cannabis sp., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin or any compound, mixture, or preparation which contains any quantity of these substances.

(13) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subsection (13)(a) of this section, but not including the isoquinoline alkaloids of opium;

(c) Opium poppy and poppy straw;

(d) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.

(e) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

(g) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (a) to (f).

(14) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under KRS 218A.030, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(15) "Opium poppy" means the plant of the species papaver somniferum L., except its seeds.

(16) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust,

partnership or association, or any other legal entity.

(17) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(18) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy.

(19) "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific investigator, optometrist as authorized in KRS 320.240, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

(20) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(21) "Second or subsequent offense" means that for the purposes of this chapter an offense is considered as a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter, or under any statute of the United States, or of any state relating to substances classified as controlled substances or counterfeit substances, except that a prior conviction for a nontrafficking offense shall be treated as a prior offense only when the subsequent offense is a nontrafficking offense. For the purposes of this section, a conviction voided under KRS 218A.275 or 218A.276 shall not constitute a conviction under this chapter.

(22) "Sell" means to dispose of a controlled substance to another person for consideration or in furtherance of commercial distribution.

(23) "Tetrahydrocannabinols" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the plant Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

1. Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;
2. Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers;
3. Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers.

(24) "Traffic"***, except as provided in Section 59 of this Act,*** means to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, or sell a controlled substance.

(25) "Transfer" means to dispose of a controlled substance to another person without consideration and not in furtherance of commercial distribution.

(26) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

Section 64. KRS 218A.1412 is amended to read as follows:

(1) A person is guilty of trafficking in a controlled substance in the first degree when he knowingly and unlawfully traffics in: a controlled substance***, except a substance that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers or, that is*** classified in Schedules I or II which is a narcotic drug; a controlled substance analogue; lysergic acid diethylamide; or phencyclidine.

(2) Any person who violates the provisions of subsection (1) of this section shall:

(a) For the first offense be guilty of a Class C felony.

(b) For a second or subsequent offense be guilty of a Class B felony.

Section 65. KRS 218A.1413 is amended to read as follows:

(1) A person is guilty of trafficking in a controlled substance in the second degree when:

(a) He knowingly and unlawfully traffics in a controlled substance classified in Schedules I and II which is not a narcotic drug; ***or specified in KRS 218A.1412;*** or a controlled substance classified in Schedule III; but not lysergic acid diethylamide, phencyclidine, or marijuana; or

(b) He knowingly and unlawfully prescribes, orders, distributes, supplies, or sells an anabolic steroid for:

1. Enhancing performance in an exercise, sport, or game; or
2. Hormonal manipulation intended to increase muscle mass, strength, or weight in the human species without a medical necessity.

(2) Any person who violates the provisions of subsection (1) of this section shall:

(a) For the first offense be guilty of a Class D felony.

(b) For a second or subsequent offense be guilty of a Class C felony.

Section 66. KRS 218A.1415 is amended to read as follows:

(1) A person is guilty of possession of a controlled substance in the first degree when he knowingly and unlawfully possesses: a controlled substance ***that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers or, that is*** classified in Schedules I or II which is a narcotic drug; a controlled substance analogue; lysergic acid diethylamide; or phencyclidine.

(2) Possession of a controlled substance in the first degree is:

(a) For a first offense a Class D felony.

(b) For a second or subsequent offense a Class C felony.

Section 67. KRS 218A.1416 is amended to read as follows:

(1) A person is guilty of possession of a controlled substance in the second degree when he knowingly and unlawfully possesses: a controlled substance classified in Schedules I or II which is not a narcotic drug; ***or specified in KRS 218A.1415;*** or, a controlled substance classified in Schedule III; but not lysergic acid diethylamide, phencyclidine, or marijuana.

(2) Possession of a controlled substance in the second degree is:

(a) For a first offense a Class A misdemeanor.

(b) For a second or subsequent offense a Class D felony.

Section 68. KRS 218A.070 is amended to read as follows:

Unless otherwise rescheduled by regulation of the Cabinet for Human Resources, the controlled substances listed in this section are included in Schedule II:

(1) Any material, compound, mixture, or preparation which contains any quantity of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (a), but not including the isoquinoline alkaloids of opium;

(c) Opium poppy and poppy straw;

(d) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(2) Any material, compound, mixture, or preparation which contains any quantity of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation: Alphaprodine; Anileridine; Bezitramide; Dihydrocodeine; Diphenoxylate; Fentanyl; Isomethadone; Levomethorphan; Levorphanol; Metazocine; Methadone; Methadone-Intermediate; 4-cyano-2-dimethylamino-4; 4-diphenyl butane; Moramide-Intermediate; 2-methyl-3-morpholino-1; 1-diphenyl-propane-carboxylic acid; Pethidine; Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine, Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate; Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid; Phenazocine; Piminodine; Racemethorphan; Racemorphan.

(3) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(a) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(b) [~~Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;~~

~~(c)~~] Phenmetrazine and its salts;

(c)[~~(d)~~]Methylphenidate.

Section 69. KRS 218A.180 is amended to read as follows:

(1) Except when dispensed directly by a practitioner to an ultimate user, no ***methamphetamine or*** controlled substance in Schedule II may be dispensed without the written prescription of a practitioner. No controlled substance in Schedule II shall be refilled. All prescriptions for controlled substances classified in Schedule II shall be maintained in a separate prescription file.

(2) Except when dispensed directly by a practitioner to an ultimate user, a controlled substance included in Schedules III, IV, and V, which is a prescription drug, shall not be dispensed without a written or oral prescription by a practitioner. All oral prescriptions shall be dated and signed by the pharmacist. A pharmacist refilling any prescription shall record on the prescription the date, the quantity and his initials. The maintenance of prescription records under the federal controlled substances laws and regulations, containing substantially the same information as specified herein, shall constitute compliance with this subsection. The prescription shall not be filled or refilled more than six (6) months after the date thereof or be refilled more than five (5) times, unless renewed by the practitioner and a new prescription, written or oral shall be required.

(3) All written prescriptions for controlled substances shall be dated as of and signed by the practitioner on the date when issued and shall bear the full name and address of the patient and the name, address and registration number of the practitioner. All prescriptions for controlled substances shall be retained for a period of two (2) years.

(4) The pharmacist filling a written or oral prescription for a controlled substance shall affix to the package a label showing the date of filling, the pharmacy name and address, the serial number of the prescription, the name of the patient, the name of the prescribing practitioner and directions for use and cautionary statements, if any, contained in such prescription or required by law.

Section 70. KRS 189.990 is amended to read as follows:

(1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456 and 189.960, shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense. Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars ($20) nor more than two thousand dollars ($2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars ($11) nor more than thirty dollars ($30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.

(2) (a) Any person who violates the weight provisions of KRS 189.221, 189.222, 189.226, 189.230, 189.270, or 189.271 shall be fined two cents (2¢) per pound for each pound of excess load when the excess is two thousand (2,000) pounds or less, three cents (3¢) per pound when the excess exceeds two thousand (2,000) pounds and is three thousand (3,000) pounds or less, five cents (5¢) per pound when the excess exceeds three thousand (3,000) pounds and is four thousand (4,000) pounds or less, seven cents (7¢) per pound when the excess exceeds four thousand (4,000) pounds and is five thousand (5,000) pounds or less, and nine cents (9¢) per pound when the excess exceeds five thousand (5,000) pounds but in no case shall the fine be less than sixty dollars ($60) nor more than five hundred dollars ($500).

(b) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, or 189.490, for which another penalty is not specifically provided, shall be guilty of a misdemeanor and shall be fined not less than ten dollars ($10) nor more than five hundred dollars ($500).

(c) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.

(3) (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars ($15).

(b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars ($35) nor more than two hundred dollars ($200).

(4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.

(5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars ($100) nor more than two hundred dollars ($200) or imprisoned not less than thirty (30) days nor more than sixty (60) days or both. For each subsequent offense occurring within three (3) years, such person shall be fined not less than three hundred dollars ($300) nor more than five hundred dollars ($500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.

(6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars ($15) in excess of the cost of the repair of the road.

(7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars ($20) nor more than fifty dollars ($50).

(8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100).

(9) Any person who violates KRS 189.530 shall be fined not less than thirty-five dollars ($35) nor more than one hundred

dollars ($100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.

(10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.

(11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars ($30) nor more than one hundred dollars ($100) for each offense.

(12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and in case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.

(13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars ($20) nor more than twenty-five dollars ($25).

(15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars ($100), and upon subsequent convictions, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or imprisoned for thirty (30) days, or both.

(17) (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.

(b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name such vehicle used in the transportation of inflammable liquids or explosives is licensed, such person shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500). Each violation shall constitute a separate offense.

(18) Any person who abandons a vehicle upon the right-of-way of a state highway for seven (7) consecutive days shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.

(19) Every person violating KRS 189.393 shall be ***guilty of a Class B misdemeanor, unless the offense is being committed by a defendant fleeing the commission of a felony offense which the defendant was also charged with violating and was subsequently convicted of that felony, in which case it is a Class A misdemeanor***[~~punished upon a first conviction by imprisonment for a period of not less than five (5) days nor more than ninety (90) days, or by fine of not less than thirty-five dollars ($35) nor more than five hundred dollars ($500), or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than ten (10) days nor more than six (6) months, or by a fine of not less than sixty dollars ($60) nor more than one thousand dollars ($1,000), or by both such fine and imprisonment~~].

(20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.

(21) A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of such a regulation shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.

(22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars ($500) or imprisoned for not more than six (6) months, or both.

(23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars ($25) nor more than three hundred dollars ($300).

(24) Any person who violates the provisions of KRS 189.125(3) shall be fined fifty dollars ($50).

(25) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars ($25).

(26) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.

(27) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle, may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:

(a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and

(b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.

SECTION 71. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

Any person who was found guilty of a felony offense under KRS Chapter 218A, KRS 237.040, KRS Chapter 507, KRS Chapter 508, KRS Chapter 509, KRS Chapter 511, KRS Chapter 513, KRS 514.030 relating to a motor vehicle, KRS 514.100, KRS 525.020, KRS 525.030, KRS 527.040, KRS 527.070, and KRS 527.100, and who was wearing body armor at the time of the commission of the offense shall not be granted probation, shock probation, parole, conditional discharge, or any other form of early release.

Section 72. KRS 532.060 is amended to read as follows:

(1) A sentence of imprisonment for a felony shall be an indeterminate sentence, the maximum of which shall be fixed within the limits provided by subsection (2), and subject to modification by the trial judge pursuant to KRS 532.070.

(2) The authorized maximum terms of imprisonment for felonies are:

(a) For a Class A felony, not less than twenty (20) years nor more than ***fifty (50) years, or*** life imprisonment;

(b) For a Class B felony, not less than ten (10) years nor more than twenty (20) years;

(c) For a Class C felony, not less than five (5) years nor more than ten (10) years; and

(d) For a Class D felony, not less than one (1) year nor more than five (5) years.

(3) ***For any felony specified in KRS Chapter 510, KRS 530.020, 530.064, or 531.310 the sentence shall include an additional three (3) year period of conditional discharge which shall be added to the maximum sentence rendered for the offense. During this period of conditional discharge, if a defendant violates the provisions of conditional discharge, the defendant may be reincarcerated for:***

(a) The remaining period of his initial sentence, if any is remaining; and

(b) The entire period of conditional discharge, or if the initial sentence has been served, for the remaining period of conditional discharge.

(4) The actual time of release within the maximum established by subsection (1), or as modified pursuant to KRS 532.070, shall be determined under procedures established elsewhere by law.

Section 73. KRS 532.030 is amended to read as follows:

(1) When a person is convicted of a capital offense he shall have his punishment fixed at death, ***or at a term of imprisonment for life without benefit of probation or parole,*** or at a term of imprisonment for life without benefit of probation or parole until he has served a minimum of twenty-five (25) years of his sentence, or to a sentence of life, or to a term of not less than twenty (20) years ***nor more than fifty (50) years***.

(2) When a person is convicted of a Class A felony he shall have his punishment fixed at imprisonment in accordance with KRS 532.060.

(3) When a person is convicted of an offense other than a capital offense or Class A felony, he shall have his punishment fixed at:

(a) A term of imprisonment authorized by this chapter; or

(b) A fine authorized by KRS Chapter 534; or

(c) Both imprisonment and a fine unless precluded by the provisions of KRS Chapter 534.

(4) In all cases in which the death penalty may be authorized the judge shall instruct the jury in accordance with subsection (1) of this section. The instructions shall state, subject to the aggravating and mitigating limitations and requirements of KRS 532.025, that the jury may recommend upon a conviction for a capital offense a sentence of death, ***or at a term of imprisonment for life without benefit of probation or parole,*** or a term of imprisonment for life without benefit of probation or parole until the defendant has served a minimum of twenty-five (25) years of his sentence, or a sentence of life, or to a term of not less than twenty (20) years ***nor more than fifty (50) years***.

Section 74. KRS 532.025 is amended to read as follows:

(1) (a) Upon conviction of a defendant in cases where the death penalty may be imposed, a hearing shall be conducted. In such hearing, the judge shall hear additional evidence in extenuation, mitigation, and aggravation of punishment, including the record of any prior criminal convictions and pleas of guilty or pleas of nolo contendere of the defendant, or the absence of any prior conviction and pleas; provided, however, that only such evidence in aggravation as the state has made known to the defendant prior to his trial shall be admissible. Subject to the Kentucky Rules of Evidence, juvenile court records of adjudications of guilt of a child for an offense that would be a felony if committed by an adult shall be admissible in court at any time the child is tried as an adult, or after the child becomes an adult, at any subsequent criminal trial relating to that same person. Juvenile court records made available pursuant to this section may be used for impeachment purposes during a criminal trial and may be used during the sentencing phase of a criminal trial; however, the fact that a juvenile has been adjudicated

delinquent of an offense that would be a felony if the child had been an adult shall not be used in finding the child to be a persistent felony offender based upon that adjudication. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Release of any records resulting from the child's prior abuse and neglect under Title IV-E or IV-B of the Federal Social Security Act is also prohibited. The judge shall also hear argument by the defendant or his counsel and the prosecuting attorney, as provided by law, regarding the punishment to be imposed. The prosecuting attorney shall open and the defendant shall conclude the argument. In cases in which the death penalty may be imposed, the judge when sitting without a jury shall follow the additional procedure provided in subsection (2) of this section. Upon the conclusion of the evidence and arguments, the judge shall impose the sentence or shall recess the trial for the purpose of taking the sentence within the limits prescribed by law. If the trial court is reversed on appeal because of error only in the presentence hearing, the new trial which may be ordered shall apply only to the issue of punishment;

(b) In all cases in which the death penalty may be imposed and which are tried by a jury, upon a return of a verdict of guilty by the jury, the court shall resume the trial and conduct a presentence hearing before the jury. Such hearing shall be conducted in the same manner as presentence hearings conducted before the judge as provided in paragraph (a) of this subsection, including the record of any prior criminal convictions and pleas of guilty or pleas of nolo contendere of the defendant. Upon the conclusion of the evidence and arguments, the judge shall give the jury appropriate instructions, and the jury shall retire to determine whether any mitigating or aggravating circumstances, as defined in subsection (2) of this section, exist and to recommend a sentence for the defendant. Upon the findings of the jury, the judge shall fix a sentence within the limits prescribed by law.

(2) In all cases of offenses for which the death penalty may be authorized, the judge shall consider, or he shall include in his instructions to the jury for it to consider, any mitigating circumstances or aggravating circumstances otherwise authorized by law and any of the following statutory aggravating or mitigating circumstances which may be supported by the evidence:

(a) Aggravating circumstances:

1. The offense of murder or kidnapping was committed by a person with a prior record of conviction for a capital offense, or the offense of murder was committed by a person who has a substantial history of serious assaultive criminal convictions;
2. The offense of murder or kidnapping was committed while the offender was engaged in the commission of arson in the first degree, robbery in the first degree, burglary in the first degree, rape in the first degree, or sodomy in the first degree;
3. The offender by his act of murder, armed robbery, or kidnapping knowingly created a great risk of death to more than one (1) person in a public place by means of a destructive device, weapon, or other device which would normally be hazardous to the lives of more than one (1) person;
4. The offender committed the offense of murder for himself or another, for the purpose of receiving money or any other thing of monetary value, or for other profit;
5. The offense of murder was committed by a person who was a prisoner and the victim was a prison employee engaged at the time of the act in the performance of his duties;
6. The offender's act or acts of killing were intentional and resulted in multiple deaths; and
7. The offender's act of killing was intentional and the victim was a state or local public official or police officer, sheriff, or deputy sheriff engaged at the time of the act in the lawful performance of his duties;

(b) Mitigating circumstances:

1. The defendant has no significant history of prior criminal activity;
2. The capital offense was committed while the defendant was under the influence of extreme mental or emotional disturbance even though the influence of extreme mental or emotional disturbance is not sufficient to constitute a defense to the crime;
3. The victim was a participant in the defendant's criminal conduct or consented to the criminal act;
4. The capital offense was committed under circumstances which the defendant believed to provide a moral justification or extenuation for his conduct even though the circumstances which the defendant believed to provide a moral justification or extenuation for his conduct are not sufficient to constitute a defense to the crime;
5. The defendant was an accomplice in a capital offense committed by another person and his participation in the capital offense was relatively minor;
6. The defendant acted under duress or under the domination of another person even though the duress or the domination of another person is not sufficient to constitute a defense to the crime;

7. At the time of the capital offense, the capacity of the defendant to appreciate the criminality of his conduct to the requirements of law was impaired as a result of mental illness or retardation or intoxication even though the impairment of the capacity of the defendant to appreciate the criminality of his conduct or to conform the conduct to the requirements of law is insufficient to constitute a defense to the crime; and

8. The youth of the defendant at the time of the crime.

(3) The instructions as determined by the trial judge to be warranted by the evidence or as required by KRS 532.030(4) shall be given in charge and in writing to the jury for its deliberation. The jury, if its verdict be a recommendation of death, ***or imprisonment for life without benefit of probation or parole,*** or imprisonment for life without benefit of probation or parole until the defendant has served a minimum of twenty-five (25) years of his sentence, shall designate in writing, signed by the foreman of the jury, the aggravating circumstance or circumstances which it found beyond a reasonable doubt. In nonjury cases, the judge shall make such designation. In all cases unless at least one (1) of the statutory aggravating circumstances enumerated in subsection (2) of this section is so found, the death penalty***, or imprisonment for life without benefit of probation or parole,*** or the sentence to imprisonment for life without benefit of probation or parole until the defendant has served a minimum of twenty-five (25) years of his sentence, shall not be imposed.

Section 75. KRS 533.010 is amended to read as follows:

(1) Any person who has been convicted of a crime and who has not been sentenced to death may be sentenced to probation, probation with an alternative sentencing plan, or conditional discharge as provided in this chapter.

(2) Before imposition of a sentence of imprisonment, the court shall consider[~~the possibility of~~] probation, probation with an alternative sentencing plan, or conditional discharge. ***Unless the defendant is a violent felon as defined in KRS 439.3401 or a statute prohibits probation, shock probation, or conditional discharge,*** after due consideration of the nature and circumstances of the crime and the history, character, and condition of the defendant, probation[~~, probation with an alternative sentencing plan,~~] or conditional discharge ***shall***[~~should~~] be granted, unless the court is of the opinion that imprisonment is necessary for protection of the public because:

(a) There is substantial risk that during a period of probation[~~, probation with an alternative sentencing plan,~~] or conditional discharge the defendant will commit another crime;

(b) The defendant is in need of correctional treatment that can be provided most effectively by his commitment to a correctional institution; or

(c) A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.

(3) ***In the event the court determines that probation is not appropriate after due consideration of the nature and circumstances of the crime, and the history, character, and condition of the defendant, probation with an alternative sentencing plan shall be granted unless the court is of the opinion that imprisonment is necessary for the protection of the public because:***

(a) There is a likelihood that during a period of probation with an alternative sentencing plan or conditional discharge the defendant will commit a Class D or Class C felony or a substantial risk that the defendant will commit a Class B or Class A felony;

(b) The defendant is in need of correctional treatment that can be provided most effectively by commitment to a correctional institution; or

(c) A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.

(4) The court shall not determine that there is a likelihood that the defendant will commit a Class C or Class D felony based upon the fact that:

(a) The defendant has never been convicted of, pled guilty to, or entered an Alford plea to a felony offense;

(b) If convicted of, having pled guilty to, or entered an Alford plea to a felony offense, the defendant successfully completed probation more than ten (10) years immediately prior to the date of the commission of the felony for which the defendant is now being sentenced and has had no intervening convictions, pleas of guilty, or Alford pleas to any criminal offense during that period; or

(c) The defendant has been released from incarceration for the commission of a felony offense more than ten (10) years immediately prior to the date of the commission of the felony for which the defendant is now being sentenced and has had no intervening convictions, pleas of guilty, or Alford pleas to any criminal offense during that period.

(5) In making a determination under subsection (4) of this section, the court may determine that the greater weight of the evidence indicates that there is a likelihood that the defendant will commit a Class C or Class D felony.

(6) Upon initial sentencing of a defendant or upon modification or revocation of probation, when the court deems it in the best interest of the public and the defendant, the court may order probation with the defendant to serve one (1) of the following alternative sentences:

(a) To a halfway house for no more than twelve (12) months;

(b) To home incarceration with or without work release for no more than twelve (12) months;

(c) To jail for a period not to exceed twelve (12) months with or without work release and other programs as required by the court;

(d) To a residential treatment program for the abuse of alcohol or controlled substances; or

(e) To any other specified counseling program, rehabilitation or treatment program, or facility.

(7) If during the term of the alternative sentence the defendant fails to adhere to and complete the conditions of the alternative sentence, the court may modify the terms of the alternative sentence or may modify or revoke probation and alternative sentence, and commit the defendant to an institution.

(8) In addition to those conditions that the court may impose, the conditions of alternative sentence shall include the following and, if the court determines that the defendant cannot comply with them, then they shall not be made available:

(a) A defendant sentenced to a halfway house shall:

1. Be working or pursuing his or her education, or be enrolled in a full-time treatment program;

2. Pay restitution during the term of probation; and

3. Have no contact with the victim of the defendant's crime;

(b) A defendant sentenced to home incarceration shall:

1. Be employed by another person or self-employed at the time of sentencing to home incarceration and continue the employment throughout the period of home incarceration, unless the court determines that there is a compelling reason to allow home incarceration while the defendant is unemployed;

2. Pay restitution during the term of home incarceration;

3. Enter a treatment program, if appropriate;

4. Pay all or some portion of the cost of home incarceration as determined by the court;

5. Comply with other conditions as specified; and

6. Have no contact with the victim of the defendant's crime;

(c) A defendant sentenced to jail with work release shall:

1. Pay restitution during all or some part of the defendant's term of probation;

2. Pay all or some portion of the cost of incarceration as determined by the court; and

3. Have no contact with the victim of the defendant's crime; or

(d) A defendant sentenced to a residential treatment program for drug and alcohol abuse shall:

1. Undergo mandatory drug screening during term of probation;

2. Be subject to active, supervised probation for a term of five (5) years;

3. Undergo aftercare as required by the treatment program;

4. Pay restitution during the term of probation; and

5. Have no contact with the victim of the defendant's crime.

(9) When the court deems it in the best interest of the defendant and the public, the court may order the person to work at community service related projects under the terms and conditions specified in KRS 533.070. Work at community service related projects shall be considered as a form of conditional discharge.

(10) Probation with alternative sentence shall not be available as set out in KRS 532.045 and 533.060, except as provided in KRS 533.030(6).

(11) The court may utilize a community corrections program authorized or funded under KRS Chapter 196 to provide services to any person released under this section.

(12) When the court deems it in the best interest of the defendant and the public, the court may order the defendant to placement for probation monitoring by a private agency. The private agency shall report to the court on the defendant's compliance with his terms of probation or conditional discharge. The defendant shall be responsible for any reasonable charges which the private agency charges.

Section 76. KRS 532.020 is amended to read as follows:

(1) Any offense defined outside this code for which a law outside this code provides a sentence to a term of imprisonment in the state~~[penitentiary or reformatory]~~ for:

(a) At least one (1) but not more than five (5) years shall be deemed a Class D felony;

(b) At least five (5) but not more than ten (10) years shall be deemed a Class C felony;

(c) At least ten (10) but not more than twenty (20) years shall be deemed a Class B felony;

(d) For ***at least*** twenty (20) ***but not***~~[or]~~ more ***than fifty (50)*** years ***or for life*** shall be deemed a Class A felony.

(2) Any offense defined outside this code for which a law outside this code provides a sentence to a definite term of imprisonment with a maximum which falls between ninety (90) days and twelve (12) months shall be deemed a Class A misdemeanor.

(3) Any offense defined outside this code for which a law outside this code provides a sentence to a definite term of imprisonment with a maximum of less than ninety (90) days shall be deemed a Class B misdemeanor.

(4) Any offense defined outside this code for which a law outside this code provides a sentence to a fine only or to any other punishment, whether in combination with a fine or not, other than death or imprisonment shall be deemed a violation.

Section 77. KRS 532.050 is amended to read as follows:

(1) No court shall impose sentence for conviction of a felony, other than a capital offense, without first ordering a presentence investigation after conviction and giving due consideration to a written report of the investigation. The presentence investigation report shall not be waived; however, the completion of the presentence investigation report may be delayed until after sentencing upon the written request of the defendant if the defendant is in custody and is ineligible for probation or conditional discharge.

(2) The report shall be prepared and presented by a probation officer and shall include an analysis of the defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, personal habits, and any other matters that the court directs to be included.

(3) Before imposing sentence for a felony conviction, the court may order the defendant to submit to psychiatric observation and examination for a period not exceeding sixty (60) days. The defendant may be remanded for this purpose to any available clinic or mental hospital or the court may appoint a qualified psychiatrist to make the examination.

(4) If the defendant has been convicted of any felony offense under KRS Chapter 510, 530.020, 530.064, 531.310, any sexual offense under KRS 506.010 or 506.030, or any other felony offense committed in conjunction with a misdemeanor under KRS Chapter 510, the court shall, prior to determining the sentence, order an evaluation of the defendant to be conducted by the sexual offender treatment program operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services. The evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment, and shall be considered by the court in determining the appropriate sentence. ***A copy of the evaluation shall be furnished to the Commonwealth and to the defendant.*** If the defendant is eligible and the court suspends the sentence and places the defendant on probation or conditional discharge, the provisions of KRS 532.045(3) to (8) shall apply. All communications relative to the evaluation and treatment of the sex offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings. The defendant shall pay for any evaluation or treatment required pursuant to this section up to the defendant's ability to pay but no more than the actual cost of the evaluation or treatment.

(5) ***The presentence investigation report shall identify the counseling treatment, educational, and rehabilitation needs of the defendant and identify community-based and correctional-institutional-based programs and resources available to meet those needs or shall identify the lack of programs and resources to meet those needs.***

(6) Before imposing sentence, the court shall advise the defendant or his counsel of the factual contents and conclusions of any presentence investigation or psychiatric examinations and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the presentence investigation report. It shall not be necessary to disclose the sources of confidential information.

Section 78. KRS 532.080 is amended to read as follows:

(1) When a defendant is found to be a persistent felony offender, the jury, in lieu of the sentence of imprisonment assessed under KRS 532.060 for the crime of which such person presently stands convicted, shall fix a sentence of imprisonment as authorized by subsection (5) or (6) of this section. When a defendant is charged with being a persistent felony offender, the determination of whether or not he is such an offender and the punishment to be imposed pursuant to subsection (5) or (6) of this section shall be determined in a separate proceeding from that proceeding which resulted in his last conviction. Such proceeding shall be conducted before the court sitting with the jury that found the defendant guilty of his most recent offense unless the court for good cause discharges that jury and impanels a new jury for that purpose.

(2) A persistent felony offender in the second degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of one (1) previous felony. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:

(a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and

(b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and

(c) That the offender:

1. Completed service of the sentence imposed on the previous felony conviction within five (5) years prior to the date of commission of the felony for which he now stands convicted; or

2. Was on probation, parole, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or

3. Was discharged from probation, parole, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or

4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or

5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.

(3) A persistent felony offender in the first degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of two (2) or more felonies. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:

(a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and

(b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and

(c) That the offender:

1. Completed service of the sentence imposed on any of the previous felony convictions within five (5) years prior to the date of the commission of the felony for which he now stands convicted; or

2. Was on probation, parole, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or

3. Was discharged from probation, parole, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or

4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or

5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.

(4) For the purpose of determining whether a person has two (2) or more previous felony convictions, two (2) or more convictions of crime for which that person served concurrent or uninterrupted consecutive terms of imprisonment shall be deemed to be only one (1) conviction, unless one (1) of the convictions was for an offense committed while that person was imprisoned.

(5) A person who is found to be a persistent felony offender in the second degree shall be sentenced to an indeterminate term of imprisonment pursuant to the sentencing provisions of KRS 532.060(2) for the next highest degree than the offense for which convicted. A person who is found to be a persistent felony offender in the second degree shall not be eligible for probation, shock probation, or conditional discharge.

(6) A person who is found to be a persistent felony offender in the first degree shall be sentenced to imprisonment as follows:

(a) If the offense for which he presently stands convicted is a Class A or Class B felony, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than twenty (20) years nor more than ***fifty (50) years, or*** life imprisonment; or

(b) If the offense for which he presently stands convicted is a Class C or Class D felony, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than ten (10) years nor more than twenty (20) years.

(7) ~~[If the offense the person presently stands convicted of is a Class A, B, or C felony,]~~A person who is found to be a persistent felony offender in the first degree shall not be eligible for probation, shock probation, or conditional discharge, ***and if the offense the person presently stands convicted of is a Class A, B, or C felony, shall not be eligible***~~[nor]~~ for parole until having served a minimum term of incarceration of not less than ten (10) years.

(8) ***No conviction, plea of guilty or Alford plea to a violation of KRS 218A.500 shall bring a defendant within the***

purview of or be used as a conviction eligible for making a person a persistent felony offender under this section.

(9) The provisions of this section amended by 1994 Ky. Acts ch. 396, sec. 11, shall be retroactive.

Section 79. KRS 439.3401 is amended to read as follows:

(1) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to the commission of a capital offense, Class A felony, or Class B felony involving the death of the victim ***or serious physical injury to a victim***, or rape in the first degree or sodomy in the first degree of the victim ***by forcible compulsion***~~[, or serious physical injury to a victim]~~. ***The court shall designate in its judgment if the victim suffered death or serious physical injury, or, in the case of rape or sodomy, forcible compulsion.***

(2) A violent offender who has been convicted of a capital offense and who has received a life sentence (and has not been sentenced to twenty-five (25) years without parole), or a Class A felony and receives a life sentence, or to death and his sentence is commuted to a life sentence shall not be released on parole until he has served at least ***twenty (20)***~~[twelve (12)]~~ years in the penitentiary. ***Violent offenders may have a greater minimum parole eligibility date than other offenders who receive longer sentences, including a sentence of life imprisonment.***

(3) A violent offender who has been convicted of a capital offense or Class A felony with a sentence of a term of years or Class B felony who is a violent offender shall not be released on parole until he has served at least ***eighty-five percent (85%)***~~[fifty percent (50%)]~~ of the sentence imposed.

(4) ***A violent offender may not be awarded any credit on his sentence authorized by KRS 197.045(1), except the educational credit. A violent offender may, at the discretion of the commissioner, receive credit on his sentence authorized by KRS 197.045(3). In no event shall a violent offender be given credit on his sentence if the credit reduces the term of imprisonment to less than eighty-five percent (85%) of the sentence.***

(5) This section shall not apply to a person who has been determined by a court to have been a victim of domestic violence or abuse pursuant to KRS 533.060 with regard to the offenses involving the death of the victim or serious physical injury to the victim. The provisions of this subsection shall not extend to rape in the first degree or sodomy in the first degree by the defendant.

(6)~~[(5)]~~ This section shall apply only to those persons who commit offenses after July 15, ***1998***~~[1986]~~.

Section 80. KRS 439.3405 is amended to read as follows:

(1) Notwithstanding any statute eliminating ***parole*** or establishing minimum time for parole eligibility for a certain class or status of offender, including KRS 439.340(10), 439.3401, 532.080(7), and 533.060, the board, with the written consent of a majority of the full board, may review the case of any prisoner and release that prisoner on parole despite any elimination of or minimum time for parole eligibility, when the prisoner has a documented terminal medical condition likely to result in death within one (1) year ***or severe chronic lung disease, end-stage heart disease, severe neuro-muscular disease such as multiple sclerosis; or has severely limited mobility due to paralysis as a result of stroke or trauma; or is dependent on external life support systems*** and would not pose a threat to society if paroled.

(2) Medical information considered under this section shall be limited to the medical findings supplied by Department of Corrections medical staff. The medical staff shall provide in writing the prisoner's diagnosis and prognosis in support of the conclusion that the prisoner suffers from a terminal medical condition likely to result in death within one (1) year ***or because of the conditions set forth in subsection (1) of this section he is totally dependent on others for the activities of daily living***.

(3) The medical information prepared by the Department of Corrections medical staff under this section shall be forwarded to the warden of the institution who shall submit that information and a recommendation for or against parole review under this section to the commissioner of the Department of Corrections or his designee. With the approval of the commissioner of the Department of Corrections, a request for parole review under this section, along with the medical information and warden's recommendation, shall be submitted to the board.

(4) Medical information presented under this section shall be considered along with other information relevant to a decision regarding the granting of parole and shall not constitute the only reason for granting parole.

Section 81. KRS 15.315 is amended to read as follows:

The Kentucky Law Enforcement Council is hereby established as an independent administrative body of state government to be made up as follows:

(1) The Attorney General of Kentucky, the commissioner of the Department of State Police, ***directors of the Southern Police Institute***~~[the dean of the School of Police Administration]~~ of the University of Louisville, the dean of the ***College***~~[School]~~ of Law Enforcement of Eastern Kentucky University, the president of the Kentucky Peace Officers Association, the president of the Kentucky Association of Chiefs of Police, and the Kentucky president of the Fraternal Order of Police, shall be ex officio members of the council, as full voting members of the council by reason of their office. The Kentucky special agent in charge of the Federal Bureau of Investigation shall serve on the council in an advisory capacity only without voting privileges. Each ex officio member may designate in writing a person to represent

him and vote on his behalf.

(2) Nine (9) members shall be appointed by the Governor for terms of four (4) years from the following classifications: a city manager or mayor, one (1) Kentucky sheriff, a member of the Kentucky State Bar Association, five (5) chiefs of police, and a citizen of Kentucky not coming within the foregoing classifications. No person shall serve beyond the time he holds the office or employment by reason of which he was initially eligible for appointment. Vacancies shall be filled in the same manner as the original appointment and the successor shall be appointed for the unexpired term. Any member may be appointed for additional terms.

(3) No member may serve on the council with the dual membership as the representative of more than one (1) of the aforementioned groups or the holder of more than one (1) of the aforementioned positions. In the event that an existing member of the council assumes a position entitling him to serve on the council in another capacity the Governor shall appoint an additional member from the group concerned to prevent dual membership.

(4) Membership on the council does not constitute a public office and no member shall be disqualified from holding public office by reason of his membership.

SECTION 82. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

(1) When a patient who has been involuntarily committed to a psychiatric facility or forensic psychiatric facility and who has been charged with or convicted of a violent crime as defined in KRS 439.3401 is discharged or transferred from the facility, the administrator shall notify the law enforcement agency in the county to which the person is to be released, the prosecutor in the county where the violent crime was committed, and the Department of Corrections.

(2) If a patient who has been involuntarily committed to a psychiatric facility or forensic psychiatric facility and who has been charged with or convicted of a violent crime as defined in KRS 439.3401 escapes from the facility, the administrator shall notify the law enforcement agency in the county in which the facility is located, the prosecutor in the county where the violent crime was committed, and the Department of Corrections.

(3) The administrator of a psychiatric facility or forensic psychiatric facility, or the administrator's designee, who acts in good faith in making the notifications required in this section or is unable to provide the release information required, is immune from any civil liability.

(4) The Department of Corrections shall notify, or contract with a private entity to notify, victims of crime who have made a notification request of the discharge or escape of a patient from a psychiatric facility or forensic psychiatric facility.

(5) The Department of Corrections and the Cabinet for Human Resources shall each promulgate administrative regulations under KRS Chapter 13A to carry out the duties set forth in this statute.

Section 83. KRS 532.210 is amended to read as follows:

(1) Any misdemeanant ***or a felon who has not been convicted of, pled guilty to, or entered an Alford plea to a violent felony offense*** may petition the sentencing court for an order directing that all or a portion of a sentence of imprisonment in the county jail be served under conditions of home incarceration. Such petitions may be considered and ruled upon by the sentencing court prior to and throughout the term of the ***defendant's***[~~misdemeanant's~~] sentence.

(2) The sentencing judge shall study the record of all persons petitioning for home incarceration and, in his discretion, may:

(a) Cause additional background or character information to be collected or reduced to writing by the county jailer or misdemeanor supervision department;

(b) Conduct hearings on the desirability of granting home incarceration;

(c) Impose on the home incarceree such conditions as are fit, including restitution;

(d) Order that all or a portion of a sentence of imprisonment in the county jail be served under conditions of home incarceration at whatever time or intervals, consecutive or nonconsecutive, as the court shall determine. The time actually spent in home incarceration pursuant to this provision shall not exceed six (6) months or the maximum term of imprisonment assessed pursuant to this chapter whichever is the shorter;

(e) Issue warrants for persons when there is reason to believe they have violated the conditions of home incarceration, conduct hearings on such matters, and order reimprisonment in the county jail upon proof of violation; and

(f) Grant final discharge from incarceration.

(3) All home incarcerees shall execute a written agreement with the court setting forth all of the conditions of home incarceration. The order of home incarceration shall incorporate that agreement and order compliance with its terms. The order and agreement shall be transmitted to the supervising authority and to the appropriate jail official.

(4) Time spent in home incarceration under this subsection shall be credited against the maximum term of imprisonment assessed for the defendant pursuant to this chapter.

(5) Home incarcerees shall be under the supervision of the county jailer except in counties establishing misdemeanor

supervision departments, wherein they shall be under the supervision of such departments. Home incarcerees shall be subject to the decisions of such authorities during the period of supervision. Fees for supervision or equipment usage shall be paid directly to the supervising authority.

SECTION 84. A NEW SECTION OF KRS CHAPTER 506 IS CREATED TO READ AS FOLLOWS:

(1) No person, who at the time of the commission of the offense was acting in furtherance of criminal gang activity, shall commit any of the following offenses:

(a) Any felony offense in violation of KRS Chapter 500 through Chapter 534;

(b) Any felony offense in violation of KRS Chapter 218A;

(c) Any misdemeanor assault offense in violation of KRS Chapter 508;

(d) Any violation of KRS 527.030 or 527.050;

(e) Any violation of KRS 276.280 or 276.310;

(f) Any gambling offense as defined in KRS 411.090, KRS Chapter 528, or Section 226 of the Constitution;

(g) Any illegal trafficking in destructive devices or booby traps as defined in KRS Chapter 237; or

(h) Lending at usurious interest and enforcing repayment by illegal means in violation of KRS Chapter 360.

(2) Other provisions of law notwithstanding, any person who is convicted of any of the offenses enumerated in subsection 1(a) to (h) of this section who was acting in furtherance of criminal gang activity at the time of the commission of the offense shall:

(a) Be penalized one (1) class more severely than provided in the penalty provision pertaining to that offense, if it is a felony; or

(b) Be penalized as a Class D felon, if the offense would otherwise be a misdemeanor, except for violation of Section 85 of this Act.

(3) As used in this section, "criminal gang activity" means a group of five (5) or more persons:

(a) Having four (4) or more of the following:

1. A common name;

2. A common identifying sign or signs;

3. A common identifying mode, style, or color of dress;

4. An identifying tattoo or body marking;

5. An organizational structure, overt or covert;

6. A de facto claim of territory or jurisdiction; or

7. An initiation ritual; and

(b) Collaborating to engage in any of the following on a continuing basis:

1. Any felony offense in violation of KRS Chapter 500 through 534;

2. Any felony offense in violation of KRS Chapter 218A;

3. Any misdemeanor assault offense in violation of KRS Chapter 508;

4. Any misdemeanor offense in violation of KRS Chapter 514;

5. Any violation of KRS Chapter 527.030 or 527.050;

6. Any violation of KRS Chapter 276.280 or 276.310;

7. Any gambling offense as defined in KRS Chapter 411.090, KRS Chapter 528, or Section 226 of the Constitution;

8. Any illegal trafficking in destructive devices or booby traps as defined in KRS Chapter 237; or

9. Lending at usurious interest and enforcing repayment by illegal means in violation of KRS Chapter 360.

(4) As used in this section, "continuing basis" means the commission, attempted commission, solicitation, or conviction of at least two (2) crimes, one (1) of which occurred after the effective date of this chapter and the last of which occurred within five (5) years, excluding any period of imprisonment, after the commission of a prior criminal act.

SECTION 85. A NEW SECTION OF KRS CHAPTER 506 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of criminal gang intimidation when he threatens another person because the other person:

(a) Refuses to join a criminal gang;

(b) Has withdrawn or is attempting to withdraw from a criminal gang; or

(c) Refuses to submit to a demand made by a criminal gang.

(2) Criminal gang intimidation is a Class A misdemeanor.

SECTION 86. A NEW SECTION OF KRS CHAPTER 506 IS CREATED TO READ AS FOLLOWS:

(1) It is no defense to prosecution under Section 84 or 85 of this Act that:

(a) One (1) or more members of the gang are not criminally responsible for the offense;

(b) One (1) or more members of the gang have been acquitted, have not been prosecuted or convicted, have been convicted of a different offense, or are under prosecution;

(c) A person has been charged with, acquitted, or convicted of any offense under Section 84 or 85 of this Act;

(d) The participants may not know each other's identity;

(e) The membership in the criminal gang may change from time to time; or

(f) The participants may stand in a wholesaler-retailer or other arm's length arrangement in the conduct of illicit distribution or other operations.

(2) Once the initial combination of five (5) or more persons is formed, the number or identity of persons remaining in the gang is immaterial as long as four (4) or more persons in the gang, excluding the defendant, are involved in a continuing course of conduct constituting a violation of Section 84 or 85 of this Act.

Section 87. KRS 635.020 is amended to read as follows:

(1) If, prior to an adjudicatory hearing, there is a reasonable cause to believe that a child before the court has committed a felony other than those described in subsections (2) and (3) of this section, a misdemeanor, or a violation, the court shall initially proceed in accordance with the provisions of this chapter.

(2) If a child charged with a capital offense, Class A felony, or Class B felony, had attained age fourteen (14) at the time of the alleged commission of the offense, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.

(3) If a child charged with a Class C or Class D felony has on one (1) prior separate occasion been adjudicated a public offender for a felony offense and had attained the age of sixteen (16) at the time of the alleged commission of the offense, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.

(4) Any other provision of KRS Chapters ***600***~~[610]~~ to 645 to the contrary notwithstanding, if a child charged with a felony in which a firearm was used in the commission of the offense or ***an offense pursuant to Section 84 or 85 of this Act*** had attained the age of fourteen (14) years at the time of the commission of the alleged offense, he shall be transferred to the Circuit Court for trial as an adult if, following a preliminary hearing, the District Court finds probable cause to believe that***:***

(a) The child committed a felony, that a firearm was used in the commission of that felony, and that the child was fourteen (14) years of age or older at the time of the commission of the alleged felony***; or***

(b) The child committed an offense as set out in Section 84 or 85 of this Act, that at the time of the commission of the offense the child was acting in furtherance of criminal gang activity, and that the child was fourteen (14) years of age or older at the time of the commission of the alleged offense.

If convicted in the Circuit Court***,*** he shall be subject to the same penalties as an adult offender, except that until he reaches the age of eighteen (18) years, he shall be confined in a secure detention facility for juveniles or for youthful offenders, unless released pursuant to ***bond or bail, probation, transfer pursuant to KRS 640.070,*** expiration of sentence***,*** or parole***.***~~[, and]~~ At age eighteen (18)***, if confined in a secure facility for juveniles,*** he shall be transferred to an adult facility operated by the Department of Corrections to serve any time remaining on his sentence.

(5) If a child previously convicted as a youthful offender under the provisions of KRS Chapter 640 is charged with a felony allegedly committed prior to his eighteenth birthday, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.

(6) A child who is charged as is provided in subsection (2) of this section and is also charged with a Class C or D felony, a misdemeanor, or a violation arising from the same course of conduct shall have all charges included in the same proceedings; and the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.

(7) If a person who is eighteen (18) or older and before the court is charged with a felony that occurred prior to his eighteenth birthday, the court shall, upon motion of the county attorney made prior to adjudication, and after the county

attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.

(8) All offenses arising out of the same course of conduct shall be tried with the felony arising from that course of conduct, whether the charges are adjudicated under this chapter or under KRS Chapter 640 and transferred to Circuit Court.

SECTION 88. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

(1) A pretrial diversion program shall be operated in each Circuit Court and each District Court by the Administrative Office of the Courts. The chief judge of each circuit or district, as appropriate, shall submit a plan for the pretrial diversion program to the Supreme Court for approval on or before December 1, 1999. The pretrial diversion program shall contain the following elements:

(a) The program may be utilized for a person charged with a misdemeanor or felony offense who, within ten (10) years immediately preceding the commission of this offense, has not been convicted of a felony under the laws of this state, another state, or of the United States, or has not been on probation or parole and who is not subject to the provisions of paragraph (c) of this subsection.

(b) The program shall not be utilized for persons charged with felony offenses which, if convicted, would classify them as violent offenders under KRS 439.3401 or for persons charged with offenses for which probation, parole, or conditional discharge is prohibited under KRS 532.045.

(c) Any person charged with an offense not specified as precluding a person from pretrial diversion under paragraph (b) of this subsection may apply in writing to the county or Commonwealth's attorney, as appropriate, for entry into a pretrial diversion program.

(d) No person shall be required to enter a plea of guilty as a condition of pretrial diversion or as a condition of an application for pretrial diversion.

(2) The county or Commonwealth's attorney shall make a recommendation upon each application for pretrial diversion to the District Judge or Circuit Judge in the court in which the case would be tried. If the attorney for the Commonwealth has recommended pretrial diversion and the judge approves pretrial diversion, it shall be granted according to the terms agreed upon.

(3) The court shall assess a diversion supervision fee of a sufficient amount to defray all or part of the cost of participating in the diversion program. Unless the fee is waived by the court in the case of indigency, the fee shall be assessed against each person placed in the diversion program. The fee may be based upon ability to pay. All fees collected shall be placed in a trust and agency account that shall not lapse and that shall be expended by the Administrative Office of the Courts for the purpose of administering and supervising the pretrial diversion program.

SECTION 89. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

When considering an application for pretrial diversion the attorney for the Commonwealth shall:

(1) Have a criminal record check made to ascertain if the person is eligible for pretrial diversion.

(2) Interview the victim of the crime, if there is an identified victim, and, when the victim of the crime is deceased or the attorney for the Commonwealth deems it necessary, interview a member of the family of the victim of the crime. The attorney for the Commonwealth shall explain to the victim the diversion program, the proposed diversion conditions, and any other matters that the attorney for the Commonwealth deems to be appropriate. The results of the interview and recommendations of the victim may be presented to the court when it is considering the application for pretrial diversion. The victim, or the victim's family if the victim is deceased, may attend the court hearing, if they so desire. The attorney for the Commonwealth shall notify them of this fact and the time, date, and place of the hearing.

(3) Conduct any other investigation that the attorney for the Commonwealth determines may be necessary with regard to the defendant and the circumstances of the crime so as to enable him or her to set proper conditions of pretrial diversion, or to make a decision whether to recommend or oppose the application of the defendant for pretrial diversion.

SECTION 90. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

(1) The provisions of KRS 533.020 relating to the period of probation shall, in so far as possible, be applicable to the period of pretrial diversion except that supervision of the participants in the programs shall be done by the Administrative Office of the Courts.

(2) The provisions of KRS 533.030 relating to conditions of probation and restitution shall, in so far as possible, be applicable to pretrial diversion. Restitution shall be ordered in all cases where a victim has suffered monetary damage as a result of the alleged crime. Restitution to the state, or the victim, or both, may be ordered in any pretrial diversion program.

SECTION 91. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

(1) If the defendant fails to complete the provisions of the pretrial diversion agreement within the time specified, or is

not making satisfactory progress toward the completion of the provisions of the agreement, the Administrative Office of the Courts, the victim, or a peace officer may inform the attorney for the Commonwealth of the alleged violation or noncompliance, and the attorney for the Commonwealth, may apply to the court for a hearing to determine whether or not the pretrial diversion agreement should be voided and the defendant stand trial as charged.

(2) In making a determination as to whether or not a pretrial diversion agreement should be voided, the court shall use the same criteria as for the revocation of probation, and the defendant shall have the same rights as he or she would if probation revocation was sought.

(3) Making application for a pretrial diversion agreement tolls any statute of limitations relative to the criminal offenses for which the application is made for the period until the application is granted or denied. Approval of the application for pretrial diversion by the court tolls any statute of limitations relative to criminal offenses diverted for the period of the diversion agreement.

(4) If the court voids the pretrial diversion agreement, the court shall notify the applicable prosecutor, in writing, that the pretrial diversion agreement has been voided and the reasons for the action. The prosecutor shall decide whether or not the defendant should be tried and for what charges. If the decision is made to try the defendant the court shall order the defendant to stand trial. The defendant may be arrested and jailed pending pretrial release. The order voiding the pretrial diversion agreement is subject to appeal in the same manner as any probation revocation under the statutes and the Rules of Criminal Procedure.

SECTION 92. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

(1) If the defendant successfully completes the provisions of the pretrial diversion agreement, the charges against the defendant shall be listed as "dismissed-diverted" and shall not constitute a criminal conviction.

(2) The defendant shall not be required to list this disposition on any application for employment, licensure, or otherwise unless required to do so by federal law.

(3) Pretrial diversion records shall not be introduced as evidence in any court in a civil, criminal, or other matter without the consent of the defendant.

SECTION 93. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

The Supreme Court of Kentucky shall, by rule, determine all forms and other matters necessary for the proper administration of the pretrial diversion program.

SECTION 94. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

(1) The pretrial diversion program authorized by Sections 88 to 93 of this Act shall be the sole program utilized in the Commonwealth.

(2) As of the effective date of this section, no other pretrial diversion program shall be permitted, except to supervise persons granted pretrial diversion prior to the effective date of this section. No new persons shall be admitted to these programs.

(3) A person who is in a pretrial diversion program as of the effective date of this section may continue in that program until he or she successfully completes the program or is removed from the program for other reasons, whichever occurs earlier.

Section 95. KRS 197.500 is amended to read as follows:

As used in KRS 197.505 to 197.525, unless the context otherwise requires:

(1) "Department" means the Department of Corrections;

(2) "Adult correctional facility" means *any minimum or medium adult penal or correctional facility operated for the purpose of housing convicted felons for the department*[~~an adult penal or correctional facility for the exclusive confinement of sentenced adult felons who have been classified by the department to be minimum security and restricted-custody inmates and shall include any prison, reformatory, farm center, forestry camp, or similar institution which houses minimum security sentenced adult felons. For purposes of KRS 197.505 to 197.525, a county or regional jail shall not be considered an adult correctional facility~~]; and

(3) "Private provider" means a private legal entity authorized to do business in the Commonwealth and which is in the business of establishing, operating, and managing adult correctional facilities.

SECTION 96. A NEW SECTION OF KRS CHAPTER 197 IS CREATED TO READ AS FOLLOWS:

All persons, while acting for a private provider pursuant to the provisions of KRS 197.505 to 197.525 in any capacity entailing the maintenance of custody over any prisoners, shall have the power and authority of peace officers, including the authority granted to Department of Corrections employees pursuant to KRS 196.037(2).

SECTION 97. A NEW SECTION OF KRS CHAPTER 197 IS CREATED TO READ AS FOLLOWS:

(1) When KRS 197.510 or any other statute relating to contracting for the private operation of prisons requires a

performance bond, an irrevocable letter of credit or a performance bond in a form satisfactory to the Commonwealth may be substituted.

(2) The contract shall also protect the state's interest in providing a continual level of prison beds available without a sudden drop in the number of prison beds available or the need to release inmates or provide for their transfer to other facilities.

Section 98. KRS 197.170 is amended to read as follows:

(1) The wardens of the state penitentiaries upon the release of any prisoner or inmate from confinement, shall immediately notify the Circuit Court, the Commonwealth's attorney of the district, the county attorney and sheriff of the county, the chief of police of the city and county, to which the inmate is released, and any victim, as defined in KRS 421.500, who has requested that he be notified on release of a particular inmate who victimized him and who has forwarded a current address and telephone number to the Department of Corrections, giving the residence of the person released and the name of the person to whom he was released. The provisions of KRS Chapter 202A notwithstanding, the Department of Corrections may release to the public the information that a petition to involuntarily hospitalize a prisoner has been filed concerning any inmate who is scheduled to be released from custody.

(2) If the Circuit Court notified pursuant to subsection (1) of this section is a court other than the court which sentenced the inmate, the warden shall also notify the sentencing court.

(3) Notices received by sheriffs and chiefs of police shall be posted in a conspicuous location where personnel employed by the department may see it. ***Notices posted pursuant to this subsection shall remain posted for not less than seven (7) days.***

SECTION 99. A NEW SECTION OF KRS CHAPTER 455 IS CREATED TO READ AS FOLLOWS:

In the event of a charge for a violation of KRS 514.040 with an amount of one hundred dollars ($100) or less, a summons shall be issued prior to an arrest warrant. An arrest warrant shall not be issued until the person charged fails to respond to the summons; unless the issuing judge determines that, based upon previous offenses or charges, an arrest of the person is necessary in order to reasonably assure his or her appearance in court.

Section 100. KRS 15.310 is amended to read as follows:

As used in KRS 15.315 to 15.510, 15.990 and 15.992, unless the context otherwise requires:

(1) ***"Basic training course" means the peace officer basic training course provided by the Department of Criminal Justice Training or a course approved and recognized by the Kentucky Law Enforcement Council pursuant to KRS 15.440;***

(2) "Certified peace officer" means a peace officer who is certified under Sections 101 to 112 of this Act;

(3) "Certification" means the act by the council of issuing certification to a peace officer who successfully completes the training requirements established or approved by the Kentucky Law Enforcement Council pursuant to KRS 15.440 and the requirements set forth within this chapter;

(4) "Council" means the Kentucky Law Enforcement Council established by KRS 15.315 to 15.510, 15.990 and 15.992;

(5)[~~(2)~~] "Department" means the Department of Criminal Justice Training of the Justice Cabinet;

(6)[~~(3)~~] "Law enforcement officer" means a member of a lawfully organized police unit or police force of county, city or metropolitan government who is responsible for the detection of crime and the enforcement of the general criminal laws of the state, as well as sheriffs, sworn deputy sheriffs, campus security officers, law enforcement support personnel, public airport authority security officers, other public and federal peace officers responsible for law enforcement, and special local peace officers licensed pursuant to KRS 61.360;[~~ and~~]

(7) "Peace Officer" means a person defined in KRS 446.010; and

(8)[~~(4)~~] "Secretary" means the secretary of the Justice Cabinet.

SECTION 101. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

(1) The following officers employed or appointed as full-time, part-time, or auxiliary officers, whether paid or unpaid, shall be certified:

(a) State Police officers;

(b) City, county, and urban-county police officers;

(c) Deputy sheriffs, except those identified in KRS 70.045 and 70.263(3);

(d) State or public university safety and security officers appointed pursuant to KRS 164.950;

(e) School security officers employed by local boards of education who are special law enforcement officers appointed under KRS 61.902;

(f) Airport safety and security officers appointed under KRS 183.880;

(g) Department of Alcoholic Beverage Control field representatives and investigators appointed under KRS 241.090; and

(h) Division of Insurance Fraud Investigators appointed under KRS 304.47-040.

(2) The requirements of Sections 101 to 112 of this Act for certification may apply to all state peace officers employed pursuant to KRS Chapter 18A and shall, if adopted, be incorporated by the Department of Personnel for job specifications.

(3) Additional training in excess of the standards set forth in Sections 101 to 112 of this Act for all peace officers possessing arrest powers who have specialized law enforcement responsibilities shall be the responsibility of the employing agency.

(4) The following officers may, upon request of the employing agency, be certified by the council:

(a) Deputy coroners;

(b) Deputy constables;

(c) Deputy jailers;

(d) Deputy sheriffs under KRS 70.045 and 70.263(3);

(e) Officers appointed under KRS 61.360;

(f) Officers appointed under KRS 61.902, except those who are school security officers employed by local boards of education; and

(g) Private security officers.

(5) The following officers shall be exempted from the certification requirements but may upon their request be certified by the council:

(a) Sheriffs;

(b) Coroners;

(c) Constables; and

(d) Jailers.

(6) Federal peace officers cannot be certified under Sections 101 to 112 of this Act.

SECTION 102. A NEW SECTION OF KRS 15.310 TO 15.510 IS CREATED TO READ AS FOLLOWS:

A person certified after December 1, 1998, under Sections 101 to 112 of this Act shall, at the time of becoming certified, meet the following minimum qualifications:

(1) Be a citizen of the United States;

(2) Be at least twenty-one (21) years of age;

(3) Be a high school graduate or have successfully completed a General Education Development (G.E.D.) examination;

(4) Possess a valid license to operate a motor vehicle;

(5) Be fingerprinted for a criminal background check;

(6) Not have been convicted of any felony;

(7) Not be prohibited by federal or state law from possessing a firearm;

(8) Have received and read the Kentucky Law Enforcement Officers Code of Ethics as established by the council;

(9) Have received an honorable discharge if having served in any branch of the armed forces of the United States;

(10) Have passed a medical examination by the council to determine if he can perform peace officer duties as determined by a validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall pass the medical examination, appropriate to the agency's job task analysis, of the employing agency. All agencies shall certify passing medical examination results to the council which shall accept them as complying with KRS 15.315 to 15.510;

(11) Have passed a drug screening test administered or approved by the council by administrative regulation. A person shall be deemed to have passed a drug screening test if the results of the test are negative for the use of an illegal controlled substance or prescription drug abuse. Any agency that administers its own test that meets or exceeds this standard shall certify passing test results to the council which shall accept them as complying with KRS 15.315 to 15.510;

(12) Have undergone a background investigation established or approved by the council by administrative regulation to determine suitability for the position of a peace officer. If the employing agency has established its own background investigation that meets or exceeds the standards of the council, as set forth by administrative regulation, the agency shall conduct the background investigation and shall certify background investigation results to the council, which

shall accept them as complying with KRS 15.315 to 15.510;

(13) Have been interviewed by the employing agency;

(14) Not have had certification as a peace officer permanently revoked in another state;

(15) Have taken a psychological examination administered or approved by the council by administrative regulation to determine the person's suitability to perform peace officer duties as determined by a council validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall take that agency's psychological examination, appropriate to the agency's job task analysis. All agencies shall certify psychological examination results to the council which shall accept them as complying with KRS 15.315 to 15.510;

(16) Have passed a physical agility test administered or approved by the council by administrative regulation to determine his suitability to perform peace officer duties as determined by a council validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall take the physical agility examination of the employing agency. All agencies shall certify physical agility examination results to the council, which shall accept them as demonstrating compliance with KRS 15.315 to 15.510; and

(17) Have taken a polygraph examination administered or approved by the council by administrative regulation to determine his suitability to perform peace officer duties. Any agency that administers its own polygraph examination as approved by the council shall certify the results that indicate whether a person is suitable for employment as a peace officer to the council, which shall accept them as complying with KRS 15.315 to 15.510.

SECTION 103. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

(1) The council shall administer the physical agility, polygraph, psychological, and drug screen tests at cost for those agencies requesting council-administered tests. Agencies may petition the council for waiver of the costs of these tests upon a showing of undue financial hardship.

(2) An agency may, at its own expense, administer its own physical agility, polygraph, psychological, medical, and drug screen tests, as well as additional tests.

SECTION 104. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

The following certification categories shall exist:

(1) Precertification status. The officer is currently employed or appointed by an agency and meets or exceeds all those minimum qualifications set forth in Section 102 of this Act, but has not successfully completed a basic training course, except those officers covered by Section 111 of this Act. The officer shall have full peace officer powers as authorized under the statute under which he was appointed or employed. If an officer fails to successfully complete a basic training course within one (1) year of employment, his enforcement powers shall automatically terminate, and he shall not exercise peace officer powers in the Commonwealth until he has successfully completed a basic training course.

(2) Certification status. Unless the certification is in revoked status or inactive status, the officer is currently employed or appointed by an agency and has met all training requirements. The officer shall have full peace officer powers as authorized under the statute under which he was appointed or employed.

(3) Inactive status.

(a) The person has been separated from the agency by which he was employed or appointed and has no peace officer powers;

(b) The person has been employed by another agency in a non-peace officer position; or

(c) The person is on military active duty for a period exceeding three hundred sixty-five (365) days.

The person may remain on inactive status. A person who is on inactive status and who returns to a peace officer position shall have certification status restored if he has not committed an act for which his certified status may be revoked pursuant to Sections 101 to 112 of this Act and by successfully completing forty (40) hours of in-service training as prescribed by the council.

(4) Revoked or denied status. The officer has no enforcement powers and has been separated from an enforcement agency for any one (1) of the following reasons:

(a) Failure to meet or maintain training requirements;

(b) Willful falsification of information to obtain or maintain certified status;

(c) Certification was the result of an administrative error;

(d) Failure to meet or maintain minimum certification standards;

(e) Plea of guilty to, conviction of, or entering of an Alford plea to any felony;

(f) Prohibition by federal or state law from possessing a firearm.

(5) The design of a certificate may be changed periodically. When a new certificate is produced, it shall be distributed free of charge to each currently certified peace officer.

SECTION 105. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

(1) Within five (5) working days of employment or appointment, the chief executive officer of the employing agency, or his designee, shall file a report with the council certifying that the newly employed officer is certified or meets or exceeds the precertification qualifications of Section 102 of this Act.

(2) If the person is certified, the council shall continue certified status.

(3) If the person is on inactive status, the council shall upgrade to certified status unless the certification is revoked as provided by Sections 101 to 112 of this Act.

(4) If the person is not certified and not on inactive status, the council shall designate the person as being in precertification status.

(5) A person who is in precertification status shall, upon successful completion of the required basic training, be certified unless he has committed an act that would result in revocation of his certificate in which case he shall be denied certification.

(6) A person who is denied certified status under this section shall have the same right of appeal as a person who has been revoked under Sections 101 to 112 of this Act.

(7) If the certified officer has successfully completed the basic training required by KRS 95.955 and transfers from a peace officer position from a current employer to a peace officer position for another employer, and both employers have, at least ten (10) working days prior to the effective date of the transfer, notified the council in writing of the transfer, the council shall maintain the officer in certified status.

SECTION 106. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

Any person who is aggrieved by a determination by the employing agency or by the council that he fails to meet the requirements for precertification status may:

(1) If the determination was made by the employing agency, appeal the decision in the same manner as for other employment appeals within the agency; or

(2) If the determination was made by the council, appeal the decision to the local Circuit Court having jurisdiction over the employing agency.

SECTION 107. A NEW SECTION OF KRS CHAPTER 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

(1) Within ten (10) working days from separation from service, the chief executive officer of the employing agency, or his designee, shall file with the council a summary report that provides the relevant information about the person's separation from service.

(2) If the person has been separated for having pled guilty to, been convicted of, or entered an Alford plea to a felony, the council shall revoke the person's certification.

(3) If the person has been separated for any other reason other than death, the council shall place the certification on inactive status. If the person has been separated due to death, the certification shall be retired.

(4) The employing agency's findings of fact and evidentiary conclusions shall be deemed final. The council shall be limited only to revoking the certification.

(5) The council shall not accept or hear complaints.

SECTION 108. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

(1) If the council believes an agency's job task analysis to be insufficient or erroneous, the council shall file a declaratory action in Franklin Circuit Court to declare the job task analysis invalid.

(2) Until the job task analysis has been declared invalid and all appeals have been exhausted, the council shall accept the agency's job task analysis.

SECTION 109. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

(1) An agency may be required to pay for all training received by a person from the Department of Criminal Justice Training or any other facility approved by the Kentucky Law Enforcement Council if the agency knowingly employs or appoints a person to be an officer of any type as enumerated in Section 101 of this Act and if that person fails to achieve certified status as required by Sections 101 to 112 of this Act.

(2) The agency shall be denied participation in the Kentucky Law Enforcement Foundation Program Fund if the agency knowingly employs or appoints a person to be an officer of any type as enumerated in Section 101 of this Act and if that person:

(a). Fails to meet those minimum qualifications set forth in Section 102 of this Act;

(b) Fails to achieve certified status as required by Sections 101 to 112 of this Act; or

(c) Fails to maintain the minimum training requirements set forth in KRS 95.955.

SECTION 110. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

(1) The following Kentucky Revised Statutes and any administrative regulations promulgated thereunder affecting those peace officers required to be certified pursuant to Sections 101 to 112 of this Act shall not be superseded by the provisions of Sections 101 to 112 of this Act, and in all instances the provisions of all statutes specified below shall prevail:

- *(a) KRS Chapter 16, relating to Kentucky State Police Officers;*
- *(b) KRS Chapter 70, relating to sheriffs, and deputy sheriffs;*
- *(c) KRS Chapter 78, relating to county police;*
- *(d) KRS Chapters 15 and 95, relating to city and urban-county police;*
- *(e) KRS Chapter 18, relating to airport safety and security officers;*
- *(f) KRS Chapter 164, relating to State Universities and Colleges; Regional Education and Archaeology officers;*
- *(g) KRS Chapter 18A, relating to all state peace officers;*
- *(h) KRS Chapter 241.090, relating to Department of Alcoholic Beverage Control field representatives and investigators;*
- *(i) KRS 304.47-040, relating to Division of Insurance Fraud Investigators; and*
- *(j) Any other statutes affecting peace officers not specifically cited herein.*

SECTION 111. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

(1) The effective date of Sections 101 to 112 of this Act shall be December 1, 1998. All peace officers employed as of December 1, 1998, shall be deemed to have met all the requirements of Sections 101 to 112 of this Act and shall be granted certified status as long as they remain in continuous employment of the agency by which they were employed as of the effective date of this Act, or shall have successfully completed an approved basic training course approved and recognized by the Kentucky Law Enforcement Council pursuant to KRS 15.440(4) when seeking employment with another law enforcement agency.

(2) Any peace officers employed after December 1, 1998, shall comply with all minimum standards specified in Sections 101 to 112 of this Act. Persons newly employed or appointed after December 1, 1998, shall have one (1) year within which to gain certified status or they shall lose their law enforcement powers.

(3) The Open Records Act notwithstanding, the person's home address, telephone number, date of birth, social security number, background investigation, medical examination, psychological examination, and polygraph examination conducted pursuant to his statute shall not be subject to disclosure.

SECTION 112. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

No provisions of Sections 101 to 112 of this Act shall preclude an appointing or employing agency from having requirements that are in excess of or in addition to any requirements specified by this Act or an administrative regulation promulgated under Sections 101 to 112 of this Act.

Section 113. KRS 532.055 is amended to read as follows:

(1) In all felony cases, the jury in its initial verdict will make a determination of not guilty, guilty, guilty but mentally ill, or not guilty by virtue of insanity, and no more.

(2) Upon return of a verdict of guilty or guilty but mentally ill against a defendant, the court shall conduct a sentencing hearing before the jury, if such case was tried before a jury. In the hearing the jury will determine the punishment to be imposed within the range provided elsewhere by law. The jury shall recommend whether the sentences shall be served concurrently or consecutively.

- (a) Evidence may be offered by the Commonwealth relevant to sentencing including:
  1. Minimum parole eligibility, prior convictions of the defendant, both felony and misdemeanor;
  2. The nature of prior offenses for which he was convicted;
  3. The date of the commission, date of sentencing, and date of release from confinement or supervision from all prior offenses;
  4. The maximum expiration of sentence as determined by the division of probation and parole for all such current and prior offenses;
  5. The defendant's status if on probation, parole, conditional discharge, or any other form of legal release;[~~and~~]
  6. Juvenile court records of adjudications of guilt of a child for an offense that would be a felony if

committed by an adult. Subject to the Kentucky Rules of Evidence, these records shall be admissible in court at any time the child is tried as an adult, or after the child becomes an adult, at any subsequent criminal trial relating to that same person. Juvenile court records made available pursuant to this section may be used for impeachment purposes during a criminal trial, and may be used during the sentencing phase of a criminal trial; however, the fact that a juvenile has been adjudicated delinquent of an offense that would be a felony if the child had been an adult shall not be used in finding the child to be a persistent felony offender based upon that adjudication. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Release of any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the federal Social Security Act is also prohibited; ***and***

7. The impact of the crime upon the victim, as defined in KRS 421.500, including a description of the nature and extent of any physical, psychological, or financial harm suffered by the victim;

(b) The defendant may introduce evidence in mitigation. For purposes of this section, mitigating evidence means evidence that the accused has no significant history of criminal activity which may qualify him for leniency. This section shall not preclude the introduction of evidence which negates any evidence introduced by the Commonwealth; and

(c) Upon conclusion of the proof, the court shall instruct the jury on the range of punishment and counsel for the defendant may present arguments followed by the counsel for the Commonwealth. The jury shall then retire and recommend a sentence for the defendant.

(3) All hearings held pursuant to this section shall be combined with any hearing provided for by KRS 532.080. This section shall not apply to sentencing hearings provided for in KRS 532.025.

(4) In the event that the jury is unable to agree as to the sentence or any portion thereof and so reports to the judge, the judge shall impose the sentence within the range provided elsewhere by law.

Section 114. KRS 439.315 is amended to read as follows:

(1) A person placed by a releasing authority on probation, parole, or other form of release subject to supervision by the Department of Corrections and all persons supervised pursuant to KRS 439.560 shall pay a fee to offset the costs of supervising the probation, parole, or other supervised release.

(2) The fees shall be as follows:

(a) For a felony, not less than ten dollars ($10) per month while on active supervision nor more than two thousand five hundred dollars ($2,500) ***per year***.

(b) For a misdemeanor, not less than ten dollars ($10) per month while on active supervision nor more than five hundred dollars ($500) ***per year***, except as provided in subsection (13) of this section.

(3) The releasing authority shall order the fee paid in a lump sum or installments. If the fee is to be paid in a lump sum, the person shall not be released from custody until the fee is paid in full.

(4) Upon the failure of a person to pay an installment on a fee set forth in a release agreement, the releasing authority shall hold a hearing to determine why the installment has not been paid. Failure without good cause to pay an installment pursuant to a release agreement shall be grounds for the revocation of probation, parole, conditional release, or other form of release upon which the person has been released as provided in KRS 533.050.

(5) The releasing authority shall hold a hearing to determine the ability of the defendant to make the payments; and in making this determination, the releasing authority shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution. In counties containing a city of the first class or an urban-county form of government, the releasing authority may waive the payment of the fee in whole or in part for defendants placed under the supervision of the adult misdemeanant probation and work release program, if it finds that any of the factors in subsection (6) of this section exist.

(6) The releasing authority shall not waive any fee unless the commissioner of the Department of Corrections or his designee petitions the releasing authority in written form for the waiver. The Department of Corrections shall not petition unless:

(a) The offender is a student in a school, college, university, or course of vocational or technical training designed to fit the student for gainful employment. Certification of student status shall be supplied to the releasing authority by the educational institution in which the offender is enrolled. In such case, the fee may be postponed until completion of education but shall be paid thereafter.

(b) The offender has an employment disability, as determined by a physical, psychological, or psychiatric examination acceptable to, or ordered by, the releasing authority.

(7) At any time during the pendency of the judgment or order rendered according to the terms of this section, a defendant may petition the releasing authority to modify or vacate its previous judgment or order on the grounds of change of circumstances with regard to the defendant's ability to pay the fee. The releasing authority shall advise the defendant of this right at the time of the rendering of the judgment or order placing the defendant on probation, parole, or other

supervised release.

(8) All sums paid by the defendant pursuant to this section shall be paid into the general fund, except as provided in subsection (13) of this section.

(9) When granting a release of any defendant by way of probation, parole, or otherwise, the releasing authority shall make the payment of this fee a condition of release, unless the fee has been waived, reduced, or delayed as provided in this section. Nonpayment shall be grounds for revocation of the release as provided in KRS 533.050.

(10) The releasing authority, if the Department of Corrections petitions the releasing authority to modify the fee, shall consider the petition and may waive the payment of the fee in whole or in part, delay payment of the fee, increase the fee, or deny the petition.

(11) All fees fixed under the provisions of this section shall be collected by the circuit clerk of the county where the defendant is supervised, except as provided in subsection (13) of this section.

(12) The Department of Corrections and the Division of Probation and Parole shall, for each person released under its supervision, keep an account of all payments made and report delinquencies to the releasing authority.

(13) In counties containing a city of the first class or an urban-county form of government, persons placed by a releasing authority on probation, parole, or other release subject to supervision by the adult misdemeanant probation and work release program of the county containing a city of the first class or urban-county government shall pay a fee to offset the costs of supervising the probation, parole, or other supervised release. The fees shall be assessed by the releasing authority in accordance with the provisions of this section. The fee for a misdemeanant defendant placed under the supervision of an adult misdemeanant probation and work release program of a county containing a city of the first class or an urban-county government shall be not less than one hundred dollars ($100) nor more than five hundred dollars ($500) ***per year***. All sums paid by the defendant under this subsection shall be paid into the general fund of the county containing a city of the first class or urban-county government in lieu of the payment specified in subsection (8) of this section. All fees fixed under this subsection shall be collected by the circuit clerk of the county containing a city of the first class or urban-county involved. The adult misdemeanant probation and work release program of the county containing a city of the first class or urban-county government shall, for each person released under its supervision, keep an account of all payments made, maintain copies of all receipts issued by the circuit clerk, and report delinquencies to the court.

Section 115. KRS 337.010 is amended to read as follows:

(1) As used in this chapter, unless the context requires otherwise:

  (a) "Commissioner" means commissioner of the Department of Workplace Standards under the direction and supervision of the secretary of the Labor Cabinet;

  (b) "Department" means Department of Workplace Standards in the Labor Cabinet;

  (c) "Wages" include any compensation due to an employee by reason of his employment, including salaries, commissions, vested vacation pay, overtime pay, severance or dismissal pay, earned bonuses, and any other similar advantages agreed upon by the employer and the employee or provided to employees as an established policy. The wages shall be payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to the allowances made in this chapter;

  (d) "Employer" is any person, either individual, corporation, partnership, agency, or firm who employs an employee and includes any person, either individual, corporation, partnership, agency, or firm acting directly or indirectly in the interest of an employer in relation to an employee; and

  (e) "Employee" is any person employed by or suffered or permitted to work for an employer.

(2) As used in KRS 337.275 to 337.325, 337.345, and KRS 337.385 to 337.405, unless the context requires otherwise:

  (a) "Employee" is any person employed by or suffered or permitted to work for an employer, but shall not include:

    1. Any individual employed in agriculture;

    2. Any individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of outside salesman, or as an outside collector as the terms are defined by administrative regulations of the commissioner;

    3. Any individual employed by the United States;

    4. Any individual employed in domestic service in or about a private home. The provisions of this section shall include individuals employed in domestic service in or about the home of an employer where there is more than one (1) domestic servant regularly employed;

    5. Any individual classified and given a certificate by the commissioner showing a status of learner, apprentice, worker with a disability, sheltered workshop employee, and student under administrative procedures and administrative regulations prescribed and promulgated by the commissioner. This certificate shall authorize employment at the wages, less than the established fixed minimum fair wage

rates, and for the period of time fixed by the commissioner and stated in the certificate issued to the person;

6. Employees of retail stores, service industries, hotels, motels, and restaurant operations whose average annual gross volume of sales made for business done is less than ninety-five thousand dollars ($95,000) for the five (5) preceding years exclusive of excise taxes at the retail level or if the employee is the parent, spouse, child, or other member of his employer's immediate family;

7. Any individual employed as a babysitter in employer's home, or an individual employed as a companion by a sick, convalescing, or elderly person or by the person's immediate family, to care for that sick, convalescing, or elderly person and whose principal duties do not include housekeeping;

8. Any individual engaged in the delivery of newspapers to the consumer;

9. Any individual subject to the provisions of KRS Chapters 7, 16, 27A, 30A, and 18A provided that the commissioner of the Department of Personnel shall have the authority to prescribe by administrative regulation those emergency employees, or others, who shall receive overtime pay rates necessary for the efficient operation of government and the protection of affected employees;

10. Any employee employed by an establishment which is an organized nonprofit camp, religious, or nonprofit educational conference center, if it does not operate for more than seven (7) months in any calendar year; or

11. Any employee whose function is to provide twenty-four (24) hour residential care on the employer's premises in a parental role to children who are primarily dependent, neglected, and abused and who are in the care of private, nonprofit childcaring facilities licensed by the Cabinet for Human Resources under KRS 199.640 to 199.670.

(b) "Agriculture" means farming in all its branches, including cultivation and tillage of the soil; dairying; production, cultivation, growing, and harvesting of any agricultural or horticultural commodity; raising of livestock, bees, furbearing animals, or poultry; and any practice, including any forestry or lumbering operations, performed on a farm in conjunction with farming operations, including preparation and delivery of produce to storage, to market, or to carriers for transportation to market;

(c) "Gratuity" means voluntary monetary contribution received by an employee from a guest, patron, or customer for services rendered;

(d) "Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than thirty dollars ($30) per month in tips; and

(e) "U.S.C." means the United States Code.

(3) As used in KRS 337.505 to 337.550, unless the context requires otherwise:

(a) "Construction" includes construction, reconstruction, improvement, enlargement, alteration, or repair of any public works project by contract fairly estimated to cost more than two hundred fifty thousand dollars ($250,000). No public works project, if procured under a single contract and subject to the requirements of this section, may be divided into multiple contracts of lesser value to avoid compliance with the provisions of this section;

(b) "Contractor" and "subcontractor" include any superintendent, foreman, or other authorized agent of any contractor or subcontractor who is in charge of the construction of the public works or who is in charge of the employment or payment of the employees of the contractor or subcontractor who are employed in performing the work to be done or being done by the contractor or subcontractor under the particular contract with any public authority;

(c) 1. "Locality" shall be determined by the commissioner. The commissioner may designate more than one (1) county as a single locality, but, if more than one (1) county is designated, the multicounty locality shall not extend beyond the boundaries of a state Senatorial district. The commissioner shall not designate less than an entire county as a locality. If there is not available in the locality a sufficient number of competent, skilled laborers, workmen, and mechanics to efficiently and properly construct the public works, "locality" shall include any other locality nearest the one in which the work of construction is to be performed and from which such available skilled laborers, workmen, and mechanics may be obtained in sufficient number to perform the work; and

2. "Locality" with respect to contracts advertised or awarded by the Transportation Cabinet of this state shall be determined by the secretary of the Transportation Cabinet. The secretary may designate any number of counties as constituting a single locality. The secretary may also designate all counties of the Commonwealth as a single locality, but he shall not designate less than an entire county as a locality;

(d) "Public authority" means any officer, board, or commission of this state, or any political subdivision or department thereof in the state, or any institution supported in whole or in part by public funds, including publicly-owned or controlled corporations, authorized by law to enter into any contract for the construction of public works and any nonprofit corporation funded to act as an agency and instrumentality of the government agency in connection with the construction of public works***, and any "private provider", as defined in Section 95 of this Act, which enters into any contract for the construction of an "adult correctional facility", as defined in Section 95 of this Act***; and

(e) "Public works" includes all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, and all other structures or work***, including "adult correctional facilities", as defined in Section 95 of this Act,*** constructed under contract with any public authority.

(4) If the federal government or any of its agencies furnishes by loans or grants any part of the funds used in constructing public works, and if the federal government or its agencies prescribe predetermined prevailing minimum wages to be paid to mechanics, workmen, and laborers employed in the construction of the public works, and if KRS 337.505 to 337.550 is also applicable, those wages in each classification which are higher shall prevail.

Section 116. KRS 532.110 is amended to read as follows:

(1) When multiple sentences of imprisonment are imposed on a defendant for more than one (1) crime, including a crime for which a previous sentence of probation or conditional discharge has been revoked, the multiple sentences shall run concurrently or consecutively as the court shall determine at the time of sentence, except that:

(a) A definite and an indeterminate term shall run concurrently and both sentences shall be satisfied by service of the indeterminate term;

(b) The aggregate of consecutive definite terms shall not exceed one (1) year; and

(c) The aggregate of consecutive indeterminate terms shall not exceed in maximum length the longest extended term which would be authorized by KRS 532.080 for the highest class of crime for which any of the sentences is imposed. ***In no event shall the aggregate of consecutive indeterminate terms exceed fifty (50) years.***

(2) If the court does not specify the manner in which a sentence imposed by it is to run, the sentence shall run concurrently with any other sentence which the defendant must serve.

(3) When a defendant is sentenced to imprisonment for a crime committed while on parole in this state, the term of imprisonment and any period of reimprisonment that the board of parole may require the defendant to serve upon the revocation of his parole shall run concurrently, unless the court orders them to run consecutively.

(4) Notwithstanding any provision in this section to the contrary, if a person is convicted of an offense that is committed while he is imprisoned in a penal or reformatory institution, during an escape from imprisonment, or while he awaits imprisonment, the sentence imposed for that offense may be added to the portion of the term which remained unserved at the time of the commission of the offense. The sentence imposed upon any person convicted of an escape or attempted escape offense shall run consecutively with any other sentence which the defendant must serve.

(5) Notwithstanding any provision in this chapter to the contrary, if a person is convicted of an offense that is committed while he is imprisoned in a penal or reformatory institution, the sentence imposed for that offense may, upon order of the trial court, be served in that institution. The person may be transferred to another institution pursuant to administrative regulations of the Department of Corrections.

SECTION 117. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

(1) When a person is convicted of, pleads guilty to, or enters an Alford plea to a felony offense and is sentenced to jail as a condition of conditional discharge, or as a condition of probation, the Department of Corrections shall pay for the incarceration of that person in a county jail at the same rate and under the same conditions as for a Class D felon who is incarcerated in the county jail under KRS 532.100.

(2) If a person incarcerated in a county jail on conditional discharge or probation under subsection (1) of this section is granted work release, he shall pay the work release fees required by law to the jailer. The amount of work release fees paid by a prisoner shall be deducted from the amount which the Department of Corrections shall pay for the incarceration of that prisoner.

Section 118. The following KRS sections are repealed:

520.100 Resisting order to stop motor vehicle.

610.115 Circumstances permitting court to order further detention of child in custody of Department of Juvenile Justice or cabinet.

Section 119. (1) If the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by this 1998 Regular Session of the General Assembly, each reference to the Cabinet for Human Resources in the following sections shall be codified as the Cabinet for Health Services: Sections 7, 9, 11, 12, 13, 14, 16, 18, 19, 28, and 82 of this Act.

(2) If the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by this 1998 Regular Session of the General Assembly, the reference to the Cabinet for Human Resources appearing in subsection (1)(h) of Section 10 of this Act shall be codified as both the Cabinet for Families and Children and the Cabinet for Health Services.

Section 120. Sections 24 and 25 of this Act may be cited as the Sarah Hansen Act.

Section 121. Sections 101 to 112 of this Act take effect December 1, 1998.

The Committee on Tourism Development and Energy reported **HB 517** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Consent Calendar.

HB 517, AN ACT relating to electric cooperative utilities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 278.010 is amended to read as follows:

As used in KRS 278.010 to 278.450, and in KRS 278.990, unless the context otherwise requires:

(1) "Corporation" includes private, quasipublic, and public corporations, and all boards, agencies and instrumentalities thereof, associations, joint-stock companies, and business trusts;

(2) "Person" includes natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest;

(3) "Utility" means any person except a city, who owns, controls, or operates or manages any facility used or to be used for or in connection with:

  (a) The generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power, or other uses;

  (b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses;

  (c) The transporting or conveying of gas, crude oil, or other fluid substance by pipeline to or for the public, for compensation;

  (d) The diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation;

  (e) The transmission or conveyance over wire, in air, or otherwise, of any message by telephone or telegraph for the public, for compensation; or

  (f) The treatment of sewage for the public, for compensation, if the facility is a subdivision treatment facility plant, located in a county containing a city of the first class or a sewage treatment facility located in any other county and is not subject to regulation by a metropolitan sewer district;

(4) "Retail electric supplier" means any person, firm, corporation, association, or cooperative corporation, excluding municipal corporations, engaged in the furnishing of retail electric service;

(5) "Certified territory" shall mean the areas as certified by and pursuant to KRS 278.017;

(6) "Existing distribution line" shall mean an electric line which on June 16, 1972, is being or has been substantially used to supply retail electric service and includes all lines from the distribution substation to the electric consuming facility but does not include any transmission facilities used primarily to transfer energy in bulk;

(7) "Retail electric service" means electric service furnished to a consumer for ultimate consumption, but does not include wholesale electric energy furnished by an electric supplier to another electric supplier for resale;

(8) "Electric-consuming facilities" means everything that utilizes electric energy from a central station source;

(9) ***"Generation and Transmission Cooperative", or "G&T", means a utility formed under KRS Chapter 279 that provides electric generation and transmission services;***

(10) "Distribution Cooperative" means a utility formed under KRS Chapter 279 that provides retail electric service;

(11) "Facility" includes all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of any utility;

(12)[~~(10)~~] "Rate" means any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof;

(13)[~~(11)~~] "Service" includes any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, the purity, pressure, and quantity of water, and in general the quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility;

(14)[~~(12)~~] "Adequate service" means having sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following the commencement of permanent service and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service;

(15)[~~(13)~~] "Commission" means the Public Service Commission of Kentucky;

(16)[~~(14)~~] "Commissioner" means one (1) of the members of the commission;

(17)[~~(15)~~] "Demand-side management" means any conservation, load management, or other utility activity intended to influence the level or pattern of customer usage or demand.

SECTION 2. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding any other statute to the contrary, a G&T or distribution cooperative may at any time decrease regulated operating revenues by an amount to be determined solely by the cooperative utility. If the revenue reduction is allocated among and within the consumer classes on a proportional basis that will result in no change in the rate design currently in effect, the revised rates and tariffs shall be authorized and made permanent on the proposed effective date.

(2) Notwithstanding any other statute, any revenue increase authorized by the Public Service Commission or any revenue decrease authorized in subsection (1) of this section that is to flow through the effects of an increase or decrease in wholesale rates may, at the distribution cooperative's discretion, be allocated to each class and within each tariff on a proportional basis that will result in no change in the rate design currently in effect. In the event of an increase in the wholesale rates and tariffs of the wholesale supplier by the Public Service Commission, the rates and tariffs of the distribution cooperative that have been revised on a proportional basis to result in no change in the rate design shall be authorized and shall become effective on the same date as those of the wholesale supplier. In those cases where an interim increase in the power supplier's wholesale rates are authorized, the distribution cooperative's flow through rates shall be interim. The distribution cooperative's permanent rates and tariffs shall become effective on the date that the wholesale supplier's permanent rates become effective as ordered by the commission.

(3) Any rate increase or decrease as provided for in subsections of (1) and (2) of this section shall not apply to special contracts under which the rates are subject to change or adjustment only as stipulated in the contract or as ordered by the commission.

(4) The Public Service Commission shall promulgate administrative regulations pursuant to KRS Chapter 13A to establish filing requirements and notice requirements to the commission, the Attorney General, and the public under this section.

The Committee on Elections and Constitutional Amendments reported **HB 229, HB 474,** with Committee Substitute attached thereto, and **HB 477,** with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 229, AN ACT proposing an amendment to Section 170 of the Constitution of Kentucky relating to the finances of the Commonwealth.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. It is proposed that Section 170 of the Constitution of Kentucky be amended to read as follows:

There shall be exempt from taxation public property used for public purposes; places of burial not held for private or corporate profit; real property owned and occupied by, and personal property both tangible and intangible owned by, institutions of religion; institutions of purely public charity, and institutions of education not used or employed for gain by any person or corporation, and the income of which is devoted solely to the cause of education, public libraries, their endowments, and the income of such property as is used exclusively for their maintenance; household goods of a person used in his home; crops grown in the year in which the assessment is made, and in the hands of the producer; and real property maintained as the permanent residence of the owner, who is sixty-five years of age or older, or is classified as totally disabled under a program authorized or administered by an agency of the United States government or by the railroad retirement system, provided the property owner received disability payments pursuant to such disability classification, has maintained such disability classification for the entirety of the particular taxation period, and has filed with the appropriate local assessor by December 31 of the taxation period, on forms provided therefor, a signed statement indicating continuing disability as provided herein made under penalty of perjury, up to the assessed valuation of sixty-five hundred dollars on said residence and contiguous real property, except for assessment for special benefits. The real property may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. The exemptions shall apply only to the value of the real property assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which his interest in the corporation bears to the assessed value of the property.[~~All laws exempting or omitting property from taxation other than the property above mentioned shall be void.~~] The General Assembly may authorize any incorporated city or town to exempt manufacturing establishments from municipal taxation, for a period not exceeding five years, as an inducement to their location. ***Notwithstanding the provisions of Sections 3, 172, and 174 of this Constitution to the contrary, the General Assembly may provide by law an exemption for all or any portion of the property tax for any class of personal property. All laws exempting or omitting property from taxation other than the property mentioned above shall be void.***

Section 2. This amendment shall be submitted to the voters of the Commonwealth for their ratification or rejection at the time and in the manner provided for under Sections 256 and 257 of the Constitution and under KRS 118.415. The proposed amendment shall be summarized on the ballot and presented to the voters in the following language: "Are you in favor of amending Section 170 of the Constitution of Kentucky to permit the General Assembly to exempt any class of intangible personal property?"

HB 474, AN ACT relating to removal from public office.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 63 IS CREATED TO READ AS FOLLOWS:

Any other statute to the contrary notwithstanding, no person appointed to a public office or position of employment in the Commonwealth, except a person appointed to fill a vacancy in an elective office, shall have the power to remove from any elective public office in the Commonwealth any person elected to that public office.

The Committee Substitute to **HB 474** is as follows:

AN ACT relating to removal from public office.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 63 IS CREATED TO READ AS FOLLOWS:

No person appointed to a public office or position of employment in the Commonwealth, except a person appointed to fill a vacancy in an elective office, shall have the power to remove from any elective public office in the Commonwealth any person elected to that public office.

HB 477, AN ACT relating to eligibility to be a candidate in a political primary election.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 118.125 is amended to read as follows:

(1) Except as provided in KRS 118.155, any person who is qualified under the provisions of KRS 116.055 to vote in any primary election for the candidates for nomination by the party at whose hands he seeks the nomination, shall have his name printed on the official ballot of his party for an office to which he is eligible in that primary, upon filing, with the Secretary of State or county clerk, as appropriate, at the proper time, a notification and declaration.

(2) The notification and declaration shall be in the form prescribed by the State Board of Elections. It shall be signed by the candidate and by not less than two (2) registered voters of the same party from the district or jurisdiction from which the candidate seeks nomination.

(a) The notification and declaration for a candidate for an office other than Governor or Lieutenant Governor shall include the following oath:

"For the purpose of having my name placed on the official primary election ballot as a candidate for nomination by the ------ Party, I, ------ (name in full as desired on the ballot as provided in KRS 118.129), do solemnly swear that I reside at No. ------ street in the City of ------, State of Kentucky, and that I am a registered ------ (party) voter in ------ precinct, City of ------; that I believe in the principles of the ------ Party[~~, and intend to support its principles and policies and vote for its nominees at the coming regular election; that I was affiliated with such party and supported its nominees at the last regular election, or was prevented from doing so by reason of ------ (state reason here)~~]; that if nominated as a candidate of such party at the ensuing election I will accept the nomination and not withdraw for reasons other than those stated in KRS 118.105(3); that I will not knowingly violate any election law or any law relating to corrupt and fraudulent practice in campaigns or elections in this state, and if finally elected I will qualify for the office."

The declaration shall be subscribed and sworn to by the person making it before an officer authorized to administer an oath.

(b) The notification and declaration for a slate of candidates for Governor and Lieutenant Governor shall include the following oath:

"For the purpose of having our names placed on the official primary election ballot as a slate of candidates for Governor and Lieutenant Governor for nomination by the ------ Party, I, ------, (name of candidate for Governor in full as desired on the ballot as provided in KRS 118.129), do solemnly swear that I reside at ------ in the City of ------, State of Kentucky, and that I am a registered ------ (party) voter in ------ precinct, City of ------; and I, ------, (name of candidate for Lieutenant Governor in full as desired on the ballot as provided in KRS 118.129), do solemnly swear that I reside at ------ in the City of ------, State of Kentucky, and that I am a registered ------ (party) voter in ------ precinct, City of ------; that we believe in the principles of the ------ Party[~~, and intend to support its principles and policies and vote for its nominees in the regular election at which a Governor and Lieutenant Governor are elected; that we will be or were affiliated with that party and will support or supported its nominees at the regular election preceding the year in which a Governor and Lieutenant Governor are elected, or will be or were prevented from doing so by reason of ------ (state reason here for the candidate for Governor) ------ (state reason here for the candidate for Lieutenant Governor)~~]; that we will accept the nomination and not withdraw for reasons other than those stated in KRS 118.105(3); that we will not knowingly violate any election law or any law relating to corrupt or fraudulent practice in campaigns or elections in this state, and if finally elected we will qualify for our offices."

The declaration shall be subscribed and sworn to by the persons making it before an officer authorized to administer an oath.

(3) When the notice and declaration has been filed with the Secretary of State or county clerk, as appropriate, and certified according to KRS 118.165, the Secretary of State or county clerk, as appropriate, shall have the candidate's name printed on the ballot according to the provisions of this chapter, except as provided in KRS 118.185.

(4) Titles, ranks, or spurious phrases shall not be accepted on the filing papers and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials, and contractions of given names may be acceptable as the candidate's name.

The Committee Substitute to **HB 477** is as follows:

AN ACT relating to eligibility to be a candidate in a political primary election.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 118.125 is amended to read as follows:

(1) Except as provided in KRS 118.155, any person who is qualified under the provisions of KRS 116.055 to vote in any primary election for the candidates for nomination by the party at whose hands he seeks the nomination, shall have his name printed on the official ballot of his party for an office to which he is eligible in that primary, upon filing, with the Secretary of State or county clerk, as appropriate, at the proper time, a notification and declaration.

(2) The notification and declaration shall be in the form prescribed by the State Board of Elections. It shall be signed by the candidate and by not less than two (2) registered voters of the same party from the district or jurisdiction from which the candidate seeks nomination.

(a) The notification and declaration for a candidate for an office other than Governor or Lieutenant Governor shall include the following oath:

"For the purpose of having my name placed on the official primary election ballot as a candidate for nomination by the ------ Party, I, ------ (name in full as desired on the ballot as provided in KRS 118.129), do solemnly swear that I reside at No. ------ street in the City of ------, State of Kentucky, and that I am a registered ------ (party) voter in ------ precinct, City of ------; that I believe in the principles of the ------ Party, and intend to support its principles and policies[~~ and vote for its nominees at the coming regular election; that I was affiliated with such party and supported its nominees at the last regular election, or was prevented from doing so by reason of ------ (state reason here)~~]; that if nominated as a candidate of such party at the ensuing election I will accept the nomination and not withdraw for reasons other than those stated in KRS 118.105(3); that I will not knowingly violate any election law or any law relating to corrupt and fraudulent practice in campaigns or elections in this state, and if finally elected I will qualify for the office."

The declaration shall be subscribed and sworn to by the person making it before an officer authorized to administer an oath.

(b) The notification and declaration for a slate of candidates for Governor and Lieutenant Governor shall include the following oath:

"For the purpose of having our names placed on the official primary election ballot as a slate of candidates for Governor and Lieutenant Governor for nomination by the ------ Party, I, ------, (name of candidate for Governor in full as desired on the ballot as provided in KRS 118.129), do solemnly swear that I reside at ------ in the City of ------, State of Kentucky, and that I am a registered ------ (party) voter in ------ precinct, City of ------; and I, ------, (name of candidate for Lieutenant Governor in full as desired on the ballot as provided in KRS 118.129), do solemnly swear that I reside at ------ in the City of ------, State of Kentucky, and that I am a registered ------ (party) voter in ------ precinct, City of ------; that we believe in the principles of the ------ Party, and intend to support its principles and policies[~~ and vote for its nominees in the regular election at which a Governor and Lieutenant Governor are elected; that we will be or were affiliated with that party and will support or supported its nominees at the regular election preceding the year in which a Governor and Lieutenant Governor are elected, or will be or were prevented from doing so by reason of —— (state reason here for the candidate for Governor) —— (state reason here for the candidate for Lieutenant Governor)~~]; that we will accept the nomination and not withdraw for reasons other than those stated in KRS 118.105(3); that we will not knowingly violate any election law or any law relating to corrupt or fraudulent practice in campaigns or elections in this state, and if finally elected we will qualify for our offices."

The declaration shall be subscribed and sworn to by the persons making it before an officer authorized to administer an oath.

(3) When the notice and declaration has been filed with the Secretary of State or county clerk, as appropriate, and certified according to KRS 118.165, the Secretary of State or county clerk, as appropriate, shall have the candidate's name printed on the ballot according to the provisions of this chapter, except as provided in KRS 118.185.

(4) Titles, ranks, or spurious phrases shall not be accepted on the filing papers and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials, and contractions of given names may be acceptable as the candidate's name.

The Committee on Education reported **HB 237**, with Committee Amendment attached thereto, **HB 257**, **HB 307**, **HB 308**, and **HB 330**, with Committee Amendments attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 237, AN ACT relating to the Kentucky School for the Blind and School for the Deaf.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 167.015 is amended to read as follows:

(1) The Kentucky School for the Blind at Louisville, Kentucky, and the Kentucky School for the Deaf at Danville, Kentucky, shall be managed and controlled by the Kentucky Board of Education. The board shall have possession and the responsibility and authority for preservation, repair, and control of the buildings and grounds belonging to the state and dedicated to the schools. The board may, except as provided in KRS 45A.045, sell any property held for the use and benefit of the schools, and purchase other property deemed by the board to be suitably and conveniently located, and erect buildings necessary for carrying out the purposes of the schools. The board may ***promulgate administrative***[~~adopt rules and~~] regulations to carry into effect its powers with respect to the schools, and may require from the superintendent of the schools any reports and information it desires as to the condition of the schools.

(2) The Kentucky School for the Deaf and the Kentucky School for the Blind shall serve as the Statewide Educational Resource Center on Deafness and as the Statewide Educational Resource Center on Blindness, respectively. They shall provide technical assistance and resource services to local school districts, parents, and other agencies or organizations serving children and youth who are deaf and hard of hearing or who are blind or visually impaired. Depending on the availability of funding, services may include, but not be limited to, assessments; consultations on curriculum; language and communication; orientation and mobility; classroom devices, including telecommunication devices for the deaf and hard of hearing and Braille for the blind and visually impaired; professional development; and program development and implementation. The Kentucky School for the Deaf and the Kentucky School for the Blind may enter into collaborative agreements with local school districts and other public and private agencies to provide for regional or satellite programs for children and youth who are deaf and hard of hearing or who are blind or visually impaired.

The Committee Amendment No. 1 to **HB 237** is as follows:

On page 1, line 14, by adding new language after "***(2)***" the following: "***In addition to being recognized as a school providing quality, full-time educational services to students who are deaf and hard of hearing or who are blind or visually impaired,***" and change "***The***" to "***the***";

On page 1, line 14, after the word "***shall***", by inserting the word "***also***"; and

On page 1, line 24, after the word "***impaired;***", by inserting "***assistive technology***".

HB 257, AN ACT relating to teachers' retirement.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS 161.220 TO 161.716 IS CREATED TO READ AS FOLLOWS:

A member of the Teachers' Retirement System who is in an active contributing status with the system, and who was formerly employed by a federal Head Start agency, operated under Title 42, United States Code, secs. 9831 et seq., which does not participate in a state-administered retirement system, may obtain credit for the period of the member's service in the Head Start program by paying to the Teachers' Retirement System the full cost of the service credit purchased, as determined by the system. The service credit purchased may not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1). Payment for the service credit purchased may be made in installments in lieu of a lump-sum payment. The payment shall not be picked up, as described in KRS 161.540(2), and the entire payment shall be placed in the teachers' savings fund.

HB 307, AN ACT relating to the Kentucky Tuition Grant program.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 164.785 is amended to read as follows:

(1) The State of Kentucky shall grant an amount as provided in KRS 164.780 and this section to any applicant who meets the following qualifications:

(a) Is a Kentucky resident as defined by the Kentucky Council on Postsecondary Education;

(b) Has been accepted by or is enrolled as a full time student in a Kentucky independent nonprofit college or university which is accredited by the Southern Association of Colleges and Schools and whose institutional programs are not comprised solely of a sectarian instruction***. An otherwise eligible student having a disability defined by Title II of the Americans with Disabilities Act (42 U.S.C. §12131 et seq.), certified by a licensed physician to be unable to attend the eligible program of study full-time because of the disability may also qualify under this paragraph***;

(c) Is not enrolled in a program of study leading to a degree in theology, divinity, or religious education; and

(d) Has not previously attended college or university for more than seven (7) semesters or the equivalent.

(2) The amount of the tuition grant to be paid to a student each semester, or appropriate academic term, shall be determined by the Kentucky Higher Education Assistance Authority.

(3) The maximum amount shall not exceed fifty percent (50%) of the average state appropriation per full-time equivalent student enrolled in all public institutions of higher education. Such tuition grants are to be calculated annually by the Kentucky Higher Education Assistance Authority.

(4) The need of each applicant shall be determined by acceptable need analysis such as the parents' confidential statement of the college scholarship service, and such other analyses as the authority may determine, subject to the approval by the U.S. Secretary of Education.

(5) An adjustment shall be made in the tuition grant of any student awarded a scholarship from any other source provided the combination of grants and awards exceeds the calculated need of the student.

HB 308, AN ACT relating to teacher scholarships.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 164.769 is amended to read as follows:

(1) It is the intent of the General Assembly to establish a teacher scholarship program to assist highly qualified individuals to become certified Kentucky teachers and render teaching service in Kentucky schools.

(2) For purposes of this section, the terms listed below shall have the following meanings:

(a) "Critical shortage area" means an understaffing of teachers in particular subject matters at the secondary level, in grade levels, or in geographic locations at the elementary and secondary level, as determined by the commissioner of education in consultation with the authority. The commissioner and the authority may use any source considered reliable including, but not limited to, local education agencies to identify the critical shortage areas.

(b) "Eligible program of study" means an undergraduate or graduate program of study which is preparatory to initial teacher certification, but does not lead to a certificate, diploma, or degree in theology, divinity, or religious education.

(c) "Expected family contribution" means the amount that a student and his family are expected to contribute toward the cost of the student's education determined by applying methodology set forth in 20 U.S.C. sec. 1087 kk to 1087 vv.

(d) "Participating institution" means an institution of higher education located in Kentucky which offers an eligible program of study and has in force an agreement with the authority providing for administration of this program.

(e) "Qualified teaching service" means teaching the major portion of each school day for at least seventy (70) days each semester in a public school of the Commonwealth or a private school certified pursuant to KRS 156.160(3)***, except that an individual having a disability defined by Title II of the Americans with Disabilities Act (42 U.S.C. §12131 et seq.), whose disability, certified by a licensed physician, prevents that individual from teaching a major portion of each school day, shall be deemed to perform qualified teaching service by teaching the maximum time permitted by the attending physician***.

(f) "Semester" means a period of about eighteen (18) weeks, which usually makes up one-half (1/2) of a school year or one-half (1/2) of a participating institution's academic year.

(g) "Summer term" means an academic period consisting of one (1) or more sessions of instruction between a spring and a fall semester.

(3) The authority may, to the extent of appropriations and other funds available to it pursuant to subsection (9) of this section, award teacher scholarships to persons eligible under subsection (4) of this section, who initially demonstrate financial need in accordance with standards and criteria established by the authority or received teacher scholarships pursuant to this section prior to July 1, 1996. Each teacher scholarship shall be evidenced by a promissory note that requires repayment or cancellation pursuant to subsection (6) of this section.

(4) Kentucky residents who are United States citizens and enrolled or accepted for enrollment in an eligible program of study on a full-time basis at a participating institution shall be eligible, to apply for and be awarded teacher scholarships. Teacher scholarships shall first be awarded to highly qualified eligible students who meet standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 for admission to a teacher education program at a participating institution or who received teacher scholarships pursuant to this section prior to July 1, 1996. If funds are not depleted after awarding teacher scholarships to students who meet the preceding criteria, then awards shall be made to any otherwise eligible students seeking admission to a teacher education program.

(5) The authority shall establish, by administrative regulation, the maximum amount of scholarship to be awarded for each semester and summer term under this section, and shall prorate the amount awarded to any student enrolled less than full-time in accordance with paragraph (6)(a) of this section. The aggregate amount of scholarships awarded to an individual shall not exceed twelve thousand five hundred dollars ($12,500) for undergraduate students and seven thousand five hundred dollars ($7,500) for post-baccalaureate students, except that the aggregate amount of scholarships awarded to an individual who received teacher scholarships pursuant to this section prior to July 1, 1996, including any amount received pursuant to KRS 156.611, 156.613, 164.768, or 164.770, shall not exceed twenty thousand dollars ($20,000), and the amount of each scholarship to be awarded shall not exceed the applicant's total cost of education minus other financial assistance received or expected to be received by the applicant during the academic period.

(6) (a) The authority shall disburse teacher scholarships to eligible students who agree to render qualified teaching service as certified teachers, and are unconditionally admitted and enrolled in an eligible program of study on a full-time basis, except that disbursements may be made to otherwise eligible students enrolled less than full-time in the semester or summer term in which the eligible program of study will be completed ***or otherwise eligible students having a disability defined by Title II of the Americans with Disabilities Act (42 U.S.C. §12131 et seq.), who have been certified by a licensed physician to be unable to attend the eligible program of study full-time because of the disability***. Teacher scholarships shall be disbursed to eligible students who received teacher scholarships pursuant to this section for recertification in a critical shortage area prior to July 1, 1996, who are enrolled in and continuing toward completion of their program of study, and who agree to render qualified teaching service as certified teachers.

(b) A teacher scholarship shall not be awarded or a promissory note cancellation shall not be granted to any person who is in default on any obligation to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785 until financial obligations to the authority are satisfied, except that ineligibility for this reason may be waived by the authority for cause.

(c) Recipients shall render one (1) semester of qualified teaching service for each semester or summer term of scholarship received, except that recipients who teach in a critical shortage area designated by the authority shall render one (1) semester of qualified teaching service as repayment for two (2) semesters or summer terms of scholarships received. Upon completion of each semester of qualified teacher service, the authority shall cancel the appropriate number of promissory notes.

(d) If the recipient of a teacher scholarship fails to complete an eligible program of study at a participating institution or fails to render qualified teaching service in any semester following certification or recertification, unless the failure is temporarily waived for cause by the authority, the recipient shall immediately become liable to the authority for repayment of the sum of all outstanding promissory notes and accrued interest. Persons liable for repayment of scholarships under this paragraph shall be liable for interest accruing from the dates on which the teacher scholarships were disbursed.

(e) Recipients who have outstanding loans or scholarships under KRS 156.611, 156.613, 164.768, or 164.770 respectively, and who render qualified teaching service, shall have their notes canceled in accordance with subsection (6)(c) of this section.

(f) The authority shall establish, by administrative regulation, the terms and conditions for the award, cancellation, and repayment of teacher scholarships including, but not limited to, the selection criteria, eligibility for renewal awards, amount of scholarship payments, deferments, the rate of repayment, and the interest rate thereon.

(g) Notwithstanding any other statute to the contrary, the maximum interest rate applicable to repayment of a promissory note under this section shall be twelve percent (12%) per annum, except that if a judgment is rendered to recover payment, the judgment shall bear interest at the rate of five percent (5%) greater than the rate actually charged on the promissory note.

(7) A repayment obligation imposed by this section shall not be voidable by reason of the age of the recipient at the time of receiving the teacher scholarship.

(8) Failure to meet repayment obligations imposed by this section shall be cause for the revocation of a person's teaching certificate, subject to the procedures set forth in KRS 161.120.

(9) All moneys repaid to the authority under this section shall be added to the appropriations made for purposes of this section, and the funds and unobligated appropriations shall not lapse.

(10) The authority may execute appropriate contracts and promissory notes for administering this section.

(11) If available funds are insufficient for all requested scholarships for eligible applicants during any fiscal year, the authority shall give priority consideration to eligible applicants who previously received teacher scholarships. If funds are insufficient to make all requested renewal scholarships to eligible applicants, the authority shall reduce all scholarship awards to the extent necessary to provide scholarships to all qualified renewal applicants. If, after awarding all eligible renewal applicants, funds are not depleted, initial applications shall be ranked according to regulatory selection criteria, which may include expected family contribution and application date, and awards shall be made to highly qualified applicants until funds are depleted.

HB 330, AN ACT relating to school safety and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds that:

(1) Every student should have access to a safe, secure, and orderly school that is conducive to learning;

(2) All schools and school districts must have plans, policies, and procedures dealing with measures for assisting students who are at risk of academic failure or of engaging in disruptive and disorderly behavior; and

(3) State and local resources are needed to enlarge the capacities for research, effective programming, and program evaluation that lead to success in addressing safety and discipline within the schools.

SECTION 2. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

As used in this chapter, unless the context requires otherwise:

(1) "Intervention services" means any preventive, developmental, corrective, supportive services or treatment provided to a student who is at risk of school failure, is at risk of participation in violent behavior or juvenile crime, or has been expelled from the school district. Services may include, but are not limited to, alternative educational programs, psychological services, identification and assessment of abilities, counseling services, medical services, day treatment, family services, work and community service programs.

(2) "School resource officer" means a sworn law enforcement officer who has specialized training to work with youth at a school site. The school resource officer shall be employed through a contract between a local law enforcement agency and a school district.

SECTION 3. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) The General Assembly hereby authorizes the establishment of the Center for School Safety. The center's mission shall be to serve as the central point for data analysis; research; dissemination of information about successful school safety programs, research results, and new programs; and in collaboration with the Department of Education and others to provide technical assistance for safe schools.

(2) To fulfill its mission, the Center for School Safety shall:

(a) Establish a clearinghouse for information and materials concerning school violence prevention;

(b) Provide program development and implementation expertise and technical support to schools, law enforcement agencies, and communities, which may include coordinating training for administrators, teachers, students, parents, and other community representatives;

(c) Analyze the data collected in compliance with Section 5 of this Act;

(d) Research and evaluate school safety programs so schools and communities are better able to address their specific needs;

(e) Administer a school safety grant program for local districts as directed by the General Assembly;

(f) Promote the formation of interagency efforts to address discipline and safety issues within communities throughout the state in collaboration with other postsecondary education institutions;

(g) Advise the Kentucky Board of Education on administrative policies and administrative regulations; and

(h) Provide an annual report by July 1 each year to the Governor, the Kentucky Board of Education, and the Interim Joint Committee on Education regarding the status of school safety in Kentucky.

(3) The Center for School Safety shall be governed by a board of directors appointed by the Governor. Members shall consist of:

(a) The commissioner or a designee of the Department of Education;

(b) The commissioner or a designee of the Department of Juvenile Justice;

(c) The commissioner or a designee of the Department for Mental Health and Mental Retardation Services;

(d) The commissioner or a designee of the Department for Social Services;

(e) The secretary or a designee of the Education, Arts, and Humanities Cabinet;

(f) A juvenile court judge;

(g) A local school district board of education member;

(h) A local school administrator;

(i) A school council parent representative; and

(j) A teacher.

In appointing the board of education member, the school administrator, the school council parent member, and the teacher, the Governor shall solicit recommendations from the following groups respectively: the Kentucky School Boards Association, the Kentucky Association of School Administrators, the Kentucky Association of School Councils, and the Kentucky Education Association. The initial board shall be appointed by July 15, 1998. The board shall hold its first meeting no later than thirty (30) days after the appointment of the members.

SECTION 4. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) Each nonstate-government employee member of the board of directors for the Center for School Safety shall serve a term of two (2) years and may be reappointed, but a member shall not serve more than two (2) consecutive terms.

(2) The members who are nonstate-government employees shall be reimbursed for travel, meals, and lodging and expenses relating to official duties of the board from funds appropriated for this purpose.

(3) The board of directors shall meet a minimum of four (4) times per year. The board of directors shall be attached to the office of the secretary of the Education, Arts, and Humanities Cabinet for administrative purposes.

(4) The board of directors shall annually elect a chair and vice chair from the membership. The board may form committees as needed.

(5) Using a request for proposal process, the board of directors shall select a public university to administer the Center for School Safety for a period of not less than four (4) years unless funds for the center are not appropriated, or the board determines that the university is negligent in carrying out its duties as specified in the request for proposal and contract. The initial request for proposals shall be issued not later than September 15, 1998. The board shall select a university no later than January 1, 1999. The university shall be the fiscal agent for the center and:

(a) Receive funds based on the approved budget by the board of directors and the General Assembly's appropriation for the center. The center shall operate within the fiscal policies of the university and in compliance with policies established by the board of directors per the request for proposal and contract; and

(b) Employ the staff of the center who shall have the retirement and employee benefits granted other similar university employees.

(6) The board of directors shall annually approve:

(a) A work plan for the center;

(b) A budget for the center;

(c) Operating policies as needed; and

(d) Recommendations for grants, beginning in the 1999-2000 school year and subsequent years, to local school districts and schools to assist in the development of programs and individualized approaches to work with violent, disruptive, or academically at-risk students, and consistent with provisions of Section 6 of this Act.

(7) The board of directors shall prepare a biennial budget request to support the Center for School Safety and to provide program funds for local school district grants.

(8) The board shall develop model interagency agreements between local school districts and other local public agencies, including, among others, health departments, departments of social services, mental health agencies, and courts, in order to provide cooperative services and sharing of costs for services to students who are at risk of school failure, are at risk of participation in juvenile crime, or have been expelled from the school district.

SECTION 5. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Board of Education shall promulgate appropriate administrative regulations relating to school safety, student discipline, and related matters.

(2) The Kentucky Department of Education shall:

(a) Collaborate with the Center for School Safety in carrying out the center's mission; and

(b) Establish and maintain a statewide data collection system by which school districts shall report by sex, race, and grade level:

1. All incidences of violence and assault against school employees and students; incidences of possession of guns or other deadly weapons on school property or at school functions; and incidences of the possession or use of alcohol, prescription drugs, or controlled substances on school property or at school functions;

2. The number of arrests, the charges, and whether civil damages were pursued by the injured party;

3. The number of suspensions, expulsions, and corporal punishments; and

4. Data required during the assessment process under Section 6 of this Act.

The department shall provide all data collected relating to this subsection to the Center for School Safety according to timelines established by the center.

(3) In 1998-99, the Kentucky Department of Education shall determine the qualitative criteria and guidelines for grants to local school districts to establish appropriate alternative education programs during the 1998-99 school year in compliance with Section 7 of this Act. The department shall select the districts to receive funding, consistent with the directives in the biennial budget for 1998-99.

SECTION 6. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) Each local school shall begin an assessment of school safety and student discipline during the 1998-1999 school year including a review of the following:

(a) Reports of school incidents relating to disruptive behaviors;

(b) The school's behavior and discipline codes for clarity and appropriate notice to students and parents;

(c) The school's hierarchy of responses to discipline problems and actual disciplinary outcomes;

(d) Training needs for instructional staff in classroom management, student learning styles, and other specialized training to enhance teachers' capacity to engage students and minimize disruptive behavior;

(e) The array of school services to students at risk of academic failure, dropping out, or truancy;

(f) The engagement of parents at the earliest stages of problem behavior;

(g) Training needs for students in anger reduction, conflict resolution, peer mediation, and other necessary skills;

(h) Training needs of parents;

(i) Existing school council policies relating to student discipline and student information;

(j) The school's physical environment;

(k) The school's student supervision plan;

(l) Existing components of the school improvement plan or consolidated plan that focus on school safety and at-risk students, and the effectiveness of the components; and

(m) Other data deemed relevant by the school council or school administration.

A school that does not complete an assessment process shall not be eligible for funds under the state school safety grant program in 1999-2000 and subsequent years.

(2) By May 15, 1999, each local school district shall complete a district level assessment of district level data, resources, policies and procedures, and district- wide needs as identified from the individual school assessment process. The district shall engage local community agencies including law enforcement and the courts in the assessment process.

(3) As a result of the district assessment and analysis of data, resources, and needs each board of education shall adopt

a plan for immediate and long-term strategies to address school safety and discipline. The development of the plan shall involve at least one (1) representative from each school in the district as well as representatives from the community as a whole. The process of planning shall be determined locally depending to a large extent on the size and characteristics of the district.

(4) The district plan under subsection (3) of this section shall be the basis for any request for funds under the state school safety grant program for 1999-2000 and subsequent years. The district plan shall include the local code of acceptable behavior and discipline as required under Section 10 of this Act and a description of instructional placement options for threatening or violent students.

SECTION 7. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) A state school safety grant program shall be provided by the General Assembly to assist school districts in developing alternative educational programs and innovative programs of violence prevention, conflict resolution, disruptive or assaultive behavior management, improved school security, peer mediation, and training for employees, students, parents, and others.

(2) Funds appropriated in 1998-1999 shall be used to support the Center for School Safety and for grants to local school districts to fund appropriate alternative education programs for those school systems that do not have alternative instructional options. The distribution of grants for alternative programs in 1998-1999 shall be determined by the Kentucky Department of Education as required in Section 5 of this Act. Any funds not expended during the year shall be carried over into the next fiscal year to be used for purposes described in this section.

(3) In 1999-2000 and subsequent years, the Center for School Safety with approval from the board of directors, and in collaboration with the Kentucky Department of Education, shall establish the application process, eligibility guidelines, and funding levels for grants, consistent with the directives in the biennial budget. First priority of funding shall be for alternative programs. Other priorities for funding shall include: community-based planning; intensive academic interventions; school resource officers; training for certified and classified staff, students, parents, and community members; and other violence prevention programs.

SECTION 8. A NEW SECTION OF KRS CHAPTER 605 IS CREATED TO READ AS FOLLOWS:

By August 1, 2000, the Department of Juvenile Justice shall provide, based on available general fund appropriations, a day treatment program, accessible to every school district in each judicial region of the state. The day treatment programs shall combine therapeutic and academic services.

Section 9. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

    1. The Governor.
    2. Lieutenant Governor.
    3. Department of State.
        (a) Secretary of State.
        (b) Board of Elections.
        (c) Registry of Election Finance.
    4. Department of Law.
        (a) Attorney General.
    5. Department of the Treasury.
        (a) Treasurer.
    6. Department of Agriculture.
        (a) Commissioner of Agriculture.
        (b) Kentucky Council on Agriculture.
    7. Superintendent of Public Instruction.
    8. Auditor of Public Accounts.

9. Railroad Commission.

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
    - (a) Department of State Police.
    - (b) Department of Criminal Justice Training.
    - (c) Department of Corrections.
    - (d) Department of Juvenile Justice.
    - (e) Office of the Secretary.
    - (f) Offices of the Deputy Secretaries.
    - (g) Office of General Counsel.
    - (h) Medical Examiner Program.
    - (i) Parole Board.
    - (j) Kentucky State Corrections Commission.
    - (k) Commission on Correction and Community Service.
2. Education, Arts, and Humanities Cabinet:
    - (a) Department of Education.
        - (1) Kentucky Board of Education.
        - (2) Education Professional Standards Board.
    - (b) Department for Libraries and Archives.
    - (c) Kentucky Arts Council.
    - (d) Kentucky Educational Television.
    - (e) Kentucky Historical Society.
    - (f) Kentucky Teachers' Retirement System Board of Trustees.
    - (g) Kentucky Center for the Arts.
    - (h) Kentucky Craft Marketing Program.
    - (i) Kentucky Commission on the Deaf and Hard of Hearing.
    - (j) Governor's Scholars Program.
    - (k) Governor's School for the Arts.
    - (l) Office of Development.
    - (m) Kentucky Heritage Council.
    - (n) Kentucky African-American Heritage Commission.
    - ***(o) Board of Directors for the Center for School Safety.***
3. Natural Resources and Environmental Protection Cabinet:
    - (a) Environmental Quality Commission.
    - (b) Kentucky Nature Preserves Commission.
    - (c) Department for Environmental Protection.
    - (d) Department for Natural Resources.
    - (e) Department for Surface Mining Reclamation and Enforcement.
    - (f) Office of Legal Services.
    - (g) Office of Communications and Community Affairs.
4. Transportation Cabinet:
    - (a) Department of Highways.
    - (b) Department of Vehicle Regulation.
    - (c) Department of Administrative Services.
    - (d) Department of Fiscal Management.
    - (e) Department of Rural and Municipal Aid.
    - (f) Office of Aeronautics.

(g) Office of General Counsel.
(h) Office of Public Relations.
(i) Office of Personnel Management.
(j) Office of Minority Affairs.
(k) Office of Environmental Affairs.

5. Cabinet for Economic Development:
(a) Department of Administration and Support.
(b) Department of Job Development.
(c) Department of Financial Incentives.
(d) Department of Community Development.
(e) Tobacco Research Board.
(f) Kentucky Economic Development Finance Authority.

6. Public Protection and Regulation Cabinet:
(a) Public Service Commission.
(b) Department of Insurance.
(c) Department of Housing, Buildings and Construction.
(d) Department of Financial Institutions.
(e) Department of Mines and Minerals.
(f) Department of Public Advocacy.
(g) Department of Alcoholic Beverage Control.
(h) Kentucky Racing Commission.
(i) Board of Claims.
(j) Crime Victims Compensation Board.
(k) Kentucky Board of Tax Appeals.
(l) Backside Improvement Commission.

7. Cabinet for Human Resources:
(a) Department for Health Services.
(b) Department for Social Insurance.
(c) Department for Social Services.
(d) Department for Medicaid Services.
(e) Department for Mental Health and Mental Retardation Services.
(f) Commission for Children with Special Health Care Needs.
(g) Public Assistance Appeals Board.
(h) Office of Administrative Services.
(i) Office of Communications.
(j) Office of General Counsel.
(k) Office of Inspector General.
(l) Office of Policy and Budget.
(m) Office of the Ombudsman.

8. Finance and Administration Cabinet:
(a) Office of Legal and Legislative Services.
(b) Office of Management and Budget.
(c) Office of Financial Management and Economic Analysis.
(d) Office of the Controller.
(e) Department for Administration.
(f) Department of Facilities Management.
(g) Department of Information Systems.

  - (h) State Property and Buildings Commission.
  - (i) Kentucky Pollution Abatement Authority.
  - (j) Kentucky Savings Bond Authority.
  - (k) Deferred Compensation Systems.
  - (l) Office of Equal Employment Opportunity Contract Compliance.
  - (m) Capital Plaza Authority.
  - (n) County Officials Compensation Board.
  - (o) Kentucky Employees Retirement Systems.
  - (p) Commonwealth Credit Union.
  - (q) State Investment Commission.
  - (r) Kentucky Housing Corporation.
  - (s) Governmental Services Center.
  - (t) Kentucky Local Correctional Facilities Construction Authority.
  - (u) Kentucky Turnpike Authority.
  - (v) Historic Properties Advisory Commission.

9. Labor Cabinet:
  - (a) Department of Workplace Standards.
  - (b) Department of Workers' Claims.
  - (c) Kentucky Labor-Management Advisory Council.
  - (d) Occupational Safety and Health Standards Board.
  - (e) Prevailing Wage Review Board.
  - (f) Workers' Compensation Board.
  - (g) Kentucky Employees Insurance Association.
  - (h) Apprenticeship and Training Council.
  - (i) State Labor Relations Board.
  - (j) Kentucky Occupational Safety and Health Review Commission.
  - (k) Office of Administrative Services.
  - (l) Office of Labor Management Relations.
  - (m) Office of General Counsel.
  - (n) Workers' Compensation Funding Commission.
  - (o) Employers Mutual Insurance Authority.
10. Revenue Cabinet:
  - (a) Department of Property Taxation.
  - (b) Department of Compliance and Taxpayer Assistance.
  - (c) Department of Administrative Services.
  - (d) Office of General Counsel.
11. Tourism Cabinet:
  - (a) Department of Travel Development.
  - (b) Department of Parks.
  - (c) Department of Fish and Wildlife Resources.
  - (d) Kentucky Horse Park Commission.
  - (e) State Fair Board.
  - (f) Office of Administrative Services.
  - (g) Office of Film Promotion.
  - (h) Office of General Counsel.
12. Cabinet for Workforce Development:
  - (a) Department for Adult Education and Literacy.

(b) Department for Technical Education.
(c) Department of Vocational Rehabilitation.
(d) Department for the Blind.
(e) Department for Employment Services.
(f) State Board for Adult and Technical Education.
(g) Governor's Council on Vocational Education.
(h) The State Board for Proprietary Education.
(i) The Foundation for Adult Education.
(j) The Kentucky Job Training Coordinating Council.
(k) Office of General Counsel.
(l) Office of Communication Services.
(m) Office of Development and Industry Relations.
(n) Office of Workforce Analysis and Research.
(o) Office for Administrative Services.
(p) Office for Policy, Budget, and Personnel.
(q) Unemployment Insurance Commission.

III. Other departments headed by appointed officers:
1. Department of Military Affairs.
2. Department of Personnel.
3. Council on Postsecondary Education.
    (a) Kentucky Community Service Commission.
4. Department of Local Government.
5. Kentucky Commission on Human Rights.
6. Kentucky Commission on Women.
7. Department of Veterans' Affairs.
8. Kentucky Commission on Military Affairs.

Section 10. KRS 158.148 is amended to read as follows:

(1) In cooperation with the Kentucky Education Association, the Kentucky School Boards Association, the Kentucky Association of School Administrators, the Parent-Teachers Association, the Kentucky Chamber of Commerce, the Farm Bureau, members of the Interim Joint Committee on Education, and other interested groups, ***and in collaboration with the Center for School Safety,*** the Department of Education shall develop***:***

(a) Statewide student discipline guidelines ***to ensure safe schools;*** and

(b) Recommendations designed to ***improve the learning environment, student achievement, and to*** reduce the dropout rate in the state's public schools.

(2) The department shall obtain statewide data on major discipline problems and reasons why students drop out of school. In addition, ***the department, in collaboration with the Center for School Safety, shall identify successful*** strategies currently being used[~~ successfully~~] in programs in Kentucky and in other states ***and*** shall ***incorporate those strategies***[~~be incorporated~~] into the statewide guidelines and the recommendations to ***improve the learning environment and to*** reduce dropouts.

(3) Copies of the discipline guidelines shall be distributed to all school districts. The statewide guidelines shall contain broad principles to guide local districts in developing their own discipline code ***and school councils in the selection of discipline and classroom management techniques under Section 12 of this Act; and in the development of the district-wide safety plan***[~~. The local code shall be distributed to all students and parents in the district and shall be available for inspection~~].

(4) ***Each local board of education shall be responsible for formulating a code of acceptable behavior and discipline to apply to the students in each school operated by the board.***

(a) The superintendent, or designee, shall be responsible for overall implementation and supervision, and each school principal shall be responsible for administration and implementation within each school. Each school council shall select and implement the appropriate discipline and classroom management techniques necessary to carry out the code. The board shall establish a process for a two-way communication system for

teachers and other employees to notify a principal, supervisor, or other administrator of an existing emergency.

(b) ***The code shall contain the type of behavior expected from each student, the consequences of failure to obey the standards, and the importance of the standards to the maintenance of a safe learning environment where orderly learning is possible and encouraged.***

(c) ***The principal of each school shall apply the code of behavior and discipline uniformly and fairly to each student at the school without partiality or discrimination.***

(d) ***A copy of the code of behavior and discipline adopted by the board of education shall be posted at each school. Guidance counselors shall be provided copies for discussion with students. The code shall be referenced in all school handbooks. All school employees and parents shall be provided copies of the code.***

(5) The Department of Education ***with assistance from the Center for School Safety*** shall[~~ first~~] provide technical assistance to those districts ***requesting assistance with dropout prevention strategies***[~~reporting the greatest number of dropouts~~]. Reporting requirements shall be established by the Department of Education; however, reports shall be prepared in a manner that will provide data on successful strategies for dropout prevention.

(6)[~~(5)~~] The Kentucky Board of Education shall establish criteria for the development of dropout prevention programs and award grants ***based upon available appropriations from the General Assembly***[~~for up to twenty (20) school districts in which:~~

~~(a) The percentage of students dropping out of school is among the highest twenty-five (25) districts in the state; and~~

~~(b) More than one hundred (100) students drop out of schools each year~~]. These grants shall be administered through contracts whereby school districts agree to provide dropout prevention services specified by the Kentucky Board of Education.[~~ In addition, the Kentucky Board of Education shall have the authority to award up to twenty (20) grants to school districts having high dropout rates but fewer than one hundred (100) dropouts per year. The Kentucky Board of Education shall develop grant funding criteria based upon available appropriations.~~]

Section 11. KRS 158.150 is amended to read as follows:

(1) All pupils admitted to the common schools shall comply with the lawful regulations for the government of the schools:

(a) Willful disobedience or defiance of the authority of the teachers or administrators, use of profanity or vulgarity, assault or battery or abuse of other students, the threat of force or violence, the use or possession of alcohol or drugs, stealing or destruction or defacing of school property or personal property of students, the carrying or use of weapons or dangerous instruments, or other incorrigible bad conduct on school property, as well as off school property at school-sponsored activities, constitutes cause for suspension or expulsion from school; and

(b) Assault or battery or abuse of school personnel; stealing or willfully or wantonly defacing, destroying, or damaging the personal property of school personnel on school property, off school property, or at school-sponsored activities constitutes cause for suspension or expulsion from school.

(2) Each local board of education shall adopt a policy requiring the expulsion from school for a period of not less than one (1) year ***for*** a student who is determined by the board to have brought a weapon to a school under ***its***[~~the~~] jurisdiction***. The board shall also adopt a policy requiring disciplinary actions, up to and including expulsion from school, for a student who is determined by the board to have possessed prescription drugs or controlled substances for the purpose of sale or distribution at a school under the board's jurisdiction, or to have physically assaulted or battered or abused educational personnel or other students at a school or school function under the board's jurisdiction.***[~~of the local board of education, except that~~] The[~~ local~~] board[~~ of education~~] may modify the expulsion requirement for students on a case-by-case basis. A[~~ local~~] board[~~ of education~~] that has expelled a student from the student's regular school setting ***shall***[~~may~~] provide ***or assure that*** educational services ***are provided*** to the student in an ***appropriate*** alternative program or setting. ***Other intervention services as indicated for each student may be provided by the board or by agreement with the appropriate state or community agency. A state agency that provides the service shall be responsible for the cost.*** In determining whether a student has brought a weapon to school, a local board of education shall use the definition of "unlawful possession of a weapon on school property" stated in KRS 527.070.

(3) ***School administrators, teachers, or other school personnel may immediately remove threatening or violent students from a classroom setting or from the district transportation system.***

(4) A pupil shall not be suspended from the common schools until after at least the following due process procedures have been provided:

(a) The pupil has been given oral or written notice of the charge or charges against him which constitute cause for suspension;

(b) The pupil has been given an explanation of the evidence of the charge or charges if the pupil denies them; and

(c) The pupil has been given an opportunity to present his own version of the facts relating to the charge or charges.

These due process procedures shall precede any suspension from the common schools unless immediate suspension is essential to protect persons or property or to avoid disruption of the ongoing academic process. In such cases, the due process procedures outlined above shall follow the suspension as soon as practicable, but no later than three (3) school days after the suspension.

(5)~~[(4)]~~ The superintendent, principal, assistant principal, or head teacher of any school may suspend a pupil but shall report the action in writing immediately to the superintendent and to the parent, guardian, or other person having legal custody or control of the pupil. The board of education of any school district may expel any pupil for misconduct as defined in subsection (1) of this section, but the action shall not be taken until the parent, guardian, or other person having legal custody or control of the pupil has had an opportunity to have a hearing before the board. The decision of the board shall be final.

(6)~~[(5)]~~ (a) Suspension of exceptional children, as defined in KRS 157.200, for more than a total of ten (10) days during a school year shall constitute a change of educational placement. The admissions and release committee shall meet to review the placement and make a recommendation for continued placement or a change in placement and determine whether regular suspension or expulsion procedures apply. Additional evaluations shall be completed, if necessary.

(b) If the admissions and release committee determines that an exceptional child's behavior is related to his disability, the child shall not be suspended any further or expelled ***unless the current placement could result in injury to the child, other children, or the educational personnel, in which case an appropriate alternative placement shall be provided that will provide for the child's educational needs and will provide a safe learning and teaching environment for all***. If the admissions and release committee determines that the behavior is not related to the disability, the local educational agency may pursue its regular suspension or expulsion procedure for the child, if the behavior so warrants. However, educational services shall not be terminated during a period of expulsion. A district may seek temporary injunctive relief through the courts if the parent and the other members of the admissions and release committee cannot agree upon a placement and the current placement will likely result in injury to the student or others.

(7) Suspension of primary school students shall be considered only in exceptional cases where there are safety issues for the child or others.

Section 12. KRS 160.345 is amended to read as follows:

(1) For the purpose of this section:

(a) "Minority" means American Indian; Alaskan native; African-American; Hispanic, including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin; Pacific islander; or other ethnic group underrepresented in the school.

(b) "School" means an elementary or secondary educational institution that is under the administrative control of a principal or head teacher and is not a program or part of another school. The term "school" does not include district-operated schools that are:

1. Exclusively vocational-technical, special education, or preschool programs;
2. Instructional programs operated in institutions or schools outside of the district; or
3. Alternative schools designed to provide services to at-risk populations with unique needs.

(c) "Teacher" means any person for whom certification is required as a basis of employment in the public schools of the state with the exception of principals, assistant principals, and head teachers.

(d) "Parent" means:

1. A parent, stepparent, or foster parent of a student; or
2. A person who has legal custody of a student pursuant to a court order and with whom the student resides.

(2) By January 1, 1991, each local board of education shall adopt a policy for implementing school-based decision making in the district which shall include, but not be limited to, a description of how the district's policies, including those developed pursuant to KRS 160.340, have been amended to allow the professional staff members of a school to be involved in the decision making process as they work to meet educational goals established in KRS 158.645 and 158.6451. The policy may include a requirement that each school council make an annual report at a public meeting of the board describing the school's progress in meeting the educational goals set forth in KRS 158.6451 and district goals established by the board. The policy shall also address and comply with the following:

(a) Except as provided in paragraph (b)2. of this subsection, each participating school shall form a school council composed of two (2) parents, three (3) teachers, and the principal or administrator. The membership of the council may be increased, but it may only be increased proportionately. The teacher representatives shall be Kentucky residents. The parent representatives on the council shall not be employees of the district or employees' relatives, nor shall they be a local board member or his spouse. None of the members shall have a conflict of interest pursuant to KRS Chapter 45A, except the salary paid to district employees.

(b) 1. The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. The parent representatives shall be elected for one (1) year terms. The parent members shall be elected by the parents of students preregistered to attend the school during the term of office in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. A school council, once elected, may adopt a policy setting different terms of office for parent and teacher members subsequently elected, but the terms shall not exceed two (2) years nor be consecutive. The principal or head teacher shall be the chair of the school council.

2. School councils in schools having eight percent (8%) or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member. If the council formed under paragraph (a) of this subsection does not have a minority member, the principal, in a timely manner, shall be responsible for carrying out the following:

a. Organizing a special election to elect an additional member. The principal shall call for nominations and shall notify the parents of the students of the date, time, and location of the election to elect a minority parent to the council by ballot; and

b. Allowing the teachers in the building to select one (1) minority teacher to serve as a teacher member on the council. If there are no minority teachers who are members of the faculty, an additional teacher member shall be elected by a majority of all teachers. Term limitations shall not apply for a minority teacher member who is the only minority on faculty.

(c) 1. The school council shall have the responsibility to set school policy consistent with district board policy which shall provide an environment to enhance the students' achievement and help the school meet the goals established by KRS 158.645 and 158.6451. The principal or head teacher shall be the primary administrator and the instructional leader of the school, and with the assistance of the total school staff shall administer the policies established by the school council and the local board.

2. If a school council establishes committees, it shall adopt a policy to facilitate the participation of interested persons, including, but not limited to, classified employees and parents. The policy shall include the number of committees, their jurisdiction, composition, and the process for membership selection.

(d) The school council and each of its committees shall determine the frequency of and agenda for their meetings. Matters relating to formation of school councils that are not provided for by this section shall be addressed by local board policy.

(e) The meetings of the school council shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply.

(f) After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals.

(g) The school council shall determine which textbooks, instructional materials, and student support services shall be provided in the school. Subject to available resources, the local board shall allocate an appropriation to each school that is adequate to meet the school's needs related to instructional materials and school-based student support services, as determined by the school council.

(h) From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council. Requests for transfer shall conform to any employer-employee bargained contract which is in effect. If the vacancy to be filled is the position of principal, the school council shall select the new principal from among those persons recommended by the local superintendent. Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process. The superintendent shall provide additional applicants upon request when qualified applicants are available.

(i) The school council shall adopt a policy to be implemented by the principal in the following additional areas:

1. Determination of curriculum, including needs assessment and curriculum development;

2. Assignment of all instructional and noninstructional staff time;

3. Assignment of students to classes and programs within the school;

4. Determination of the schedule of the school day and week, subject to the beginning and ending times of the school day and school calendar year as established by the local board;

5. Determination of use of school space during the school day;

6. Planning and resolution of issues regarding instructional practices;

7. Selection and implementation of discipline and classroom management techniques ***as a part of a comprehensive school safety plan***, including responsibilities of the student, parent, teacher, counselor, and principal;

8. Selection of extracurricular programs and determination of policies relating to student participation based on academic qualifications and attendance requirements, program evaluation, and supervision; and

9. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal.

(3) The policy adopted by the local board to implement school-based decision making shall also address the following:

(a) School budget and administration, including: discretionary funds; activity and other school funds; funds for maintenance, supplies, and equipment; and procedures for authorizing reimbursement for training and other expenses;

(b) Assessment of individual student progress, including testing and reporting of student progress to students, parents, the school district, the community, and the state;

(c) School improvement plans, including the form and function of strategic planning and its relationship to district planning***, as well as the school safety plan and requests for funding from the state grant program for school safety under Section 6 of this Act***;

(d) Professional development plans developed pursuant to KRS 156.095 and 156.0951;

(e) Parent, citizen, and community participation including the relationship of the council with other groups;

(f) Cooperation and collaboration within the district, with other districts, and with other public and private agencies;

(g) Requirements for waiver of district policies;

(h) Requirements for record keeping by the school council; and

(i) A process for appealing a decision made by a school council.

(4) In addition to the authority granted to the school council in this section, the local board may grant to the school council any other authority permitted by law. The board shall make available liability insurance coverage for the protection of all members of the school council from liability arising in the course of pursuing their duties as members of the council.

(5) After July 13, 1990, any school in which two-thirds (2/3) of the faculty vote to implement school-based decision making shall do so. By June 30, 1991, each local board shall submit to the chief state school officer the name of at least one (1) school which shall implement school-based decision making the following school year. The board shall select a school in which two-thirds (2/3) of the faculty vote to implement school-based decision making. If no school in the district votes to implement school-based decision making, the local board shall designate one (1) school of its choice. All schools shall implement school-based decision making by July 1, 1996, in accordance with this section and with the policy adopted by the local board pursuant to this section. Upon favorable vote of a majority of the faculty at the school and a majority of at least twenty-five (25) voting parents of students enrolled in the school, a school performing above its threshold level requirement as determined by the Department of Education pursuant to KRS 158.6455 may apply to the Kentucky Board of Education for exemption from the requirement to implement school-based decision making, and the state board shall grant the exemption. The voting by the parents on the matter of exemption from implementing school-based decision making shall be in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. Notwithstanding the provisions of this section, a local school district shall not be required to implement school-based decision making if the local school district contains only one (1) school.

(6) The Department of Education shall provide professional development activities to assist schools in implementing school-based decision making. School council members elected for the first time shall complete a minimum of six (6) clock hours of training in the process of school-based decision making, and school council members who have served on a school council at least one (1) year shall complete a minimum of three (3) clock hours of training in the process of school-based decision making. School council training required under this subsection shall be conducted by trainers endorsed by the Department of Education, and school council members shall complete the required training no later than thirty (30) days after the beginning of the service year for which they are elected to serve. School council members elected to fill a vacancy shall complete the applicable training within thirty (30) days of their election.

(7) A school that chooses to have school-based decision making but would like to be exempt from the administrative structure set forth by this section may develop a model for implementing school-based decision making including, but not limited to, a description of the membership, organization, duties, and responsibilities of a school council. The school shall submit the model through the local board of education to the chief state school officer and the Kentucky Board of Education, which shall have final authority for approval. The application for approval of the model shall show evidence that it has been developed by representatives of the parents, students, certified personnel, and the administrators of the school and that two-thirds (2/3) of the faculty have agreed to the model.

(8) The Kentucky Board of Education, upon recommendation of the chief state school officer, shall adopt by administrative

regulation a formula by which school district funds shall be allocated to each school council. Included in the school council formula shall be an allocation for professional development that is at least sixty-five percent (65%) of the district's per pupil state allocation for professional development for each student in average daily attendance in the school. The school council shall plan professional development with the district's coordinator and other school councils. Small schools shall be encouraged to work with other school councils to maximize professional development opportunities.

(9) (a) No board member, superintendent of schools, district employee, or member of a school council shall intentionally engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (i) of subsection (2) of this section.

(b) An affected party who believes a violation of this subsection has occurred may file a written complaint with the Office of Education Accountability. The office shall investigate the complaint and resolve the conflict, if possible, or forward the matter to the Kentucky Board of Education.

(c) The Kentucky Board of Education shall conduct a hearing in accordance with KRS Chapter 13B for complaints referred by the Office of Education Accountability.

(d) If the state board determines a violation has occurred, the party shall be subject to reprimand. A second violation of this subsection may be grounds for removing a superintendent, a member of a school council, or school board member from office or grounds for dismissal of an employee for misconduct in office or willful neglect of duty.

Section 13. KRS 610.320 is amended to read as follows:

(1) A special record book shall be kept by the court for all cases, to be known as the "juvenile record," and the docket or calendar of such cases shall be called the "juvenile docket."

(2) No probation officer, nor employee of a probation officer, shall, without the consent of the District Judge sitting in juvenile session, divulge or communicate to any persons other than the court, an officer of the court interested in the case, a member of the advisory board of the court, or a representative of the cabinet, any information obtained pursuant to the discharge of his duties, nor shall any record of the action of the probation officer be made public except by leave of the District Judge; provided, that nothing in this subsection shall prohibit the probation officer from divulging or communicating such information to the court, to his colleagues or superiors in his own department, or to another probation officer having a direct interest in the record or social history of the child.

(3) All law enforcement and court records regarding children who have not reached their eighteenth birthday shall not be opened to scrutiny by the public, except court records, limited to the petition, order of the adjudication, and disposition in juvenile delinquency proceedings concerning a child who is adjudicated a juvenile delinquent for the commission of an offense that would constitute a capital offense or a Class A, B, or C felony if the juvenile were an adult, or any offense involving a deadly weapon, or an offense wherein a deadly weapon is used or displayed. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Release of any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the Federal Social Security Act is also prohibited. Otherwise, the law enforcement records shall be made available to the child, family, guardian, or legal representative of the child involved. The records shall also be made available to the court, probation officers, or representatives of the cabinet. Records, limited to the child's adjudication of delinquency, and disposition of a criminal activity covered by KRS 610.345, shall also be made available to public or private elementary and secondary school administrative***, transportation,*** and counseling personnel, and to any teacher to whose class the student has been assigned for instruction, subject to the provisions of KRS 610.340 and 610.345.

(4) Subject to the Kentucky Rules of Evidence, juvenile court records of adjudications of guilt of a child for an offense which would be a felony if committed by an adult shall be admissible in court at any time the child is tried as an adult, or after the child becomes an adult, at any subsequent criminal trial relating to that same person. Juvenile court records made available pursuant to this section may be used for impeachment purposes during a criminal trial, and may be used during the sentencing phase of a criminal trial. However, the fact that a juvenile has been adjudicated delinquent of an offense which would be a felony if the child had been an adult shall not be used in finding the child to be a persistent felony offender based upon that adjudication.

(5) This section shall not relieve the probation officer or peace officer from divulging such facts as a witness in a trial or hearing involving any cases falling under KRS Chapters 600 to 645 or the production of juvenile records for use in the trial or proceedings.

(6) This section shall not prohibit release of information regarding juvenile proceedings in the District Court which do not reveal the identity of the child or its parents or guardians, or which relate to the child's eligibility for services under Title IV-E or IV-B of the Federal Social Security Act. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court.

Section 14. KRS 610.340 is amended to read as follows:

(1) Unless a specific provision of KRS Chapters 600 to 645 specifies otherwise, all juvenile court records of any nature generated pursuant to KRS Chapters 600 to 645 by any agency or instrumentality, public or private, shall be deemed to be confidential and shall not be disclosed except to the child, parent, and to the extent necessary at the proceeding to victims, or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070 unless ordered by the court for good cause. Juvenile court records which contain information pertaining to arrests, petitions, adjudications, and dispositions of a child may be disclosed to victims or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the Federal Social Security Act shall not be disclosed to victims or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070.

(2) The provisions of this section shall not apply to public officers or employees engaged in the prosecution of cases under KRS Chapters 600 to 645 or other portions of the Kentucky Revised Statutes provided that the inspection of the records and the disclosure of the information contained therein is limited to that required in the investigation and the prosecution of the case.

(3) The provisions of this section shall not apply to employees of the cabinet or its designees responsible for any services under KRS Chapters 600 to 645 or to attorneys for parties involved in actions relating to KRS Chapters 600 to 645 or other prosecutions authorized by the Kentucky Revised Statutes provided that the inspection of the records and the disclosure of the information contained therein is limited to that required in the investigation and the representation of the client in the case.

(4) The provisions of this section shall not apply to records disclosed pursuant to KRS 610.320 or to public or private elementary and secondary school administrative***, transportation,*** and counseling personnel, to any teacher to whose class the student has been assigned for instruction, or to persons entitled to have juvenile records under KRS 610.345, if the possession and use of the records is in compliance with the provisions of KRS 610.345 and this section.

(5) No person, including school personnel, shall disclose any record or any information contained therein except as permitted by this section or other specific section of KRS Chapters 600 to 645, or except as permitted by specific order of the court.

(6) No person, including school personnel, authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain records to which he is not entitled or for purposes for which he is not permitted to obtain them pursuant to KRS Chapters 600 to 645.

(7) No person, including school personnel, not authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain records which are made confidential pursuant to KRS Chapters 600 to 645 except upon proper motion to a court of competent jurisdiction.

(8) No person shall destroy or attempt to destroy any record required to be kept pursuant to KRS Chapters 600 to 645 unless the destruction is permitted pursuant to KRS Chapters 600 to 645 and is authorized by the court upon proper motion and good cause for the destruction being shown.

(9) As used in this section the term "KRS Chapters 600 to 645" includes any administrative regulations which are lawfully promulgated pursuant to KRS Chapters 600 to 645.

Section 15. KRS 610.345 is amended to read as follows:

(1) When a child is adjudicated guilty of an offense which classifies him as a youthful offender under KRS Chapter 640, the court in which the matter was tried shall notify the principal of any public or private elementary or secondary school which the child attends of the adjudication and the petition and disposition of the case. The name of the complainant shall be deleted. Upon written request of the authorized representative of the school, the court, if it deems it appropriate, may authorize the county attorney to give the school a statement of facts in the case.

(2) When a child is adjudicated guilty of an offense which would classify him as a violent offender under KRS 439.3401, or be a felony under KRS Chapter 218A, 508, 510, or 527 if committed by an adult, but which would not classify him as a youthful offender under KRS Chapter 640, the court in which the matter was tried shall notify ***within five (5) days of the order*** the principal of any public or private elementary or secondary school which the child attends of the charge, the adjudication, and the disposition of the case. The name of the complainant shall be deleted. Upon written request of the authorized representative of the school, the court, if it deems it appropriate, may authorize the county attorney to give the school a statement of facts in the case.

(3) ***Notice of adjudication to the school principal referenced in subsections (1) and (2) of this section shall be released by the principal to employees of the school having responsibility for classroom instruction of the child and may be released to other school personnel as described in subsection (4) of this section, but the information shall otherwise be confidential and shall not be shared by school personnel with any other person or agency except as may otherwise be required by law. The notification in writing of the nature of the offense committed by the child and any probation requirements shall not become a part of the child's student record.***

(4) Records or information disclosed pursuant to this section shall be limited to records of that student's criminal petition and the disposition thereof covered by this section, shall be subject to the provisions of KRS 610.320 and 610.340, and shall not be disclosed to any other person, including school personnel, except to public or private elementary and secondary school administrative***, transportation,*** and counseling personnel, and to any teacher to whose class the student has been assigned for instruction. This section shall not authorize the disclosure of any other juvenile record or information relating to the child.

(5)[~~(4)~~] Records or information received by the school pursuant to this section shall be kept in a locked file, when not in use, to be opened only on permission of the administrator.

Section 16. Whereas it is critical that the board of directors for the Center for School Safety be appointed by July 15, 1998, in order to select a university location for the Center for School Safety by January 1, 1999, an emergency is declared to exist, and this Act takes effect upon its passage and approval of the Governor or upon its otherwise becoming law.

The Committee Amendment No. 1 to **HB 330** is as follows:

On page 8, lines 17 and 18, after "***programs***", by deleting the following new language, "***for those school systems that do not have alternative instructional options***".

The Committee Amendment No. 2 to **HB 330** is as follows:

On page 3, line 14 delete "***and***"; and

On page 3, line 15 insert before the period "***; and (k) A classified school employee***"; and

On page 3, line 20 delete "***and***"; and

On page 3, line 21 after "***Association***" insert the following "***, and the Kentucky Education Support Personnel Association***".

The Committee on Licensing and Occupations reported **HB 452, HB 459,** and **SB 70,** with House Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 452, AN ACT relating to occupations and professions.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 311.603 is amended to read as follows:

There shall be no monetary liability on the part of, and no cause of action for damages shall arise against the board, any current or former member, officer, administrator, staff member, committee member, representative, agent, consultant, or employee of the board, either as a part of the board's operation or as an individual, as the result of any act, omission, proceeding, conduct, or decision related to his official duties undertaken or performed within the scope of the function of the board***, except where actual malice is shown or willful misconduct is involved***.

HB 459, AN ACT relating to alcoholic beverage wholesalers' licenses.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. The following KRS sections are repealed:

243.105 Residence requirements for individual wholesaler.
243.106 Residence requirements for joint enterprise wholesaler.
243.107 Grandfather provisions as to wholesaler residence requirements.

SB 70, AN ACT relating to alcoholic beverages.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 243.200 is amended to read as follows:

(1) A distilled spirits and wine transporter's license shall authorize the licensee to transport distilled spirits and wine to or from the licensed premises of any licensee under KRS 243.020 to 243.670 if both the consignor and consignee in each case are authorized by the law of the states of their residence to sell, purchase, ship or receive the alcoholic beverages.

(2) A distilled spirits and wine transporter's license shall be issued only to persons authorized by proper certificate from the

Department of Vehicle Regulation to engage in the business of common carrier.

(3) No person except a railroad company or railway express company shall transport or cause to be transported any distilled spirits or wine, unless expressly authorized to do so by law.

(4) Distilled spirits and wine may be transported by the holder of any license authorized by KRS 243.030 from and to express or freight depots to and from the premises covered by the license of the person so transporting distilled spirits or wine.

(5) A licensed alcoholic beverage store operator may move, within the same county, alcoholic beverages from one of the operator's licensed stores to another without a transporter's license.

The House Committee Substitute to **SB 70** is as follows:

AN ACT relating to alcoholic beverages.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 243.200 is amended to read as follows:

(1) A distilled spirits and wine transporter's license shall authorize the licensee to transport distilled spirits and wine to or from the licensed premises of any licensee under KRS 243.020 to 243.670 if both the consignor and consignee in each case are authorized by the law of the states of their residence to sell, purchase, ship or receive the alcoholic beverages.

(2) A distilled spirits and wine transporter's license shall be issued only to persons authorized by proper certificate from the Department of Vehicle Regulation to engage in the business of common carrier.

(3) No person except a railroad company or railway express company shall transport or cause to be transported any distilled spirits or wine, unless expressly authorized to do so by law.

(4) Distilled spirits and wine may be transported by the holder of any license authorized by KRS 243.030 from and to express or freight depots to and from the premises covered by the license of the person so transporting distilled spirits or wine.

(5) A licensed alcoholic beverage store operator may move, within the same county, alcoholic beverages from one of the operator's licensed stores to another without a transporter's license. However, the licensed store operator shall keep and maintain in one (1) of his or her stores in that county, adequate books and records of the transactions involved in transporting alcoholic beverages from one (1) licensed store to another in accordance with standards established in administrative regulations promulgated by the board. The records shall be available to the department and the Revenue Cabinet upon request.

The Committee on Counties and Special Districts reported **HB 75,** with Committee Substitute attached thereto, and **HB 168,** with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 75, AN ACT relating to water districts.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 74.020 is amended to read as follows:

(1) A water district shall be administered by a board of commissioners which shall control and manage the affairs of the district. The term of each commissioner is four (4) years, except as provided in this section:

(a) If a district lies wholly within a single county, or operates as a single-county district, as provided in paragraph (c) of this subsection, the board of commissioners shall be composed of either three (3) or five (5) members as the county judge/executive shall determine. Members of the board shall be residents of the district, or of any incorporated or unincorporated area served by the district in the county in which the district was originally established, who shall be appointed by the county judge/executive with the approval of the fiscal court. If two (2) or more water districts within a single county merge as described in KRS 74.361, the county judge/executive may appoint up to two (2) additional commissioners with the approval of the fiscal court. Initial appointments shall be for terms of two (2), three (3), and four (4) years, as designated by the court.

(b) Except as provided in paragraph (c) of this subsection, if a district formed in a single county extends its area to include territory in an adjacent county, as provided by KRS 74.115, the board of commissioners shall be appointed by the county judges/executive with the approval of the fiscal courts of the concerned counties as follows: in two (2) county districts, three (3) members from the original district and two (2) members from the extended portion of the district; for extensions into three (3) or more counties, the respective county judges/executive, with the approval of the fiscal courts, shall appoint, in addition to the existing membership of the commission, two (2) members from the original one-county district and two (2) members from the newly extended portion of the district. Orders establishing the extension shall provide for the staggering of initial terms in an equitable manner.

(c) If a single-county district administered as provided in paragraph (a) ***of this subsection***[~~hereof~~] shall acquire an existing water or gas distribution system serving an area which extends beyond the boundaries of the district into another county, or if a district formed in a single county extends its area to include territory in an adjacent county as provided by KRS 74.115, it may operate the distribution system so acquired, or extended, if the area served outside the county shall be deemed to be a minor portion of the total area served by the district, and if the fiscal court of the county containing the minor portion of the total area shall have agreed to the acquisition or to the extension of the distribution system. If less than twenty-five percent (25%) of the total assets of the distribution system are located within the county outside of the boundaries of the district, it shall be conclusively presumed that the district comes within the terms of this subsection.

(2) A commissioner may be removed from office as provided by KRS 65.007.

(3) A commissioner who participates in any official action by the water district board of commissioners which results in a direct financial benefit to him may be removed from office as provided by KRS 65.007.

(4) Vacancies shall be filled by the same appointing authority which is empowered to make the original appointment. Vacancies resulting from cause other than expiration of the term shall be filled for the unexpired term only. Notwithstanding the provisions of KRS 67.710, a vacancy resulting from the expiration of a term shall be filled by the Public Service Commission if, within ninety (90) days following the expiration of the term, the vacancy has not been filled by the appropriate county judge/executive with approval of the fiscal court.

(5) The commission shall elect a chairman, secretary, and treasurer. Each commissioner shall execute a bond, approved by the county judge/executive, conditioned on the faithful performance of the duties of his position.

(6) Each commissioner shall receive ***a maximum monthly***[~~an annual~~] salary of ***four hundred dollars ($400) in districts with fewer than three thousand five hundred (3,500) water customers or a maximum monthly salary of five hundred dollars ($500) for commissioners in districts with three thousand five hundred (3,500) or more water customers***[~~not more than thirty-six hundred dollars ($3600)~~], which shall be paid out of the water district fund. In the case of single-county districts, which shall be deemed to include districts described in paragraph (c) of subsection (1) of this section, the salary shall be fixed by the county judges/executive with the approval of the fiscal court; in multicounty districts, it shall be fixed by the agreement between the county judges/executive with the approval of their fiscal courts. In fixing and approving the salary of the commissioners, the county judge/executive and the fiscal court shall take into consideration the financial condition of the district and its ability to meet its obligations as they mature.

(7) Each commissioner shall successfully complete six (6) clock hours of water district management training annually. The training shall be approved and paid for by the fiscal court of the county in which the Commissioner resides.

(8) Each commissioner shall be eligible for the disability, health maintenance organization coverage, or hospitalization benefits provided under KRS 79.080 to county employees in the county in which the commissioner resides, or which may be available to water district employees.

Section 2. KRS 74.363 is amended to read as follows:

(1) Boards of commissioners of any two (2) or more water districts may by concurrent action and by approval of a majority of the membership of the board of each merge their districts into one (1).

(2) Notwithstanding any provisions to the contrary in KRS 74.361(7), in case of a merger under this section, the members of the boards of commissioners of the merged water districts shall serve as members of the board of commissioners of the resulting district, regardless of their normal term expiration, until one (1) year after approval of the merger by the Public Service Commission. Thereafter, the board shall be composed as follows:

(a) If the boundaries of the resulting district lie wholly within a single county, the board of commissioners shall be composed of between three (3) and seven (7) members as the county judge/executive shall determine.

(b) If the boundaries of the resulting district lie within two (2) or more counties, the board of commissioners shall be composed of six (6) or more members as follows: four (4) members shall be appointed by the county judge/executive of the county in which the greatest portion of the population of the district resides; two (2) members shall be appointed by the county judge/executive of the county in which the next greatest portion of the population of the district resides; and one (1) member shall be appointed by the county judge/executive of each remaining county in which a portion of the population of the district resides.

(3) Each appointment to the board of commissioners of the resulting district shall be made by the appropriate county judge/executive with the approval of the fiscal court. Each member of the board shall be a resident of the county from which he or she is appointed. The initial terms of the board of commissioners after the merger shall be as follows: approximately one-third (1/3) of the commissioners shall be appointed for a term of two (2) years; approximately one-third (1/3) of the commissioners shall be appointed for a term of three (3) years; and the remaining commissioners shall be appointed for a term of four (4) years. Thereafter, all commissioners shall be appointed for a term of four (4) years.

The provisions of sections (2) to ***(8)***[~~(6)~~] of KRS 74.020 shall apply to all commissioners and vacancies on the board of commissioners.

(4) The resulting district shall have all the assets and legal liabilities of the water districts joining in the merger. The separate existences of the water districts joining in the merger, except the resulting district, shall cease, and the title to all real estate and other property owned by the water districts joining in the merger shall be vested in the resulting district without reversion or impairment. Bonded obligations of any district secured by the right to levy an assessment as provided by KRS 74.130 through 74.230 or secured by the revenue of the systems operated by the district shall continue to be retired or a sinking fund for such purpose created from the tax assessments or revenue from the system operated by the district from funds collected over the same area by the new board of commissioners in accordance with the laws under which the bonds were issued until all bonded obligations of the old district have been retired.

The Committee Substitute to **HB 75** is as follows:

AN ACT relating to water districts.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 74.020 is amended to read as follows:

(1) A water district shall be administered by a board of commissioners which shall control and manage the affairs of the district. The term of each commissioner is four (4) years, except as provided in this section:

(a) If a district lies wholly within a single county, or operates as a single-county district, as provided in paragraph (c) of this subsection, the board of commissioners shall be composed of either three (3) or five (5) members as the county judge/executive shall determine. Members of the board shall be residents of the district, or of any incorporated or unincorporated area served by the district in the county in which the district was originally established, who shall be appointed by the county judge/executive with the approval of the fiscal court. If two (2) or more water districts within a single county merge as described in KRS 74.361, the county judge/executive may appoint up to two (2) additional commissioners with the approval of the fiscal court. Initial appointments shall be for terms of two (2), three (3)***,*** and four (4) years, as designated by the court.

(b) Except as provided in paragraph (c) of this subsection, if a district formed in a single county extends its area to include territory in an adjacent county, as provided by KRS 74.115, the board of commissioners shall be appointed by the county judges/executive with the approval of the fiscal courts of the concerned counties as follows: in two (2) county districts, three (3) members from the original district and two (2) members from the extended portion of the district; for extensions into three (3) or more counties, the respective county judges/executive, with the approval of the fiscal courts, shall appoint, in addition to the existing membership of the commission, two (2) members from the original one-county district and two (2) members from the newly extended portion of the district. Orders establishing the extension shall provide for the staggering of initial terms in an equitable manner.

(c) If a single-county district administered as provided in paragraph (a) ***of this subsection***[~~hereof~~] shall acquire an existing water or gas distribution system serving an area which extends beyond the boundaries of the district into another county, or if a district formed in a single county extends its area to include territory in an adjacent county as provided by KRS 74.115, it may operate the distribution system so acquired, or extended, if the area served outside the county shall be deemed to be a minor portion of the total area served by the district, and if the fiscal court of the county containing the minor portion of the total area shall have agreed to the acquisition or to the extension of the distribution system. If less than twenty-five percent (25%) of the total assets of the distribution system are located within the county outside of the boundaries of the district, it shall be conclusively presumed that the district comes within the terms of this subsection.

(2) A commissioner may be removed from office as provided by KRS 65.007.

(3) A commissioner who participates in any official action by the water district board of commissioners which results in a direct financial benefit to him may be removed from office as provided by KRS 65.007.

(4) Vacancies shall be filled by the same appointing authority which is empowered to make the original appointment. Vacancies resulting from cause other than expiration of the term shall be filled for the unexpired term only. Notwithstanding the provisions of KRS 67.710, a vacancy resulting from the expiration of a term shall be filled by the Public Service Commission if, within ninety (90) days following the expiration of the term, the vacancy has not been filled by the appropriate county judge/executive with approval of the fiscal court.

(5) The commission shall elect a chairman, secretary, and treasurer. Each commissioner shall execute a bond, approved by the county judge/executive, conditioned on the faithful performance of the duties of his position.

(6) Each commissioner shall receive an annual salary of not more than thirty-six hundred dollars ($3600), which shall be paid out of the water district fund ***except that beginning January 1, 1999, each commissioner who completes during an educational year a minimum of six (6) instructional hours of water district management training approved by the***

Public Service Commission may receive an annual salary of not more than six thousand dollars ($6,000) to be paid out of the water district fund. An educational year shall begin on January 1 and end on the following December 31. In the case of single-county districts, which shall be deemed to include districts described in paragraph (c) of subsection (1) of this section, the salary shall be fixed by the county judges/executive with the approval of the fiscal court; in multicounty districts, it shall be fixed by the agreement between the county judges/executive with the approval of their fiscal courts. In fixing and approving the salary of the commissioners, the county judge/executive and the fiscal court shall take into consideration the financial condition of the district and its ability to meet its obligations as they mature.

(7) *(a)* *In order to receive an increase in salary as specified in subsection (6) of this section, commissioners shall successfully complete six (6) instructional hours of water district management training annually. The training shall be approved and paid for by the water district of the county the commissioner represents. Those commissioners not required to complete the six (6) instructional hours shall be reimbursed for the cost of instruction if they choose to complete the water district training.*

(b) *The Public Service Commission shall be responsible for the regulation of all water district management training programs for commissioners of water districts, combined water, gas, or sewer districts, or water commissions.*

(c) *The Public Service Commission shall encourage and promote the offering of high quality water district management training programs that enhance a water district commissioner's understanding of his or her responsibilities and duties. The commission shall, no later than January 1, 1999, establish standards and procedures to evaluate, accredit, and approve water district management training programs.*

(d) *The Public Service Commission may promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A to implement this section.*

(8) *A water district that provides health care and pension fund benefits to its water district employees may provide the same health care and pension fund benefits to its water district commissioners. These health care benefits for water district commissioners shall be paid for by the water district.*

Section 2. KRS 74.363 is amended to read as follows:

(1) Boards of commissioners of any two (2) or more water districts may by concurrent action and by approval of a majority of the membership of the board of each merge their districts into one (1).

(2) Notwithstanding any provisions to the contrary in KRS 74.361(7), in case of a merger under this section, the members of the boards of commissioners of the merged water districts shall serve as members of the board of commissioners of the resulting district, regardless of their normal term expiration, until one (1) year after approval of the merger by the Public Service Commission. Thereafter, the board shall be composed as follows:

(a) If the boundaries of the resulting district lie wholly within a single county, the board of commissioners shall be composed of between three (3) and seven (7) members as the county judge/executive shall determine.

(b) If the boundaries of the resulting district lie within two (2) or more counties, the board of commissioners shall be composed of six (6) or more members as follows: four (4) members shall be appointed by the county judge/executive of the county in which the greatest portion of the population of the district resides; two (2) members shall be appointed by the county judge/executive of the county in which the next greatest portion of the population of the district resides; and one (1) member shall be appointed by the county judge/executive of each remaining county in which a portion of the population of the district resides.

(3) Each appointment to the board of commissioners of the resulting district shall be made by the appropriate county judge/executive with the approval of the fiscal court. Each member of the board shall be a resident of the county from which he or she is appointed. The initial terms of the board of commissioners after the merger shall be as follows: approximately one-third (1/3) of the commissioners shall be appointed for a term of two (2) years; approximately one-third (1/3) of the commissioners shall be appointed for a term of three (3) years; and the remaining commissioners shall be appointed for a term of four (4) years. Thereafter, all commissioners shall be appointed for a term of four (4) years. The provisions of sections (2) to *(8)*[~~(6)~~] of KRS 74.020 shall apply to all commissioners and vacancies on the board of commissioners.

(4) The resulting district shall have all the assets and legal liabilities of the water districts joining in the merger. The separate existences of the water districts joining in the merger, except the resulting district, shall cease, and the title to all real estate and other property owned by the water districts joining in the merger shall be vested in the resulting district without reversion or impairment. Bonded obligations of any district secured by the right to levy an assessment as provided by KRS 74.130 through 74.230 or secured by the revenue of the systems operated by the district shall continue to be retired or a sinking fund for such purpose created from the tax assessments or revenue from the system operated by the district from funds collected over the same area by the new board of commissioners in accordance with the laws under which the bonds were issued until all bonded obligations of the old district have been retired.

HB 168, AN ACT relating to cellular telecommunications facilities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 100 IS CREATED TO READ AS FOLLOWS:

In addition to the definitions set forth in KRS 100.111, the following definitions shall apply to Sections 1 to 2 and Section 4 of this Act:

(1) "Cellular antenna tower" means a tower constructed for, or an existing facility that has been adapted for, the location of transmission or related equipment to be used in the provision of cellular telecommunications services or personal communications services;

(2) "Cellular telecommunications service" means a retail telecommunications service that uses radio signals transmitted through cell sites and mobile switching stations;

(3) "Co-location" means locating two (2) or more transmission antennas or related equipment on the same cellular antenna tower;

(4) "Personal communication service" means as defined in 47 U.S.C. sec. 332(c); and

(5) "Utility" is defined in KRS 278.010(3).

SECTION 2. A NEW SECTION OF KRS CHAPTER 100 IS CREATED TO READ AS FOLLOWS:

(1) A planning unit and legislative body or fiscal court may plan for and regulate the siting of cellular antenna towers in accordance with locally adopted planning or zoning regulations in accordance with KRS Chapter 100.

(2) Every utility that proposes to construct an antenna tower for cellular telecommunications services or personal communications services within the jurisdiction of a planning unit that has adopted planning or zoning regulations in accordance with KRS Chapter 100 shall:

(a) Submit a proposal to the planning commission of the affected planning unit to construct an antenna tower for cellular or personal telecommunications services prior to applying to the Public Service Commission for a certificate of necessity and convenience as required by KRS 278.020(1); and

(b) File a grid map with the planning commission that shows the location of all existing cellular antenna towers and that indicates the general position of proposed construction sites for new cellular antenna towers within an area that includes:

1. All of the planning unit's jurisdiction; and

2. A one-half (1/2) mile area outside of the boundaries of the planning unit's jurisdiction, if that area contains either existing or proposed construction sites for cellular antenna towers; and

(c) Provide any additional information requested by the planning unit that is necessary to evaluate a proposal for the construction of a cellular antenna tower.

(3) After receiving the proposal to construct a cellular antenna tower, the planning commission shall:

(a) Review the proposal in light of its agreement with the comprehensive plan and locally adopted zoning regulations;

(b) Make its final decision to approve or disapprove the proposal; and

(c) Advise the utility in writing of its final decision, within sixty (60) days from the date the proposal is submitted.

(4) If the planning commission disapproves of the proposed construction, it shall state the reasons for disapproval in its written decision and may make suggestions which, in its opinion, better accomplish the objectives of the comprehensive plan and the locally adopted zoning regulations. The affected utility may appeal the final decision of the planning unit to the Circuit Court of the county in which the proposed location of the cellular antenna tower lies. No permit for construction of a cellular or personal communications services antenna tower, including any certificate of convenience and necessity required to be issued by the Kentucky Public Service Commission, shall be issued until the planning commission approves the proposal or a final determination has been issued by the court to either vacate or set aside the planning unit's decision to disapprove the proposal.

(5) The planning commission may require co-location of additional transmitting or related equipment on any new or existing towers, if there is available space on the tower and the required co-location does not interfere with the structural integrity of the antenna tower. In the event of co-location, a utility shall be considered the primary user of the tower if the utility is the owner of the antenna tower and if no other agreement exists that proscribes an alternate arrangement between the parties for use of the tower. Any other entity that co-locates transmission or related facilities on a cellular antenna tower shall do so in a manner that does not impose additional costs or operating restrictions on the primary user. Any disputes between the planning commission and parties affected by co-location shall be resolved by the Public Service Commission.

Section 3. KRS 100.324 is amended to read as follows:

(1) All other provisions of this chapter to the contrary notwithstanding***,*** public utilities operating under the jurisdiction of the Public Service Commission, except as specified in ***Section 2 of this Act***[~~subsection (5) of this section~~], or the Department of Vehicle Regulation or Federal Power Commission, any municipally-owned electric system, and common carriers by rail shall not be required to receive the approval of the planning unit for the location or relocation of any of their service facilities. Service facilities include all facilities of such utilities and common carriers by rail other than office space, garage space, and warehouse space and include office space, garage space, and warehouse space when such space is incidental to a service facility. The Public Service Commission and the Department of Vehicle Regulation shall give notice to the planning commission of any planning unit of any hearing which affects locations or relocations of service facilities within that planning unit's jurisdiction.

(2) The nonservice facilities excluded in subsection (1) of this section must be in accordance with the zoning regulations.

(3) Upon the request of the planning commission, the public utilities referred to in this section shall provide the planning commission of the planning unit affected with information concerning service facilities which have been located on and relocated on private property.

(4) Any proposal for acquisition or disposition of land for public facilities, or changes in the character, location, or extent of structures or land for public facilities, excluding state and federal highways and public utilities and common carriers by rail mentioned in this section, shall be referred to the commission to be reviewed in light of its agreement with the comprehensive plan, and the commission shall, within sixty (60) days from the date of its receipt, review the project and advise the referring body whether the project is in accordance with the comprehensive plan. If it disapproves of the project, it shall state the reasons for disapproval in writing and make suggestions for changes which will, in its opinion, better accomplish the objectives of the comprehensive plan. No permit required for construction or occupancy of such public facilities shall be issued until the expiration of the sixty (60) day period or until the planning commission issues its report, whichever occurs first.

[~~(5) Every utility which proposes to construct an antenna tower for cellular telecommunications services or personal communications services within a county containing a city of the first class shall submit the proposal to the planning commission of the affected planning unit. The planning commission shall review the proposal in light of its agreement with the comprehensive plan and locally adopted zoning regulations and shall, within sixty (60) days from the date the proposal is submitted, make its final decision and advise the utility in writing whether the proposed construction is in accordance with the comprehensive plan and locally adopted zoning regulations. If the planning commission fails to issue a final decision within sixty (60) days, it is presumed to have approved the proposal, and may not later appeal a decision of the Public Service Commission under KRS 278.650(3). If the planning commission disapproves of the proposed construction, it shall state the reasons for disapproval in its written decision and may make suggestions which, in its opinion, better accomplish the objectives of the comprehensive plan and the locally adopted zoning regulations. No permit for construction of a cellular or personal communications services antenna tower, including any certificate of convenience and necessity required to be issued by the Kentucky Public Service Commission, shall be issued until the expiration of the sixty (60) day period or until the planning commission issues its final decision on the utility proposal, whichever occurs first.~~]

Section 4. KRS 278.650 is amended to read as follows:

[~~(1)~~]If a utility proposes construction of an antenna tower for cellular telecommunications services or personal communications services which is to be located within a county containing a city of the first class, then the utility shall submit the proposal to the planning commission of the affected planning unit prior to making application to the commission for a certificate of public convenience and necessity as required by KRS 278.020(1). The commission shall not grant a certificate of convenience and necessity in this situation until ***the planning commission approves the proposal or a final determination has been issued by the court to either vacate or set aside the planning unit's decision to disapprove the utility's proposal***[~~a final action on the proposal has been taken by the planning commission of the affected planning unit, or until the sixty (60) day time period set forth in KRS 100.324(5) has expired, whichever comes first.~~

~~(2) If a planning commission rejects a proposal to construct an antenna tower, the commission may override the decision of the planning commission and issue a certificate of convenience and necessity for construction of the cellular or personal communications services antenna tower, if it determines that there is no acceptable alternate site, and that the public convenience and necessity requires the proposed construction.~~

~~(3) Any party aggrieved by the final action of the Public Service Commission under subsections (1) and (2) of this section shall appeal from the action to the Franklin Circuit Court. The appeal shall be filed within thirty (30) days after the final action by the Public Service Commission. All final actions of the Public Service Commission which have not been appealed within thirty (30) days shall not be subject to judicial review.~~

~~(4) If a utility proposes construction of an antenna tower for cellular telecommunications services or personal communications services which is to be located outside the area of a county containing a city of the first class, then the commission may also take into account in its deliberations the character of the general area concerned, and the likely effects of the installation on nearby land uses and values~~].

The Committee Substitute to **HB 168** is as follows:

AN ACT relating to cellular telecommunications facilities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 100 IS CREATED TO READ AS FOLLOWS:

In addition to the definitions set forth in KRS 100.111, the following definitions shall apply to Sections 1 to 2 of this Act:

(1) "Cellular antenna tower" means a tower constructed for, or an existing facility that has been adapted for, the location of transmission or related equipment to be used in the provision of cellular telecommunications services or personal communications services;

(2) "Cellular telecommunications service" means a retail telecommunications service that uses radio signals transmitted through cell sites and mobile switching stations;

(3) "Co-location" means locating two (2) or more transmission antennas or related equipment on the same cellular antenna tower;

(4) "Personal communication service" has the meaning as defined in 47 U.S.C. sec. 332(c);

(5) "Uniform application" means an application for a certificate of convenience and necessity issued under KRS 278.020 submitted by a utility to the Public Service Commission to construct an antenna tower for cellular telecommunications services of personal communications service in a jurisdiction, that has adopted planning and zoning regulations in accordance with KRS Chapter 100, except for any county that contains a city of the first class; and

(6) "Utility" has the meaning as defined in KRS 278.010(3).

SECTION 2. A NEW SECTION OF KRS CHAPTER 100 IS CREATED TO READ AS FOLLOWS:

(1) A planning unit as defined in KRS 100.111 and legislative body or fiscal court that has adopted planning and zoning regulations, except for a county that contains a city of the first class as provided under KRS 278.650, may plan for and regulate the siting of cellular antenna towers in accordance with locally adopted planning or zoning regulations in KRS Chapter 100 by officially registering with the Public Service Commission. The registration shall be in the form of an official resolution adopted by the local planning commission. Nothing in this section shall require a planning unit and legislative body or fiscal court to plan for and regulate the siting of cellular antenna towers.

(2) Every utility that proposes to construct an antenna tower for cellular telecommunications services or personal communications services within the jurisdiction of a planning unit that has adopted planning and zoning regulations in accordance with KRS Chapter 100, except for a county that contains a city of the first class as provided under KRS 278.650, and that has officially registered with the Public Service Commission shall:

(a) Submit a copy of the utility's completed uniform application to the planning commission of the affected planning unit to construct an antenna tower for cellular or personal telecommunications services within five (5) days of applying to the Public Service Commission for a certificate of necessity and convenience as required by KRS 278.020(1). The uniform application shall include a grid map that shows the location of all existing cellular antenna towers and that indicates the general position of proposed construction sites for new cellular antenna towers within an area that includes:

1. All of the planning unit's jurisdiction; and

2. A one-half (1/2) mile area outside of the boundaries of the planning unit's jurisdiction, if that area contains either existing or proposed construction sites for cellular antenna towers;

(b) Include in any contract with a owner of property upon which a cellular antenna tower is to be constructed, a provision that specifies, in the case of abandonment, a method that the utility will follow in dismantling and removing a cellular antenna tower including a timetable for removal; and

(c) Comply with any local ordinances concerning land use.

(3) Commencing from the time that a utility files a uniform application with the Public Service Commission, all information contained in the uniform application and any updates, except for information that specifically identifies the proposed location of the cellular antenna tower then being reviewed by the applying utility, shall be deemed confidential and proprietary within the meaning of KRS 61.878. The Public Service Commission and the local planning commission shall deny any public request for the inspection of this information, whether submitted under Kentucky's Open Records Act or otherwise, except when ordered to release the information by a court of competent jurisdiction. Any person violating this subsection shall be guilty of official misconduct in the second degree as provided under KRS 522.030.

(4) After receiving the uniform application to construct a cellular antenna tower, the planning commission shall:

(a) Review the uniform application in light of its agreement with the comprehensive plan and locally adopted zoning regulations;

(b) Make its final decision to approve or disapprove the uniform application; and

(c) Advise the utility in writing of its final decision within sixty (60) days commencing from the date that the uniform application is received by the planning commission or within a date certain specified in a written agreement between the local planning commission and the utility. If the planning commission fails to issue a final decision within sixty (60) days and if there is no written agreement between the local planning commission and the utility to a specific date for the planning commission to issue a decision, it is presumed that the local planning commission has approved the utility's uniform application.

(5) (a) If the planning commission disapproves of the proposed construction, it shall state the reasons for disapproval in its written decision and may make suggestions which, in its opinion, better accomplish the objectives of the comprehensive plan and the locally adopted zoning regulations. No permit for construction of a cellular or personal communications services antenna tower, including any certificate of convenience and necessity required to be issued by the Kentucky Public Service Commission, shall be issued until the planning commission approves the uniform application or the sixty (60) day time period has expired. If a planning commission rejects the uniform application to construct an antenna tower, the Public Service Commission may override the decision of the planning commission and issue a certificate of convenience and necessity for construction of the cellular or personal communications services antenna tower, if it determines that there is no acceptable alternate site and that the public convenience and necessity requires the proposed construction.

(b) Any party, other than the applying utility, that is aggrieved by the final action of a planning commission under this section, may appeal the action to the Public Service Commission, but this appeal shall not automatically postpone action by the Public Service Commission on the uniform application. The appeal shall be filed within thirty (30) days after the final action of the planning commission. All final actions of the planning commission which have not been appealed within thirty (30) days shall not be subject to judicial review.

(6) The planning commission may require the utility to make a reasonable attempt to co-locate additional transmitting or related equipment on any new or existing towers, if there is available space on the tower and the co-location does not interfere with the structural integrity of the tower and does not require the owner of the tower to make substantial alterations to the tower. A planning commission may provide the location of existing cellular antenna towers on which the commission deems the applying utility can successfully co-locate its transmitting and related equipment. If the local planning commission requires the utility to attempt co-location, the utility shall provide the local planning unit with a statement indicating that the utility has:

(a) Successfully attempted to co-locate on towers designed to host multiple wireless service providers' facilities or existing structures such as a telecommunications tower or another suitable structure capable of supporting the utility's facilities, and that identifies the location of the tower which the applying utility will co-locate its transmission and related facilities on; or

(b) Unsuccessfully attempted to co-locate on towers designed to host multiple wireless service provider's facilities or existing structures such as a telecommunications tower or another suitable structure capable of supporting the utility's facilities and that:

1. Identifies the location of the towers which the applying utility attempted to co-locate on; and

2. Lists the reasons why the co-location was unsuccessful in each instance.

(7) The local planning commission may deny a uniform application to construct a cellular antenna tower based on a utility's unwillingness to attempt to co-locate additional transmitting or related equipment on any new or existing towers.

(8) In the event of co-location, a utility shall be considered the primary user of the tower, if the utility is the owner of the antenna tower and if no other agreement exists that prescribes an alternate arrangement between the parties for use of the tower. Any other entity that co-locates transmission or related facilities on a cellular antenna tower shall do so in a manner that does not impose additional costs or operating restrictions on the primary user. Any disputes between the planning commission and the parties affected by co-location shall be resolved by the Franklin Circuit Court.

Section 3. KRS 100.324 is amended to read as follows:

(1) All other provisions of this chapter to the contrary notwithstanding, public utilities operating under the jurisdiction of the Public Service Commission, except as specified in ***Section 2 of this Act and*** subsection (5) of this section, or the Department of Vehicle Regulation or Federal Power Commission, any municipally-owned electric system, and common carriers by rail shall not be required to receive the approval of the planning unit for the location or relocation of any of their service facilities. Service facilities include all facilities of such utilities and common carriers by rail other than office space, garage space, and warehouse space and include office space, garage space, and warehouse space when such

space is incidental to a service facility. The Public Service Commission and the Department of Vehicle Regulation shall give notice to the planning commission of any planning unit of any hearing which affects locations or relocations of service facilities within that planning unit's jurisdiction.

(2) The nonservice facilities excluded in subsection (1) of this section must be in accordance with the zoning regulations.

(3) Upon the request of the planning commission, the public utilities referred to in this section shall provide the planning commission of the planning unit affected with information concerning service facilities which have been located on and relocated on private property.

(4) Any proposal for acquisition or disposition of land for public facilities, or changes in the character, location, or extent of structures or land for public facilities, excluding state and federal highways and public utilities and common carriers by rail mentioned in this section, shall be referred to the commission to be reviewed in light of its agreement with the comprehensive plan, and the commission shall, within sixty (60) days from the date of its receipt, review the project and advise the referring body whether the project is in accordance with the comprehensive plan. If it disapproves of the project, it shall state the reasons for disapproval in writing and make suggestions for changes which will, in its opinion, better accomplish the objectives of the comprehensive plan. No permit required for construction or occupancy of such public facilities shall be issued until the expiration of the sixty (60) day period or until the planning commission issues its report, whichever occurs first.

(5) Every utility which proposes to construct an antenna tower for cellular telecommunications services or personal communications services within a county containing a city of the first class shall submit the proposal to the planning commission of the affected planning unit. The planning commission shall review the proposal in light of its agreement with the comprehensive plan and locally-adopted zoning regulations and shall, within sixty (60) days from the date the proposal is submitted, make its final decision and advise the utility in writing whether the proposed construction is in accordance with the comprehensive plan and locally-adopted zoning regulations. If the planning commission fails to issue a final decision within sixty (60) days, it is presumed to have approved the proposal, and may not later appeal a decision of the Public Service Commission under KRS 278.650(3). If the planning commission disapproves of the proposed construction, it shall state the reasons for disapproval in its written decision and may make suggestions which, in its opinion, better accomplish the objectives of the comprehensive plan and the locally-adopted zoning regulations. No permit for construction of a cellular or personal communications services antenna tower, including any certificate of convenience and necessity required to be issued by the Kentucky Public Service Commission, shall be issued until the expiration of the sixty (60) day period or until the planning commission issues its final decision on the utility proposal, whichever occurs first.

SECTION 4. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

The commission shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, establish the minimum content of a uniform application, provided under subsection (5) of Section 1 of this Act, for a certificate of convenience and necessity to construct cellular antenna towers, and the procedures to carry out the commission's responsibilities under Section 2 of this Act.

SECTION 5. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

Commencing from the time that a utility files a uniform application, as defined in subsection (5) of Section 1 of this Act, with the commission, all information contained in the uniform application and any updates, except for information that specifically identifies the proposed location of the cellular antenna tower then being reviewed by the applying utility, shall be deemed confidential and proprietary within the meaning of KRS 61.878. The commission shall deny any public request for the inspection of this information, whether submitted under Kentucky's Open Record Act, KRS 61.872 to 61.874, or otherwise, except when ordered to release the information by a court of competent jurisdiction. Any person violating this subsection shall be guilty of official misconduct in the second degree as provided under KRS 522.030.

Section 6. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

The Committee on Counties and Special Districts reported **HB 370** and **HB 458** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Consent Calendar.

HB 370, AN ACT relating to jail standards.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 441.055 is amended to read as follows:

(1) The Department of Corrections shall for those counties which elect to house state prisoners in their jail:

(a) Adopt the recommendations of the Jail Standards Commission created pursuant to Executive Order number 81-1026 and promulgate regulations pursuant to KRS Chapter 13A establishing minimum standards for jails. These standards shall include, but not be limited to, rules governing the following areas:

1. Health and safety conditions;
2. Fire safety;
3. Jail operations, recordkeeping, and administration;
4. Curriculum of basic and continuing annual training for jailers and jail personnel, including training relating to juvenile holding facilities;
5. Custody, care, and treatment of prisoners;
6. Medical care; and
7. Jail equipment, renovation, and construction;

(b) Develop a jail standards review process, which shall include the participation of persons knowledgeable of jail operations to review and amend the standards as necessary. The jail standards shall be reviewed no later than December 31, 1992, and at least every two (2) years thereafter. Fifty percent (50%) of the participants in the review process shall be appointed from persons representing county interests and fifty percent (50%) shall be appointed from persons representing state interests; and

(c) Provide technical assistance and consultation to local governments in order to facilitate compliance with standards.

(2) ***The department shall, for those counties that elect not to hold state prisoners in their jails, adopt the recommendations of the Jail Standards Commission and promulgate administrative regulations pursuant to KRS Chapter 13A to establish minimum standards for those jails. These standards shall be limited to health and life safety.***

(3) The department may establish classifications of jails based on the maximum permissible period of incarceration or other criteria and promulgate standards for each class of jail.

Section 2. KRS 441.064 is amended to read as follows:

(1) The department shall employ the jail consultants, inspectors, and other employees necessary to administer and enforce the provisions of KRS 441.055 to 441.075.

(2) The department shall inspect each jail[~~which holds state prisoners~~] biannually and may inspect jails more frequently.

(3) The department shall be granted access at any reasonable time to any jail facility or part of any jail facility and shall be granted access to all books, records, and data pertaining to any jail which the department deems necessary for the administration and enforcement of the provisions of KRS 441.055 to 441.075.

(4) Following an inspection of a jail, the department shall notify the jailer and the fiscal court by certified mail of any deficiencies which are discovered and documented. If the deficiencies are related to health or safety, the notification shall be sent within ten (10) working days, excluding weekends and holidays. The department shall submit an annual written report of the findings of its inspections and the condition of the jail to the jailer and the fiscal court.

HB 458, AN ACT relating to deputy sheriff merit boards in counties containing a city of the first class.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 70 IS CREATED TO READ AS FOLLOWS:

(1) A deputy sheriff merit board created by a county containing a city of the first class, shall issue rules as necessary. The rules shall be consistent with the provisions of KRS 70.260 to KRS 70.273 and shall address, but not be limited to, the following:

(a) Qualifications of deputy sheriffs, including physical, mental, educational, age, and citizenship requirements;

(b) Appointment of deputy sheriffs;

(c) Promotion and demotion of deputy sheriffs, including a requirement that a deputy sheriff shall complete three (3) years of service as a deputy sheriff prior to being eligible for promotion to the rank of sergeant;

(d) Creation and oversight of competitive written, oral, and physical tests to determine the fitness of candidates for appointment and promotion;

(e) Temporary appointments in case of emergency;

(f) Organization and meetings of the deputy sheriff merit board;

(g) Procedure and conduct of public hearings;

(h) Transfer, layoff, and reinstatement of deputy sheriffs; and

(i) Suspension, probation, fining, and removal of deputy sheriffs.

(2) A deputy sheriff merit board shall publish the text of every rule within three (3) days of its adoption. The board shall supply a certified copy of the rule to the county judge/executive, the fiscal court, and the sheriff. One (1) copy of the rule shall be posted in the office of the sheriff.

(3) (a) The deputy sheriff merit board shall employ a chief examiner who shall be professionally qualified and experienced in the field of testing who shall formulate, administer, and score all written tests as required by the board for original appointment and for promotion. The chief examiner shall report to the board the results of all tests given by the examiner and shall be solely responsible to the board.

(b) The chief examiner shall compile the scores of all applicants in strict compliance with this section and shall deliver, in a sealed envelope, the scores of all applicants for promotion to the chairman of the board. The chief examiner shall not reveal to anyone the results of the tests other than in the manner set out by this section. No testing method or the scoring shall depart from, or be inconsistent with, the procedures and percentages set out in this section. For the oral portion of the test the chief examiner shall select a panel of three (3) members to conduct the oral examination of applicants for promotion. The panel members shall be persons of a supervisory capacity from an outside agency, or agency in the same field and of the same rank to which the applicant is aspiring.

(c) Scoring for the examinations shall be as follows:

1. Sixty percent (60%) for written examination;

2. Thirty percent (30%) for oral examination;

3. One percent (1%) for each year in seniority in grade, not to exceed ten percent (10%). Seniority points shall be awarded for each year of service after three (3) full years of service. The results of the written and oral examinations shall be added to the seniority points available to each applicant in determining the applicant's final evaluated rating.

(d) At least ninety (90) days notice shall be given before the examination for promotions is conducted.

(4) Physical fitness for promotion shall be presumed unless certified to the contrary by the sheriff who shall supply the board with medical records of the disability.

(5) Promotions shall be filled by the sheriff who shall select from a list of not more than three (3) candidates scoring highest on the appropriate eligibility list.

Calendar

HB 129, HB 130, HB 380, HB 412, HB 476, HB 121, HB 280, HB 387, HB 433, HB 36, HB 271, HB 272, HB 273, HB 274, HB 275, HB 300, HB 347, HB 348, HB 351, HB 360, HB 428, HB 430, HB 492, HCR 59, SB 93, SB 148, and **SB 154** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Recess

Representative Stumbo moved to suspend the rules to allow the House to recess for a Committee on Rules meeting in the Speaker's Office. Agreed. At the appointed hour, the Speaker resumed the Chair and called the House to order.

Floor Amendments (Continued)

Floor Amendment No. 11 to the Committee Substitute No. 2 to **HB 142**, by Representative Barrows:

On page 16, line 18, by deleting "*Any*"; and also on line 18,by deleting "*are relevant factors that shall*", and inserting in lieu thereof, the word "*may*".

Representative Stumbo moved that the rules be suspended for a Committee on Rules Report. Agreed.

Report of Committees (Continued)

The Committee on Rules reported that **HB 236, HB 378, SB 22, SB 37, HB 252, HB 258, HB 267, HB 317, HB 374, HB 390, HB 402, HB 407, SCR 3** and **HB 142** have been posted for passage in the Orders of the Day for February 12, 1998.

Report On Enrolled Bills

The Committee on Enrollment reported that **HB 54** has been examined and found correctly enrolled. Said Bill was read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -2:45 p.m.) **HB 54** delivered to the Senate and signed by the President. Delivered to the Governor on February 11 at 2:55 p.m.

Orders of the Day

HB 250 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Jenkins moved that **HB 250** be passed.

On the roll call the vote was: Yeas 96, Nays 0 (See February 11 , 1998 roll call on **HB 250** - Appendix.) **HB 250** was passed and the title agreed to. Representative Jenkins moved that the vote by which **HB 250** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 306 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stein moved that **HB 306** be passed.

On the roll call the vote was: Yeas 95, Nays 0 (See February 11 , 1998 roll call on **HB 306** - Appendix.) **HB 306** was passed. Representative Stein moved the adoption of Committee Amendment No. 1 Title. Agreed; and the title was agreed to. Representative Stein moved that the vote by which **HB 306,** as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 305, with Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Nunn moved the adoption of Floor Amendment No. 2 to **HB 305**. Floor Amendment No. 2 to **HB 305** was adopted. (See February 11, 1998 roll call on Floor Amendment No. 2 to **HB 305** - Appendix.)

Representative Stein moved that **HB 305**, as amended, be passed.

On the roll call the vote was: Yeas 93, Nays 3 (See February 11, 1998 roll call on **HB 305** - Appendix.) **HB 305**, as amended, was passed and the title agreed to. Representative Stein moved that the vote by which **HB 305**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 226, with Committee Substitute, Committee Amendments and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Coleman moved the adoption of the Committee Substitute to **HB 226**. Agreed.

Representative Coleman moved the adoption of Floor Amendment No. 2 to the Committee Substitute to **HB 226**. Agreed.

Representative Long moved the adoption of Floor Amendment No. 5 to the Committee Substitute to **HB 226**. Agreed.

Representative Coleman moved that **HB 226**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 96, Nays 1 (See February 11, 1998 roll call on **HB 226** - Appendix.) **HB 226**, by way of Committee Substitute as amended, was passed. Representative Coleman moved the adoption of Floor Amendment No. 3 Title to the Committee Substitute to **HB 226**. Agreed; and the title was agreed to. Representative Coleman moved that the vote by which **HB 226**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 175 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative D. Graham moved that **HB 175** be passed.

On the roll call the vote was: Yeas 90, Nays 1 (See February 11 , 1998 roll call on **HB 175** - Appendix.) **HB 175** was passed and the title agreed to. Representative D. Graham moved that the vote by which **HB 175** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 336, with Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of

members elected.

Representative Lovell moved that **HB 336** be passed.

On the roll call the vote was: Yeas 97, Nays 0 (See February 11 , 1998 roll call on **HB 336** - Appendix.) **HB 336** was passed and the title agreed to. Representative Lovell moved that the vote by which **HB 336** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 432 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Jenkins moved that **HB 432** be passed.

On the roll call the vote was: Yeas 96, Nays 0 (See February 11, 1998 roll call on **HB 432** - Appendix.) **HB 432** was passed and the title agreed to. Representative Jenkins moved that the vote by which **HB 432** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 187, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Burch moved the adoption of the Committee Substitute to **HB 187**. Agreed.

Representative Burch moved that **HB 187**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 96, Nays 0 (See February 11, 1998 roll call on **HB 187** - Appendix.) **HB 187**, by way of Committee Substitute, was passed and the title agreed to. Representative Burch moved that the vote by which **HB 187**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

Senate Message (Continued)

Announcing passage of **HB 87, HB 112,** and **HB 256**. (Time: 3:30 p.m.)

Orders of the Day (Continued)

HB 282, with Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Lee moved the adoption of Floor Amendment No. 1 to **HB 282**. Agreed.

Representative Lee moved that **HB 282**, as amended, be passed.

On the roll call the vote was: Yeas 98, Nays 0 (See February 11, 1998 roll call on **HB 282** - Appendix.) **HB 282**, as amended, was passed and the title agreed to. Representative Lee moved that the vote by which **HB 282**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 159, with Committee Substitute and Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Burch moved the adoption of the Committee Substitute to **HB 159**. Agreed.

Representative Burch moved the adoption of the Committee Amendment No. 1 to the Committee Substitute to **HB 159**. Agreed.

Representative Burch moved that **HB 159**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 93, Nays 0 (See February 11, 1998 roll call on **HB 159** - Appendix.) **HB 159**, by way of Committee Substitute as amended, was passed and the title agreed to. Representative Burch moved that the vote by which **HB 159**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 309, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved the adoption of the Committee Substitute to **HB 309**. Agreed.

Representative Long moved that **HB 309**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 95, Nays 0 (See February 11, 1998 roll call on **HB 309** - Appendix.) **HB 309**, by way of Committee Substitute, was passed and the title agreed to. Representative Long moved that the vote by which **HB 309**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 392, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved the adoption of the Committee Substitute to **HB 392**. Agreed.

Representative Long moved that **HB 392**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 95, Nays 0 (See February 11, 1998 roll call on **HB 392** - Appendix.) **HB 392**, by way of Committee Substitute, was passed and the title agreed to. Representative Long moved that the vote by which **HB 392**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 92 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative L. Clark moved that **HB 92** be passed.

On the roll call the vote was: Yeas 93, Nays 0 (See February 11 , 1998 roll call on **HB 92** - Appendix.) **HB 92** was passed and the title agreed to. Representative L. Clark moved that the vote by which **HB 92** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 193 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative D. Butler moved that **HB 193** be passed.

On the roll call the vote was: Yeas 83, Nays 11 (See February 11 , 1998 roll call on **HB 193** - Appendix.) **HB 193** was passed and the title agreed to. Representative D. Butler moved that the vote by which **HB 193** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 218, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative P. Clark moved the adoption of the Committee Substitute to **HB 218**. Agreed.

Representative P. Clark moved that **HB 218**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 90, Nays 2 (See February 11, 1998 roll call on **HB 218** - Appendix.) **HB 218**, by way of Committee Substitute, was passed and the title agreed to. Representative P. Clark moved that the vote by which **HB 218**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 399, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Damron moved the adoption of the Committee Substitute to **HB 399**. Agreed.

Representative Damron moved that **HB 399**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 97, Nays 0 (See February 11, 1998 roll call on **HB 399** - Appendix.) **HB 399**, by way of Committee Substitute, was passed and the title agreed to. Representative Damron moved that the vote by which **HB 399**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 405, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Damron moved the adoption of the Committee Substitute to **HB 405**. Agreed.

Representative Damron moved that **HB 405**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 93, Nays 0 (See February 11, 1998 roll call on **HB 405** - Appendix.) **HB 405**, by way of Committee Substitute, was passed and the title agreed to. Representative Damron moved that the vote by which **HB 405**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 101 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Ballard moved that **HB 101** be passed.

On the roll call the vote was: Yeas 94, Nays 0 (See February 11, 1998 roll call on **HB 101** - Appendix.) **HB 101** was passed and the title agreed to. Representative Ballard moved that the vote by which **HB 101** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 286, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Burch moved the adoption of the Committee Substitute to **HB 286**. Agreed.

Representative Burch moved that **HB 286**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 96, Nays 0 (See February 11, 1998 roll call on **HB 286** - Appendix.) **HB 286**, by way of Committee Substitute, was passed and the title agreed to. Representative Burch moved that the vote by which **HB 286**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 346 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 346** be passed.

On the roll call the vote was: Yeas 87, Nays 6 (See February 11, 1998 roll call on **HB 346** - Appendix.) **HB 346** was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 346** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 409 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Ballard moved that **HB 409** be passed.

On the roll call the vote was: Yeas 90, Nays 0 (See February 11 , 1998 roll call on **HB 409** - Appendix.) **HB 409** was passed and the title agreed to. Representative Ballard moved that the vote by which **HB 409** was passed be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions, Report of Committees and Posting of Bills and Resolutions for Consideration. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 569, by Representative A. Arnold: AN ACT relating to definitions for statutory construction.

HB 570, by Representative Ratliff: AN ACT proposing to amend Section 170 of the Constitution of Kentucky relating to the finances of the Commonwealth.

HB 571, by Representative Ratliff: AN ACT relating to economic assistance to local governments and declaring an emergency.

HB 572, by Representative Kerr: AN ACT relating to a certificate to extend or operate a utility.

HB 573, by Representative Kerr: AN ACT relating to commissioners of public utilities.

HB 574, by Representative Kerr: AN ACT relating to public utilities.

HB 575, by Representative Kerr: AN ACT relating to public utilities.

HB 576, by Representative Kerr: AN ACT relating to public utilities.

HB 577, by Representative Kerr: AN ACT relating to gas pipeline safety.

HB 578, by Representative Baugh: AN ACT relating to standardized fees and penalties for alcoholic beverage regulation.

HB 579, by Representative Baugh: AN ACT relating to the retail sales of alcoholic beverages.

HB 580, by Representative Baugh: AN ACT relating to the sale of malt beverages.

HB 581, by Representatives Baugh and Vincent: AN ACT relating to alcoholic beverages.

HB 582, by Representative D. D. Butler: AN ACT relating to the unauthorized switching of a customer's telecommunications provider.

HB 583, by Representative Hoffman: AN ACT relating to child care facility licensure.

HB 584, by Representatives Walton, Kerr, Cox, and Ford: AN ACT relating to crimes and punishments.

HB 585, by Representatives Walton, Kerr, Cox, and Ford: AN ACT relating to crimes and punishments.

HB 586, by Representatives Wayne and P. Clark: AN ACT relating to tax credits.

HB 587, by Representatives Zimmerman, Weaver, Haydon, R. Adams, and A. Arnold: AN ACT relating to absentee voting.

HB 588, by Representatives Gray, L. Clark, and Hoover: AN ACT relating to revenue and taxation.

HB 589, by Representative Nesler: AN ACT relating to the weight distance tax.

HB 590, by Representatives Weaver and Miller: AN ACT relating to Social Security coverage of public employees.

HB 591, by Representative Marzian: AN ACT relating to patient safety.

HB 592, by Representative Zimmerman: AN ACT relating to prison labor.

HB 593, by Representative Gooch: AN ACT relating to surface mining permit renewal.

HB 594, by Representatives Crenshaw, Gray, Jenkins, Jordan, Hoffman, Collins, Mason, Hatcher, Stein, A. Arnold, D. Butler, Simpson, Callahan, Stacy, Barrows, and Lovell: AN ACT relating to voter registration.

HJR 75, by Representative Ratliff: A JOINT RESOLUTION directing the Transportation Cabinet to name the bridge on US 460 crossing the Levisa Fork of the Big Sandy River at Millard the "Veterans Memorial Bridge" and to erect appropriate highway signs.

Posting of Bills and Resolutions for Consideration (Continued)

The Clerk announced that the following Bills have been posted for Committee consideration:

Cities: **HB 323**

Health and Welfare: **HB 456**

Banking and Insurance: **HB 401**

Floor Amendments (Continued)

Floor Amendment No. 2 to **HB 429**, by Representative Hatcher:

On page 5, after line 3, by adding:

"SECTION 3. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

An employee of a general agency may receive compensation for the referral of a consumer, who seeks information about or wishes to purchase any insurance product, to a licensed person or for the provision of the telephone number of a licensed person who sells or provides information on the product only if:

(1) The employee receives the referral fee regardless of the whether insurance coverage is sold;

(2) The referral compensation is a fixed amount; and

(3) The referral compensation is paid by the general agency."

Floor Amendment No. 1 to **HB 421**, by Representative Heleringer:

On page 1, lines 1 through 11, by deleting Section 1 and renumbering all subsequent sections accordingly; and

On page 6, line 11, after "***Section***" by deleting "*4*" and inserting "*3*" in lieu thereof; and

On page 10, line 3, after "***Section***" by deleting "*2*" and inserting "*1*" in lieu thereof; and

On page 11, lines 5 through 23, by deleting Section 5 in its entirety.

Motions, Petitions and Communications (Continued)

Representative Cave moved that the rules be suspended to act upon a Resolution. Agreed.

Representative Cave moved the adoption of the following **HR 69**:

HR 69, A RESOLUTION adjourning the House of Representatives in honor of the Kentucky State Police and declaring February 11, 1998, as State Police Day.

WHEREAS, Governor Earle C. Clements drafted legislation to create a state law enforcement agency that would later be known as the Kentucky State Police; and

WHEREAS, on February 11, 1948, the bill to introduce the Kentucky State Police Act was introduced as House Bill 291 by Representative James P. Hanratty, a Democrat from Hopkinsville, Kentucky, and was given its first reading and later passed by a vote of 72-16; and

WHEREAS, on March 5, 1948, Governor Earle C. Clements signed the State Police Act into law; it became Chapter 80 of the Kentucky Revised Statutes (later revised to Chapter 16); and

WHEREAS, the Kentucky State Police have faithfully served the citizens of this Commonwealth for the past fifty years, fulfilling the original mission of providing quality, unbiased, and professional police service from the urban centers of Louisville and Lexington to the coal fields of Eastern and Western Kentucky; and

WHEREAS, the Kentucky State Police continue to remain true to their charter of promoting traffic safety, investigating crimes, apprehending lawbreakers, and creating a climate of safety for communities throughout the Commonwealth; and

WHEREAS, in recognition of the many dedicated women and men who serve the citizens of this great Commonwealth, the House of Representatives hereby declares February 11, 1998, as State Police Day;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. This honorable body proudly hails the Kentucky State Police, and in recognition of the many dedicated women and men who serve diligently the citizens of this great Commonwealth, we do hereby declare February 11, 1998, as State Police Day in the Commonwealth of Kentucky.

Section 2. When the House of Representatives adjourns this day, it does so in honor of the Kentucky State Police.

Section 3. The Clerk of the House of Representatives is hereby directed to transmit a copy of this Resolution to the Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601.

There being no objection **HR 69** was adopted. (See February 11, 1998 co-sponsor roll call - Appendix.)

Representative Treesh moved the adoption of the following **Legislative Citation No. 65**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes Pat Taylor for her efforts in the formation of Down's Syndrome of Kentucky, a non-profit organization which holds the distinct honor of being one of only three nationwide centers that focus on the specific needs of those affected by Down's Syndrome. The entire membership is indeed honored to join with Representative Mark Treesh in paying tribute to this extraordinary citizen for outstanding, self-initiated service to her community and her dedication to improving the future of this Commonwealth. This prestigious body does hereby salute the important work of Pat Taylor and extends to her best wishes in all future endeavors. **Legislative Citation No. 65** was adopted without objection.

Representative L. Clark moved the adoption of the following **Legislative Citation No. 70**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes Brother James Fields, O.F.M. for extraordinary dedication to those people of Louisville whose unfortunate circumstances require the compassion of a giving heart, the hand of a friend and the shelter of safe haven. For it is said that good works joyously and freely given will pave the way to many blessings and rewards far beyond our worldly definition, then surely the goodness of said recipient is abundant and astounding and the Kentucky House of Representatives joins State Representative Larry Clark in honoring this beautiful life whose great exultation has been to minister to those in need at the Franciscan Mission House where the welcoming glow is forever in the window. This prestigious body wishes this generous individual a bountiful outpouring of blessings and peace.

Legislative Citation No. 70 was adopted without objection.

Representative G. Graham moved the adoption of the following **HR 65**:

HR 65, A RESOLUTION commending the Capital City Optimist Club of Frankfort for their support in child safety.

WHEREAS, the Capital City Optimist Club of Frankfort has been a vital part of the leadership of the Franklin County community; and

WHEREAS, Optimist International, of which the Capital City Optimist Club is a member, has long been a friend to youth; and

WHEREAS, motor vehicle crashes are the leading cause of death in children five to fifteen years of age; and

WHEREAS, injuries to children can be prevented by following these three simple guidelines: (1) buckle up every child in a motor vehicle properly; (2) whenever possible, put children in the back seat of the vehicle; and (3) always secure rear-facing infant seats in the back seat of the vehicle; and

WHEREAS, joint concern and action is a proven method of resolving a community's problems; and

WHEREAS, children's safety can be protected as easily as saying "ABC," Always Buckle Children in the back seat;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. The members of this honorable body are proud to commend the Capital City Optimist Club of Frankfort for its initiatives in support of the ABC safety program, and we do support them in their attempts to increase awareness of this worthwhile, lifesaving program for children.

Section 2. The Clerk of the House of Representatives is hereby directed to transmit a copy of this Resolution to the Capital City Optimist Club, 210 Glenbrook Court, Frankfort, Kentucky 40601.

There being no objection **HR 65** was adopted.

Floor Amendments (Continued)

Floor Amendment No. 3 Title to **HB 160**, by Representative DeWeese:

By amending the title to read as follows: "AN ACT relating to the establishment of a study commission to study the benefits and effects of complementary and alternative medicine."

Motions, Petitions and Communications (Continued)

Representative Gooch moved the adoption of the following **Legislative Citation No. 69**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby adjourns this legislative day in reverent memory of Lawrence Earl Beaver and extends sincerest expressions of sympathy to his loving wife of fifty-nine years, Helen Beaver, his devoted children, Gary, Michael, Nick, and Steve and his cherished sister, grandchildren, and great-grandchildren for their immense loss. Lawrence Beaver was an ordained minister who served his community with devotion, spreading the Word of God both through his work as a pastor in several churches and through his morning worship service on Radio Station WFMW. Founder of Lebco, Inc. in Madisonville, Kentucky, this distinguished Kentucky citizen has left a legacy of kindness and generosity of spirit which is this day celebrated by all those whose fortune it was to know him. The House of Representatives of the Commonwealth of Kentucky is honored to join Representative Jim Gooch, Jr. in offering solace and sincere condolences to the family of Lawrence Earl Beaver and in adjourning this day in memory of this extraordinary man. **Legislative Citation No. 69** was adopted without objection.

Representative Thomas moved the adoption of the following **Legislative Citation No. 67**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes and honors Jim Johnson president of Jim Johnson Pontiac-Nissan, Inc., upon being named by Time magazine as the recipient of a Quality Dealer Award. This award, with finalists selected by University of Michigan Graduate School of Business Administration faculty members, recognizes new car dealers for exceptional performance in their dealerships and distinguished community service. Jim Johnson, a Morgantown native, is commended for serving the community as a board member for both The Salvation Army and CrimeStoppers and as past chairman of the United Way of Southern Kentucky. This honorable body is indeed pleased to join with Speaker Jody Richards in offering sincere congratulations to Jim Johnson upon receiving this well-earned award and in wishing for his continued success. **Legislative Citation No. 67** was adopted without objection.

Representative Treesh moved that **HB 530** be withdrawn. Agreed.

Representative Damron moved that the rules be suspended to act upon a Resolution. Agreed.

Representative Damron moved the adoption of the following **HR 71**:

HR 71, A RESOLUTION adjourning the House of Representatives in honor of the Masons.

WHEREAS, the Masons are the largest and oldest fraternity worldwide whose recorded history dates back nearly 1,000 years, and whose fellowship was founded on friendship, charity, brotherly love, and benevolence; and

WHEREAS, many of our founding fathers were Masons, including such notable statesmen as George Washington, Benjamin Franklin, and Henry Clay -- men who were instrumental in the establishment and development of our great nation; and

WHEREAS, most of the signers of the Declaration of Independence and the Constitution of the United States were Masons, and the significance of their allegiance to this great nation is unparalleled and will have lasting impact; and

WHEREAS, noted for being great arbitrators and for their unbounded loyalty to God, to their country, and to their fellow man, their humanitarian contributions have given them global distinction;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. The House of Representatives is proud and honored to recognize the Masons for their genuine love and concern for humanity, and they are held in the highest esteem for their dedication to worthy causes without prejudice to or judgment of their fellow man.

Section 2. When the House of Representatives adjourns this day, it does so in honor of the Masons.

Section 3. The Clerk of the House of Representatives is hereby directed to transmit a copy of this Resolution to Representative Robert Damron and to Senator Albert Robinson.

There being no objection **HR 71** was adopted. (See February 11, 1998 co-sponsor roll call - Appendix.)

Representative Crenshaw moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Crenshaw moved that he be recorded as voting "yea" on **HB 92** and **HB 250**. Agreed. Representative Crenshaw moved that his vote be changed from "nay" to "yea" on **HB 218**. Agreed.

Representative Hoffman moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Hoffman moved that he be recorded as voting "yea" on **HB 175**. Agreed.

Representative Ratliff moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Ratliff moved that he be recorded as voting "yea" on **HB 409** and **HB 187**. Agreed.

Representative Brandstetter moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Brandstetter moved that he be recorded as voting "yea" on **HB 286**. Agreed.

Representative Johns moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Johns moved that she be recorded as voting "yea" on **HB 159**. Agreed.

Representative Collins moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Collins moved that he be recorded as voting "yea" on **HB 92**. Agreed.

Representative Ford moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Ford moved that his vote be changed from "nay" to "yea" on **HB 175**. Agreed.

Representative Callahan moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Callahan moved that he be recorded as voting "yea" on **HB 250** and **HB 306**. Agreed.

Representative Barrows moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Barrows moved that he be recorded as voting "yea" on **HB 175** and **HB 159**. Agreed.

Representative Hatcher moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Hatcher moved that he be recorded as voting "yea" on **HB 175**. Agreed.

Representative Gooch moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Gooch moved that he be recorded as voting "yea" on **HB 306**. Agreed.

Representative Alexander moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Alexander moved that he be recorded as voting "yea" on **HB 175**. Agreed.

Representative Stacy moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Stacy moved that he be recorded as voting "yea" on **HB 175**. Agreed.

Representative J. Adams moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative J. Adams moved that he be recorded as voting "yea" on **HB 282, HB 309, HB 392, HB 92, HB 193, HB 218, HB 399, HB 405, HB 101, HB 409, HB 175, HB 159, HB 432, HB 187, HB 305, HB 226,** and **HB 250**. Agreed.

The following members filed requests to have their names added as co-sponsors of Bills under rules previously suspended: **HB 36**, Representative Walton; **HB 92**, Representative Hoffman; **HB 92, HB 193, HB 594**, Representative Riggs; **HB 225**, Representative Stewart; **HB 229**, Representatives P. Clark, Horlander; **HB 305**, Representative Worthington; **HB 330, HB 506**, Representative Marzian; **HB 447, HB 449**, Representative Jordan; **HB 506**, Representative Maricle; **HB 532**, Representative Barrows; **HB 533**, Representative Johns; **HB 546**, Representative Jenkins; **HB 594**, Representative Wayne.

Announcements

The following meetings were announced:

General Government, 10:00 a.m., February 12, 1998.

Judiciary, Room 149, 10:00 a.m., February 12, 1998.

Labor and Industry, 9:00 a.m., Room 125, February 12, 1998.

Transportation, upon adjournment, February 11, 1998 and at 10:00 a.m., February 12, 1998.

Adjournment

Representative Stumbo moved that the House adjourn until 12 Noon, February 12, 1998.

On the roll call the vote was **Yeas 83**--J. Adams, R. Adams, Alexander, Anderson, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Bowling, Brandstetter, Brown, Bruce, D. Butler, D. D. Butler, Callahan, L. Clark, P. Clark, J. Clarke, Collins, Colter, Cox, Crenshaw, Crimm, Damron, DeWeese, Ford, Gee, Geveden, Gooch, D. Graham, G. Graham, Gray, Hatcher, Haydon, Hoffman, Hogancamp, Hoover, Horlander, Jenkins, Johns, Jordan, Kerr, Lee, Lindsay, Marcotte, Marzian, Mason, Miller, Miniard, Moberly, Murgatroyd, Napier, Nesler, Newsome, Palumbo, Polston, Pope, Rader, Rasche, Ratliff, Reinhardt, Richards, Riner, Scott, Siler, Simpson, Sims, Stacy, Stein, Stine, Stumbo, Thomas, Treesh, Turner, Vincent, Walton, Wayne, Weaver, Wilkey, Worthington, Yonts, Zimmerman. **Nays 6**--Bratcher, Crall, Maricle, McKee, Nunn, Stewart.

The motion to adjourn was adopted.

THURSDAY, FEBRUARY 12, 1998

TWENTY-SIXTH LEGISLATIVE DAY

The House was called to order by Speaker Richards.

Prayer by Reverend Jay Ayers, South Frankfort Presbyterian Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Allen, Burch, Clarke, Deskins, Lovell, and Ratliff.

Representative Ballard moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative Ballard moved that the reading of the Journal of February 11, 1998, be dispensed with and the same approved. Agreed.

Representative Ballard moved that the Rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Ballard moved that all properly filed co-sponsor requests be approved. Agreed.

Senate Message

Announcing passage of **SB 126, SB 135,** and **SB 202**.

Message received on **HB 56**: The Senate has passed **HB 56** with Senate Floor Amendment No. 1 and respectfully requests concurrence of this Honorable Body. (Time: 12:05 p.m.)

Report On Enrolled Bills

The Committee on Enrollment reported that **HB 87, HB 112,** and **HB 256** have been examined and found correctly enrolled. Said Bills were read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -12:08 p.m.)

Introduction of Bills

HB 595, by Representatives Brandstetter, Jenkins, Marcotte, Palumbo, Haydon, Baugh, Colter, Ford, and Cox: AN ACT relating to crimes and punishments.

HB 596, by Representative L. Clark: AN ACT relating to executive branch ethics .

HB 597, by Representative L. Clark: AN ACT relating to income tax.

HB 598, by Representative Collins: AN ACT relating to public water systems.

HB 599, by Representatives Jenkins, Miller, Weaver, Collins, and Alexander: AN ACT relating to controlled substances.

HB 600, by Representatives Jenkins and Nesler: AN ACT relating to automatic teller machines.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolution:

Appropriations and Revenue: **HB 568, HB 571, HB 586, HB 588**

Counties and Special Districts: **HB 567, SB 103**

Elections and Constitutional Amendments: **HB 570, HB 587, HB 594**

Health and Welfare: **HB 583, HB 591**

Judiciary: **HB 584, HB 585**

Licensing and Occupations: **HB 565, HB 566, HB 578, HB 579, HB 580, HB 581, SB 169**

Natural Resources and Environment: **HB 593**

State Government: **HB 569, HB 590, HB 592, SB 77**

Tourism and Energy: **HB 572, HB 573, HB 574, HB 575, HB 576, HB 577, HB 582**

Transportation: **HB 589, HJR 75**

The Clerk announced that the following Resolution has been posted for Committee consideration:

House Floor: **HR 74**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Education: **HB 29, HB 215, HB 225, HB 417, HB 424, HB 519, HB 532**

State Government: **HB 126, HB 246, HB 352, HB 355, HB 359, HB 361, HB 363, HB 366, HB 375, HB 438, HB 445, HB 486, SB 172**

Report of Committees

The Committee on Transportation reported **HB 17,** with Committee Substitute attached thereto, **HB 99,** with Committee Substitute attached thereto, **HB 311, HB 369, HB 426, HB 431,** with Committee Substitute attached thereto, **HJR 53,** with Committee Substitute and Committee Amendment attached thereto, **HJR 58,** and **SB 20,** with Committee Substitute and Committee Amendment attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 17, AN ACT relating to abandoned motor vehicles.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 189.751 is amended to read as follows:

(1) Any person who leaves a vehicle upon a county road or city street under circumstances indicating an abandonment, shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100), or imprisoned for not less than ten (10) days nor more than thirty (30) days. A vehicle left upon a county road or city street for ***three(3)***[~~seven (7)~~] consecutive days shall be presumed to be abandoned.

(2) The public authority having jurisdiction over a particular county road or city street shall cause ***a vehicle that is presumed to be abandoned under subsection (1) of this section and that***[~~any such vehicle which~~] is fit for future use to be removed by some person engaged in the business of storing or towing motor vehicles and the provisions of KRS 376.275 shall apply in disposing of ***the***[~~such~~] vehicle. Any money obtained in disposing of a vehicle that is in excess of any liens shall be paid by the seller to the owner and if the owner cannot be located, the excess money shall escheat to the state pursuant to the provisions of KRS Chapter 393. *A*[~~Such~~] vehicle shall be registered or transferred in the county where the sale is conducted upon an affidavit by the seller that the provisions of KRS 376.275 have been met. The affidavit shall contain information as prescribed by the transportation cabinet.

(3) If ***a***[~~any such~~] vehicle ***that is presumed abandoned under subsection (1) of this section*** is, in the opinion of the public authority, unfit for future use, the public authority may dispose of it immediately in[~~ such~~] a manner as it deems appropriate.

Section 2. KRS 189.752 is amended to read as follows:

(1) "State highway" means any public road maintained by the State Department of Highways.

(2) "Motor vehicle" means any vehicle propelled by an internal combustion engine capable of transporting persons or property. Motor vehicle shall not mean "moped" as defined in KRS 189.285.

(3) "Abandoned vehicle" means any automobile ***that***[~~which~~] is left upon the right-of-way of a state highway for ***three (3)***[~~fifteen (15)~~] days, whether or not it is fit for future use.

(4) "Owner" means the last registered owner.

Section 3. KRS 189.753 is amended to read as follows:

(1) Any motor vehicle left upon the right-of-way of a state highway for ***three(3)***[~~fifteen (15)~~] consecutive days shall be presumed an abandoned vehicle.

(2) The Department of State Police shall locate abandoned vehicles on the right-of-way of state highways. Upon determination that a vehicle is abandoned, and notwithstanding the provisions of KRS 189.450, the Department of State Police may order any person engaged in the business of storing or towing motor vehicles to remove the abandoned vehicle to a site chosen by ***the***[~~such~~] person. The department shall determine, if possible, the ownership of ***the***[~~such~~] vehicle through the abandoned vehicle's license plates, serial number, or other methods of determining ownership. As soon as practicable the owner shall be notified by mail, whether he is a Kentucky resident or a resident of another state, that the abandoned vehicle was illegally upon public property; the name and the address where the storage facility is located; that removal of the vehicle from the storage facility will involve payment of towing and storage charges; and that the vehicle may be sold pursuant to provisions of KRS 376.275 if not claimed within sixty (60) days. *A*[~~No~~] notification shall ***not*** be required if ownership cannot be determined. In the event of such sale, the state shall receive any proceeds after the satisfaction of all liens placed on the vehicle.

(3) The commissioner of State Police shall ***promulgate administrative regulations pursuant to KRS Chapter 13A***[~~make all rules and regulations necessary~~] to carry out the provisions of this section.

The Committee Substitute to **HB 17** is as follows:

AN ACT relating to abandoned motor vehicles.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 189.751 is amended to read as follows:

(1) Any person who leaves a vehicle upon a county road or city street under circumstances indicating an abandonment, shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100), or imprisoned for not less than ten (10) days nor more than thirty (30) days. A vehicle left upon a county road or city street for ***three(3)***[~~seven (7)~~] consecutive days shall be presumed to be abandoned.

(2) The public authority having jurisdiction over a particular county road or city street shall cause ***a vehicle that is presumed to be abandoned under subsection (1) of this section and that***[~~any such vehicle which~~] is fit for future use to be removed by some person engaged in the business of storing or towing motor vehicles and the provisions of KRS 376.275 shall apply in disposing of ***the***[~~such~~] vehicle. Any money obtained in disposing of a vehicle that is in excess of any liens shall be paid by the seller to the owner and if the owner cannot be located, the excess money shall escheat to the state pursuant to the provisions of KRS Chapter 393. *A*[~~Such~~] vehicle shall be registered or transferred in the county where the sale is conducted upon an affidavit by the seller that the provisions of KRS 376.275 have been met. The affidavit shall contain information as prescribed by the transportation cabinet.

(3) If ***a***[~~any such~~] vehicle ***that is presumed abandoned under subsection (1) of this section*** is, in the opinion of the public authority, unfit for future use, the public authority may dispose of it immediately in[~~ such~~] a manner as it deems appropriate.

Section 2. KRS 189.752 is amended to read as follows:

(1) "State highway" means any public road maintained by the State Department of Highways.

(2) "Motor vehicle" means any vehicle propelled by an internal combustion engine capable of transporting persons or property. Motor vehicle shall not mean "moped" as defined in KRS 189.285.

(3) "Abandoned vehicle" means any automobile ***that***[~~which~~] is left upon the right-of-way of a state highway for ***three (3)***[~~fifteen (15)~~] days, whether or not it is fit for future use.

(4) "Owner" means the last registered owner.

Section 3. KRS 189.753 is amended to read as follows:

(1) Any motor vehicle left upon the right-of-way of a state highway for ***three(3)***[~~fifteen (15)~~] consecutive days shall be presumed an abandoned vehicle.

(2) The Department of State Police shall locate abandoned vehicles on the right-of-way of state highways. Upon determination that a vehicle is abandoned, and notwithstanding the provisions of KRS 189.450, the Department of State Police may order any person engaged in the business of storing or towing motor vehicles to remove the abandoned vehicle to a site chosen by ***the***[~~such~~] person. The department shall determine, if possible, the ownership of ***the***[~~such~~] vehicle through the abandoned vehicle's license plates, serial number, or other methods of determining ownership. As soon as practicable the owner shall be notified by mail, whether he is a Kentucky resident or a resident of another state, that the abandoned vehicle was illegally upon public property; the name and the address where the storage facility is located; that removal of the vehicle from the storage facility will involve payment of towing and storage charges; and that the vehicle may be sold pursuant to provisions of KRS 376.275 if not claimed within sixty (60) days. *A*[~~No~~] notification shall ***not*** be required if ownership cannot be determined. In the event of such sale, the state shall receive any proceeds after the satisfaction of all liens placed on the vehicle.

(3) The commissioner of State Police shall ***promulgate administrative regulations pursuant to KRS Chapter 13A***~~[make all rules and regulations necessary]~~ to carry out the provisions of this section.

Section 4. KRS 189.990 is amended to read as follows:

(1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456 and 189.960, shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense. Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars ($20) nor more than two thousand dollars ($2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars ($11) nor more than thirty dollars ($30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.

(2) (a) Any person who violates the weight provisions of KRS 189.221, 189.222, 189.226, 189.230, 189.270, or 189.271 shall be fined two cents (2¢) per pound for each pound of excess load when the excess is two thousand (2,000) pounds or less, three cents (3¢) per pound when the excess exceeds two thousand (2,000) pounds and is three thousand (3,000) pounds or less, five cents (5¢) per pound when the excess exceeds three thousand (3,000) pounds and is four thousand (4,000) pounds or less, seven cents (7¢) per pound when the excess exceeds four thousand (4,000) pounds and is five thousand (5,000) pounds or less, and nine cents (9¢) per pound when the excess exceeds five thousand (5,000) pounds but in no case shall the fine be less than sixty dollars ($60) nor more than five hundred dollars ($500).

(b) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, or 189.490, for which another penalty is not specifically provided, shall be guilty of a misdemeanor and shall be fined not less than ten dollars ($10) nor more than five hundred dollars ($500).

(c) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.

(3) (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars ($15).

(b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars ($35) nor more than two hundred dollars ($200).

(4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.

(5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars ($100) nor more than two hundred dollars ($200) or imprisoned not less than thirty (30) days nor more than sixty (60) days or both. For each subsequent offense occurring within three (3) years, ***the***~~[such]~~ person shall be fined not less than three hundred dollars ($300) nor more than five hundred dollars ($500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.

(6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars ($15) in excess of the cost of the repair of the road.

(7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars ($20) nor more than fifty dollars ($50).

(8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100).

(9) Any person who violates KRS 189.530 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.

(10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.

(11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars ($30) nor more than one hundred dollars ($100) for each offense.

(12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and in case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.

(13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars ($20) nor more than twenty-five dollars ($25).

(15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars ($100), and upon subsequent convictions, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or imprisoned for thirty (30) days, or both.

(17) (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.

(b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name ***the***[~~such~~] vehicle used in the transportation of inflammable liquids or explosives is licensed, ***the***[~~such~~] person shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500). Each violation shall constitute a separate offense.

(18) Any person who abandons a vehicle upon the right-of-way of a state highway for ***three (3)***[~~seven (7)~~] consecutive days shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.

(19) Every person violating KRS 189.393 shall be punished upon a first conviction by imprisonment for a period of not less than five (5) days nor more than ninety (90) days, or by fine of not less than thirty-five dollars ($35) nor more than five hundred dollars ($500), or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than ten (10) days nor more than six (6) months, or by a fine of not less than sixty dollars ($60) nor more than one thousand dollars ($1,000), or by both ***a***[~~such~~] fine and imprisonment.

(20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.

(21) A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of[~~ such~~] a regulation shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.

(22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars ($500) or imprisoned for not more than six (6) months, or both.

(23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars ($25) nor more than three hundred dollars ($300).

(24) Any person who violates the provisions of KRS 189.125(3) shall be fined fifty dollars ($50).

(25) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars ($25).

(26) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.

(27) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle, may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:

(a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and

(b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.

HB 99, AN ACT relating to the lease of motor vehicles.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 367.840 is amended to read as follows:

KRS 367.841 to 367.844 shall be liberally construed and applied to promote the underlying purposes of KRS 367.841 to

367.844, which purposes are:

(1) To protect consumers ***who buy or lease new motor vehicles that***[~~whose new motor vehicles~~] do not conform to applicable warranties by holding manufacturers accountable for certain nonconformities;

(2) To limit the number of attempts and the amount of times that a manufacturer or its agents shall have to cure such nonconformities; and

(3) To require manufacturers to provide, in as expeditious a manner as possible, a refund, not to exceed the amount in KRS 367.842, or replacement vehicle that is acceptable to the aggrieved consumer when the manufacturer or its agents fail to cure any nonconformity within the specified limits.

Section 2. KRS 367.841 is amended to read as follows:

(1) "Buyer" means any resident person who buys***,***[~~or~~] contracts to buy***, or lease*** a new motor vehicle in the Commonwealth of Kentucky.

(2) "Manufacturer" means any person or corporation, resident or nonresident, who manufactures or assembles new motor vehicles which are sold in the Commonwealth of Kentucky.

(3) "Motor vehicle" means every vehicle which is self propelled, and which is intended primarily for use and operation on the public highways and required to be registered or licensed in the Commonwealth prior to such use or operation; however, "motor vehicle" shall not include conversion vans, motor homes, motorcycles, mopeds, farm tractors and other machines used in the production, harvesting and care of farm products, or vehicles which have more than two (2) axles.

(4) "New motor vehicle" means a motor vehicle which has been finally and completely assembled and is in the possession of a manufacturer, factory branch, distributor, wholesaler***,*** or an authorized motor vehicle dealer operating under a valid sales and service agreement, franchise***,*** or contract for the sale of such vehicle granted by the manufacturer, factory branch, distributor***,*** or wholesaler which is, in fact, new and on which the original title has never been issued.

(5) "Express warranty" or "warranty" means the written warranty, so labeled, of the manufacturer of a new automobile, including any terms or conditions precedent to the enforcement of obligations under the warranty.

(6) "Nonconformity" means a failure to conform with an express warranty in a manner which substantially impairs the use, value, or safety of the motor vehicle.

(7) "Reasonable allowance for use" means the amount directly attributable to a consumer's use of the vehicle other than those time periods when the vehicle is out of service due to the nonconformity.

Section 3. KRS 367.846 is amended to read as follows:

KRS 367.840 to 367.845 shall apply to new motor vehicles purchased after July 15, 1986***, and to motor vehicles leased after July 15, 1998***.

The Committee Substitute to **HB 99** is as follows:

AN ACT relating to the lease of motor vehicles.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 367.840 is amended to read as follows:

KRS 367.841 to 367.844 shall be liberally construed and applied to promote the underlying purposes of KRS 367.841 to 367.844, which purposes are:

(1) To protect consumers ***who buy or lease new motor vehicles that***[~~whose new motor vehicles~~] do not conform to applicable warranties by holding manufacturers accountable for certain nonconformities;

(2) To limit the number of attempts and the amount of times that a manufacturer or its agents shall have to cure such nonconformities; and

(3) To require manufacturers to provide, in as expeditious a manner as possible, a refund, not to exceed the amount in KRS 367.842, or replacement vehicle that is acceptable to the aggrieved consumer when the manufacturer or its agents fail to cure any nonconformity within the specified limits.

Section 2. KRS 367.841 is amended to read as follows:

(1) "Buyer" means any resident person who buys***,***[~~or~~] contracts to buy***, or lease*** a new motor vehicle in the Commonwealth of Kentucky. ***In the case of the lease of a new motor vehicle, "buyer" shall mean the lessor, lessee, or both.***

(2) "Manufacturer" means any person or corporation, resident or nonresident, who manufactures or assembles new motor vehicles which are sold in the Commonwealth of Kentucky.

(3) "Motor vehicle" means every vehicle which is self propelled, and which is intended primarily for use and operation on the public highways and required to be registered or licensed in the Commonwealth prior to such use or operation; however, "motor vehicle" shall not include conversion vans, motor homes, motorcycles, mopeds, farm tractors and other

machines used in the production, harvesting and care of farm products, or vehicles which have more than two (2) axles.

(4) "New motor vehicle" means a motor vehicle which has been finally and completely assembled and is in the possession of a manufacturer, factory branch, distributor, wholesaler, or an authorized motor vehicle dealer operating under a valid sales and service agreement, franchise, or contract for the sale of such vehicle granted by the manufacturer, factory branch, distributor, or wholesaler which is, in fact, new and on which the original title has never been issued.

(5) "Express warranty" or "warranty" means the written warranty, so labeled, of the manufacturer of a new automobile, including any terms or conditions precedent to the enforcement of obligations under the warranty.

(6) "Nonconformity" means a failure to conform with an express warranty in a manner which substantially impairs the use, value, or safety of the motor vehicle.

(7) "Reasonable allowance for use" means the amount directly attributable to a consumer's use of the vehicle other than those time periods when the vehicle is out of service due to the nonconformity.

Section 3. KRS 367.846 is amended to read as follows:

KRS 367.840 to 367.845 shall apply to new motor vehicles purchased after July 15, 1986***, and to motor vehicles leased after July 15, 1998***.

HB 311, AN ACT relating to motor vehicles.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 186A.020 is amended to read as follows:

The Transportation Cabinet shall have any and all necessary power and authority, subject to appropriate provision of the statutes, to promulgate ***administrative*** regulations and institute such programs as are reasonably necessary to carry out the provisions of this chapter.

Section 2. KRS 186A.050 is amended to read as follows:

The certificate of title ***and computer generated forms***[~~blanks~~] required by this chapter shall be designed and printed to make difficult and to facilitate detection of counterfeit likenesses or fraudulent alteration of genuine documents. The bid specifications for the acquisition of the certificate of title blanks shall require, as a minimum:

(1) That bidders have a demonstrable reputation in the printing of currency or securities, and guarantee with an appropriate cash bond that, in addition to any other requirements, the document blanks to be supplied are printed in a secure printing facility, utilizing a combination of the printing process, unique printing plates, paper, and inks to produce high quality documents designed to:

  (a) Be readily recognizable as genuine by a layman and by extra visual techniques;

  (b) Make extremely difficult the manufacture of counterfeit likenesses by direct engraving, photographic, or color xerographic means;

  (c) Visually reveal actual or attempted alteration or erasure by chemical or mechanical means.

(2) That bidders guarantee production of a specific number of uniquely numbered documents with guaranteed accounting for spoilage and a guaranteed list of document numbers supplied and those deleted.

(3) That the documents will be shipped to the Commonwealth by an agreed means to assure minimal risk of theft, loss, or destruction.

(4) That the plates utilized in printing of the blanks will not be utilized for the printing of certificate of title blanks by other than the bidder pursuant to a lawful contract with the Commonwealth.

(5) The department, by administrative regulation, may provide for the production of a certificate of title by electronic means.

Section 3. KRS 186A.060 is amended to read as follows:

The Department of Vehicle Regulation is directed to develop, in cooperation with county clerks, auto dealers, and the Revenue Cabinet, and Departments of Insurance and State Police, the forms required to record all information pertinent to the initial registration, or titling and taxation, or transfer of registration or title of a vehicle. The Department of Vehicle Regulation shall make every effort to minimize and reduce the amount of paperwork required to apply for, or transfer, a vehicle title. When possible, the title document itself shall be used as the primary form used to effect a transfer of vehicle ownership. When no in-state title exists, then forms shall be designed by the department that require only the appropriate and essential information to effect the application for title. The department shall constantly review the information needs of government agencies and other organizations with the goal of reducing, or eliminating, unnecessary documentation. ***Information being sought for application for title relevant to, but not limited to, vehicle identification, owner, buyer, usage tax, county clerk or inspector shall be set forth by the cabinet in such a way as to promote flexibility in reaching this goal. The use of an electronic medium shall be employed so that forms can be printed by the automated system. Existing statutory language in this chapter and KRS***

Chapter 186 pertaining to application, signature, forms, or application transfer record may be construed to be electronic in nature at the discretion of the cabinet as provided for by administrative regulation.

Any person who knowingly enters, or attests to the entry of, false or erroneous information in pursuit of a certificate of title shall be guilty of forgery in the second degree~~[The application for title, which may consist of one (1) or more forms, shall require the following:~~

~~(1) An appropriate heading or title;~~

~~(2) A statement that the information required by the first or original of the form must be legibly printed in dark blue or black, permanent photoreproducing ink or indelible pencil, or typed in black, except as to signatures, which shall be originally signed in dark blue or black photoreproducing ink;~~

~~(3) A statement, prominently printed in boldface type, that any person who knowingly enters, or attests to the entry of, false or erroneous information upon the form shall be subject to the penalties of forgery in the second degree;~~

~~(4) A seller or transferor section containing space for the seller or transferor's full legal name, mailing address and telephone number, including telephone area code, and if the seller or transferor is a motor vehicle dealer licensed in this state, a space for recording the dealer license number;~~

~~(5) An owner or buyer section, containing space for the owner or buyer's full legal name, mailing address, social security account number, or, if the owner is other than a person, its state or federal employer identification number, telephone number including telephone area code, and owner's birth month;~~

~~(6) A vehicle description section with space for the vehicle identification number, and if the vehicle is a motorcycle, a motor number; the make; model name; model number; year model; number of cylinders; style of body; and spaces for designating two (2) colors, single or upper, and lower; and, if the vehicle is a truck, its gross weight;~~

~~(7) A section with spaces for recording prior registration and title information to include the previous owner's name, the state in which a vehicle was last registered or titled, and the title number, registration number, and year;~~

~~(8) An odometer disclosure section containing all information elements required by applicable federal law, except that, the language of the section shall incorporate by reference the transferor's address, the vehicle description, date of the statement and the transferee's name, address and acknowledgment, which shall appear on the same form, although not necessarily within the same section. Such section shall be imprinted with the warning that knowingly giving false or erroneous information is subject to the penalty of forgery in the second degree;~~

~~(9) A transferor's lien declaration section, containing the necessary means to obtain the following information: I —— warrant that the vehicle described above is not subject to an unterminated lien in the name of a prior owner;~~

~~(10) A tax computation section for both new and used cars, consistent with requirements of the Revenue Cabinet;~~

~~(11) A section for the seller or transferor's certificate of truth and accuracy of the information. The section shall be printed in boldface type and shall read: I —— (typed or printed name) hereby certify under penalty of forgery in the second degree and applicable federal and state law and regulations that the foregoing information upon this form is true and correct to the best of my knowledge and belief. —— (signature);~~

~~(12) This language shall be followed by the words and spaces required for a notarial certificate;~~

~~(13) An owner or transferee's lien declaration section, containing the necessary means to obtain the following information: I, ——, (owner, transferee), have not applied for a loan in connection with the vehicle described above, and do not expect to do so within thirty (30) days of submission of this application to the county clerk;~~

~~(14) A lien information section containing the necessary elements to obtain the following information:~~

  ~~(a) This vehicle shall be subject to lien or liens, not exceeding two (2), in the name of the applicant, owner, or transferee;~~

  ~~(b) Spaces for recording as to a first and second lien, the lienholder's name and mailing address, including zip code; and county in which the financing statement is to be filed; and~~

  ~~(c) A statement as to whether a loan has been or will be applied for in connection with the vehicle, and whether a financing statement is expected to be filed within thirty (30) days of submission of this application to the county clerk;~~

~~(15) A section for an owner's request for issuance of a regular or special or accessible parking plate;~~

~~(16) A section for an owner's request for registration of a vehicle under a special fee classification;~~

~~(17) A section for the owner's statement of application for registration or a certificate of title. The section shall state: I —— (typed or printed name) hereby apply for registration of the vehicle described above, for a license plate of the type indicated, or a certificate of title. If I have requested that the vehicle be registered under a special use classification provided by statute, I certify that the vehicle will be operated consistent with the registration classification I have indicated. I certify under penalty of forgery in the second degree that the information I have supplied is true and correct to the best of my knowledge and belief, followed by a space for the owner's signature. This language and space shall be~~

~~followed by the words and spaces required for a notarial certificate;~~

~~(18) A section for the certified vehicle inspector's certificate of inspection of a vehicle which shall include words and spaces as indicated: I —— (printed or typed name and title) of —— (printed or typed county) —— (telephone area code and telephone number), do hereby certify under penalty of forgery in the second degree that I have personally and physically inspected the vehicle described above, together with this application and its supporting documents, and the vehicle is as described hereon; the documents supporting this application are consistent with the vehicle description, including the vehicle identification numbers appearing upon this application, and that the vehicle identification number displayed upon the vehicle and supporting documents appear to be in order. The odometer reading at the time of my inspection was —— miles/kilometers (circle one). The driver's license number of the owner is ——, state of ——. I hereby certify under penalty of forgery in the second degree that the information I have given is true and correct to the best of my knowledge and belief. —— (signature) —— (date);~~

~~(19) County clerk's section with words and spaces as appropriate, requiring the county clerk to:~~

~~(a) Enter the type, name of the issuer, identifying number and date of issue, of the document supporting the application, together with its document control number (as distinguished from title number) and the taxes and fees to be collected, including the number of months of registration sold, the month and year of expiration, and such decal numbers as may be required to permit audit of fee collections; and~~

~~(b) Words requiring, and spaces for entry of, the name of the county in which the application was received together with the date and time of receipt, and space for the signature of the clerk or deputy, which shall be preceded by the words "I certify under penalty of forgery in the second degree that I have reviewed this application and the documents supporting it; all supporting documents indicated hereon are present and consistent in pertinent part with this application, that I received the application on the date and at the time indicated hereon, and that I collected the fees as indicated." —— (signature of clerk or deputy clerk, date, county);~~

~~(20) A statement that "I certify under penalty of forgery in the second degree that this record was entered with due diligence into the automated system by me at or about —— (time) —— (date) —— (signature) —— (title);"~~

~~(21) Spaces for stamping the date and time of receipt of the application by the Department of Vehicle Regulation and for the signature or prescribed symbol of the receipt clerk and for endorsements by processing clerks;~~

~~(22) A space for endorsement that title issuance was recommended to the Department of Vehicle Regulation —— (date, time) by —— (signature) which shall be preceded by the words "I certify under penalty of forgery in the second degree that due diligence has been exercised in recommending issuance of title No. —— in the name of the applicant for the vehicle described above" —— (signature, date); and~~

~~(23) The application may contain or require any other information deemed appropriate by the Department of Vehicle Regulation in cooperation with the Revenue Cabinet and Departments of Insurance and State Police, and may be organized as efficiency dictates~~].

Section 4. KRS 186A.125 is amended to read as follows:

(1) Application for a first certificate of registration, or title, in the name of an owner shall be made on forms prescribed by the Department of Vehicle Regulation consistent with this chapter, which shall be available from any county clerk.

(2) Application forms shall be completed, except as to required signatures, by legibly printing in ink, or typing all required information.[~~When a signature is required, such signature shall be given attesting under penalty of forgery in the second degree to the truth and accuracy of the information supplied.~~]

(3) The application, when presented to the county clerk, shall contain all required information and be fully executed with all[~~required signatures present, and be accompanied by all~~] required supporting documentation and fees.

(4) The county clerk shall reject any application upon which the information provided is not legibly printed or typed, the required information is not supplied, not accompanied by required supporting documents, not properly executed with [~~required~~]signatures ***when required***, or when the clerk determines that the application is improper or that the applicant is not entitled to registration or title of the vehicle for which registration or title is sought, or in the absence of the required fees.

Section 5. KRS 186A.145 is amended to read as follows:

[~~(1) Upon receiving an application of an owner for a first certificate of registration or title in his name, the county clerk or deputy clerk shall review the form, and each copy thereof, for legibility, completeness, and consistency of information. The clerk shall ensure that all documents required in support of the application accompany the application and that they are consistent in pertinent part with the statements upon the application.~~

~~(2) Upon determining that an application is in proper form, the county clerk or his deputy shall complete those elements of the form reserved to the county clerk, endorse the application in the manner directed upon the form, and then enter designated information from the application into the automated system, in the manner required by administrative regulations of the Department of Vehicle Regulation consistent with this chapter.~~

~~(3) No~~] ***A*** county clerk shall ***not*** process an application for Kentucky title and registration from or to any Kentucky resident who has a delinquent motor vehicle ad valorem property tax account. This provision shall not apply to transactions involving licensed Kentucky motor vehicle dealers.

Section 6. KRS 186A.175 is amended to read as follows:

(1) ***The certificate of title issued by the Department of Vehicle Regulation may be used as the application for in-state transfer of vehicle ownership***[~~Each certificate of title issued by the Department of Vehicle Regulation shall contain:~~

~~(a) The date of its issue;~~

~~(b) The name, Social Security account number or federal employer identification number and current mailing address of the owner, to include zip code;~~

~~(c) The names and addresses of any lienholders, not exceeding two (2);~~

~~(d) The title number;~~

~~(e) A description of the vehicle including the following data: year, make, model name, model number, vehicle identification number, type of body, number of cylinders, color or colors not exceeding one (1) upper and one (1) lower color, and if the vehicle is a truck, its gross weight;~~

~~(f) If last titled in another state, the name of the state and the title number;~~

~~(g) Forms for assignment and warranty of title by the owner, and for assignments and warranty of title by dealers; and~~

~~(h) Any other information the department requires~~].

(2) ***The form of the certificate of title shall be determined by the Department of Vehicle Regulation and*** a certificate of title issued by the department is prima facie evidence of the facts appearing on it.

Section 7. KRS 186A.220 is amended to read as follows:

(1) Except as otherwise provided in this chapter, when any motor vehicle dealer licensed in this state buys or accepts such a vehicle in trade, which has been previously registered or titled for use in this or another state, and which he holds for resale, he shall not be required to obtain a certificate of title for it, but shall, within fifteen (15) days after acquiring such vehicle, notify the county clerk of the assignment of the motor vehicle to his dealership and pay the required transferor fee.

(2) Upon purchasing such a vehicle or accepting it in trade, the dealer shall obtain from his transferor, properly executed, all documents required by KRS 186A.215, to include the odometer disclosure statement thereon, together with a properly assigned certificate of title.

(3) The dealer shall execute his application for assignment upon documents designated by the Department of Vehicle Regulation, to the county clerk of the county in which he maintains his principal place of business. Such clerk shall enter the assignment upon the automated system.

(4) The dealer shall retain the properly assigned certificate of title received from his transferor, and may make any reassignments thereon until the forms for dealer assignment on the certificate of title are exhausted. The Department of Vehicle Regulation may, if it deems it warranted, provide a special document to allow for additional dealer assignments without requiring system generated documents.

(5) When he assigns the vehicle to a purchaser for use, he shall deliver the properly assigned certificate of title, and other documents if appropriate, to such purchaser, who shall make application for registration and a certificate of title thereon. The dealer may, with the consent of the purchaser, deliver the assigned certificate of title, and other appropriate documents of a new or used vehicle, directly to the county clerk, and on behalf of the purchaser, make application for registration and a certificate of title. In so doing, the dealer shall require from the purchaser proof of insurance as mandated by KRS 304.39-080 before delivering possession of the vehicle. Notwithstanding the provisions of KRS 186.020, 186A.065, 186A.095, 186A.215, and 186A.300, if a dealer elects to deliver the title documents to the county clerk and has not received a clear certificate of title from a prior owner, the dealer shall retain the documents in his possession until the certificate of title is obtained.

(6) ***The department may make available, upon proper application from a licensed motor vehicle dealer, electronic means by which the dealer can interface directly with AVIS and the department. If the department grants this access, all fees currently required for the issuance of a certificate of title shall continue to be charged and remitted to the appropriate parties as provided by statute.***

(7) The Department of Vehicle Regulation shall assure that the automated system is capable of accepting instructions from the county clerk that a certificate of title shall not be produced under a dealer registration situation.

Section 8. KRS 186A.530 is amended to read as follows:

(1) The owner of a motor vehicle that meets the definition of a salvage vehicle as set forth in KRS 186A.520(1) and has been issued a salvage certificate of title in Kentucky, or the equivalent thereof by another licensing jurisdiction, and has been rebuilt, may make application for a new certificate of title pursuant to KRS 186.115. The Transportation Cabinet may

promulgate administrative regulations pursuant to KRS Chapter 13A governing the form of application.

(2) Upon receipt of a salvage certificate of title issued pursuant to KRS 186A.520 or subsection (5) of this section, or similar title issued by another state, and proof of passing the inspection required by KRS 186A.115, the cabinet shall issue a new certificate of title with the words "rebuilt vehicle" printed on the face of the title. The brand shall be carried forward and printed in the appropriate section on the face of all titles issued thereafter for that motor vehicle.

(3) If ownership of a motor vehicle has been transferred to an insurance company through payment of damages, the insurance company making the payment of damages shall be deemed the owner of the vehicle.

(4) The owner of a water damaged vehicle shall make application to the cabinet for a salvage certificate of title as provided for in KRS 186A.520. The owner of a vehicle with a brand from another jurisdiction identifying the vehicle as water damaged or other similar designation who is making application for a Kentucky title shall be issued a title with the words "water damaged" printed on the face of the title.

(5) A Kentucky salvage certificate of title may be issued from an out-of-state junking certificate or other ownership document bearing a designation of "junk," "unrebuildable," or other similar classification with the following provisions:

(a) The out-of-state junking certificate of title or other ownership certificate shall be an original, secure document.

(b) The applicant shall submit a minimum of two (2) photographs of the motor vehicle showing the damage to the motor vehicle. The photographs shall be included in the application for a salvage certificate of title.

(c) The applicant shall submit a minimum of two (2)[~~ notarized~~] estimates of damage verifying that the condition of the vehicle which has been issued the junking certificate constitutes less than seventy-five percent (75%) of the retail value of the vehicle, as set forth in a current edition of the National Auto Dealers' Association N.A.D.A. price guide.

(6) (a) When an insurance company makes a claim settlement on a vehicle that has been stolen and recovered, if the vehicle meets the definition of a salvage vehicle as set forth in KRS 186A.520, the company shall apply for a salvage certificate of title as provided for in KRS 186A.520. Upon receipt of this information, the cabinet shall issue the company a certificate of title to replace a salvage certificate of title. The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A regarding the forms and any additional information which insurance companies shall be required to obtain and submit when seeking a certificate of title to replace a salvage certificate of title.

(b) In claim settlements that do not involve transfer of the vehicle to the insurance company, an insurer shall not render payment on a damage claim for a vehicle whose damage meets or exceeds seventy-five percent (75%) of the value of the vehicle, until the insurer has received proof that the owner has surrendered the title or has applied for a salvage certificate of title as set forth in KRS 186A.520. The owner shall apply for a salvage certificate of title within three (3) working days of the agreed settlement.

(c) An insurance company shall not refuse coverage to, and shall not reclassify coverage of, a vehicle that has been issued a rebuilt title pursuant to the provisions of this section.

(7) A motor vehicle owner or a motor vehicle dealer licensed in this state who offers for sale, trade, or transfer a motor vehicle which carries a title brand, as set forth in subsection (2) of this section, shall disclose the nature of the brand to any prospective buyer or transferee, prior to the sale, and according to the following:

(a) Dealer disclosure shall be located on the previous consumer-owner sticker provided for in KRS 190.080. The sticker notification shall appear in a color different from that of the previous consumer-owner sticker and shall be set apart from other information required by KRS 190.080. The sticker wording shall be printed in at least ten (10) point, bold face type, on a background of obviously different color, and shall include the following: "THIS IS A REBUILT VEHICLE." This disclosure information shall not appear on previous consumer-owner stickers for vehicles that do not have a branded title. Dealer disclosure shall also be located on a buyer's notification form to be approved by the Transportation Cabinet. The form shall inform the buyer that the vehicle is a rebuilt vehicle and may include any other information the cabinet deems necessary.

(b) Nondealer disclosure shall be made in accordance with the procedures provided for in KRS 186A.060. The Department of Vehicle Regulation shall ensure that disclosure information appears near the beginning of the application for title and informs the buyer that the vehicle is a rebuilt vehicle.

(8) Failure of a dealer to procure the buyer's acknowledgment signature on the buyer's notification form or failure of any person other than a dealer to procure the buyer's acknowledgment signature on the vehicle transaction record form shall render the sale voidable at the election of the buyer. The election to render the sale voidable shall be limited to forty-five (45) days after issuance of the title. This provision shall not bar any other remedies otherwise available to the purchaser.

(9) The notification provisions of this section shall not apply to motor vehicles more than ten (10) model years old.

(10) The Transportation Cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A, regarding the administration of the title branding procedure within ninety (90) days from July 15, 1994. The administrative regulations may include designation of additional brands which provide significant information to the owner.

Section 9. KRS 186.045 is amended to read as follows:

(1) Whenever a perfected security interest is assigned, the assignor shall immediately give a statement of assignment to the assignee and at the same time deliver another copy of the statement to the debtor. The assignee shall, within thirty (30) days thereafter, present a copy of the statement of assignment to the county clerk in whose office the security interest was noted on the certificate of title. Upon receipt of the assignment, the county clerk shall mark the same as provided in subsection (2) of KRS 355.9-405 and attach it to the ***title***~~[motor vehicle]~~ lien statement. The county clerk shall enter the assignment of the perfected security interest into the automated vehicle information system. For this service the county clerk shall collect a fee pursuant to KRS 64.012.

(2) Whenever a security interest has been discharged, other than by proceedings under KRS 355.9-501 to 355.9-507 or similar proceedings, the secured party shall, within ten (10) days thereafter, deliver a termination statement in the manner required by KRS 355.9-404 to the county clerk of the county in which the ***title***~~[motor vehicle]~~ lien statement was submitted. The secured party shall also deliver a copy of the termination statement to the debtor or the debtor's transferee. For failure to file the termination statement within the allowable time, the secured party shall be subject to the penalty provided in KRS 186.990(1). Within five (5) days after the receipt of such documents, the county clerk shall note the filing in the index, in language prescribed by the cabinet, that the termination statement has been filed. Upon presentation of the owner's title showing such security interest to the county clerk where the termination statement was submitted, and with the copy of the termination statement submitted by the secured party, the clerk shall discharge the security interest by noting on such title that the termination statement has been filed and place the seal of the county clerk thereon. The clerk shall return the owner's title to the owner. The county clerk shall then file the termination statement in the place from which the ***title***~~[motor vehicle]~~ lien statement was removed. Termination statements must be retained in the clerk's files for a period of two (2) years subsequent to the date of filing such statement, at which time they may be destroyed. The fee for these services are included in the provisions of KRS 186A.190.

(3) Upon presentation of the owner's title showing such security interest to the county clerk of a county where the termination statement was not delivered, the county clerk of that county shall access the automated system to determine whether a record of termination of the security interest has been entered into the automated system by the county clerk where the termination statement was delivered by the secured party as provided in KRS 186A.210. If such record of termination has been entered into the automated system, the county clerk of the county where the termination statement was not delivered, shall note the discharge of the security interest on the certificate of title by noting that the termination statement has been delivered, the county where it was delivered, and placing the seal of the county clerk thereon and may rely on the automated system to do so. If such record of termination has not been entered into the automated system, in no case shall the county clerk of the county other than where the termination statement was delivered, make any notation upon the certificate of title that the security interest has been discharged or that a termination statement has been delivered to the county where the ***title***~~[motor vehicle]~~ lien statement was submitted.

(4) Whenever any secured party repossesses a vehicle titled in this state, for which a security interest is in existence at the time of repossession, and disposes of such vehicle pursuant to the provisions of KRS Chapter 355, he must present, within fifteen (15) days after such disposition, an affidavit in form prescribed by the department and a termination statement or proof that such termination statement has been filed. The new owner shall pay all applicable fees for titling and transferring the vehicle to the county clerk. Upon receipt of such documents, the county clerk who issued the lien shall then omit from the title he makes application for any information relating to the security interest under which the vehicle was repossessed or any security interest subordinate thereto. However, any security interest, as shown by such title which is superior to the one under which the vehicle was repossessed, must be shown on the title issued by the clerk unless the prior secured party has discharged such security interest in such clerk's office or proof of termination is submitted in case such prior security interest was discharged in another clerk's office.

(5) Whenever any vehicle brought into this state is required to be titled in this state and such vehicle is then subject to a security interest in another state as shown by the out-of-state documents presented to the clerk, the county clerk is prohibited from processing the application for title on the vehicle unless the owner obtains from the secured party a financing statement or ***title***~~[motor vehicle]~~ lien statement and presents same to the clerk along with the fees required in KRS 186A.190. The clerk shall note the out-of-state security interest on the certificate of title. This provision does not apply to vehicles required to be registered in Kentucky under forced registration provisions under KRS 186.145.

(6) The fees provided for in this section are in addition to any state fee provided for by law.

(7) Any person violating any provision of this section or any person refusing to surrender a certificate of title registration and ownership or transfer certificate upon request of any person entitled thereto, is subject to the penalties provided in subsection (1) of KRS 186.990.

(8) The county clerk is prohibited from noting any security interest on a certificate of title on any vehicle subject to the provisions of KRS Chapter 186A if a certificate of title therefor is presented to him which has all the spaces provided thereon for noting security interests fully exhausted. The owner must see to it that a discharge is noted on the certificate of title for each security interest and then a duplicate title as provided for in KRS 186A.180 must be obtained from the clerk by the owner of the vehicle.

(9) Security interests in vehicles sold to or owned by residents of other states must be perfected in the state of such nonresident and repossession of the vehicle must be taken pursuant to the laws of such state, unless the vehicle is principally operated in Kentucky and is properly titled herein under KRS Chapter 186A and the security interest is authorized to be noted on the certificate of title by the county clerk under KRS Chapter 186A.

Section 10. KRS 186.170 is amended to read as follows:

(1) Except as provided in this subsection and in KRS 186.045, the owner shall have the receipt issued by the cabinet through the county clerk constantly in his possession, and shall display the registration plate conspicuously upon the rear of the motor vehicle, except that the registration plate upon a semitrailer-tractor shall be displayed upon the front of the tractor. The owner's copy, or a reproduced copy thereof, of the registration receipt of every motor vehicle, except motorcycles, licensed under KRS 186.050 shall be kept in the vehicle at all times and shall be available for inspection. Plates shall be kept legible at all times and the rear plate shall be illuminated when being operated during the hours designated in KRS 189.030. No rim, frame, or other covering around the plate shall in any way obscure or cover any lettering or decal on the plate; except that, any owner who objects to the display of a trademark of a private corporation which appears on the registration plate shall be entitled to receive a set of decals from the county clerk in his county of residence to cover the trademark of the private corporation. The owner may apply for the decal by presenting his certificate of registration either at the time of registration renewal or later. The county clerk shall charge a three dollar ($3) clerk's fee for issuing the decal set if it is applied for a time other than at registration renewal. If the cabinet has prescribed that plates shall continue in use, it shall each year, in addition to the registration receipt, select and give to the owner as further evidence of registration some insignia which may conveniently be attached permanently and conspicuously to the motor vehicle during each registration year. It shall be the duty of the owner to attach the insignia in the prescribed manner and no person may operate a motor vehicle unless the insignia is affixed upon it. The cabinet shall have placed on the insignia either figures, letters, writing, marks, or a combination thereof, which indicate that the motor vehicle has been registered and which in conjunction with the records of the cabinet make identity of the registrant readily ascertainable.

(2) The registration year for commercial vehicles, trailers, semitrailers, mobile homes, and recreational vehicles shall be from April 1 to March 31.

(3) At the discretion of the vehicle owner, the title to a motor vehicle may be held in the system and subsequently printed and mailed to the owner at the owners request.

Section 11. KRS 186.190 is amended to read as follows:

(1) When a motor vehicle that has been previously registered changes ownership, the registration plate shall remain upon the motor vehicle as a part of it until the expiration of the registration year.

(2) A person shall not purchase, sell, or trade any motor vehicle without delivering to the county clerk of the county in which the sale or trade is made the current ***hard copy or electronic version of the*** registration receipt issued on the motor vehicle[~~ and the bill of sale~~]. Any unexpired registration shall remain valid upon transfer of the vehicle to the new owner. Except for transactions handled by a motor vehicle dealer licensed pursuant to KRS Chapter 190, the person who is purchasing the vehicle shall present proof of insurance in compliance with KRS 304.39-080 to the county clerk before the clerk transfers the registration on the vehicle. Proof of insurance shall be in the manner prescribed in administrative regulations promulgated by the Department of Insurance pursuant to KRS Chapter 13A.

(3) Upon delivery of the ***motor vehicle*** registration receipt[~~ and the bill of sale~~] to the county clerk of the county in which the sale or trade was made, the seller shall pay to the county clerk a transfer fee of one dollar ($1), which shall be remitted to the Transportation Cabinet. The county clerk shall issue to the purchaser a transfer of registration bearing the same data and information as contained on the original registration receipt, except the change in name and address. The seller shall pay to the county clerk a fee of three dollars ($3) for his services.

(4) When a county clerk issues to a purchaser a transfer of registration in a county other than the one (1) in which the motor vehicle was originally registered, the clerk shall immediately ***forward***[~~mail~~] one (1) copy of the transfer of registration to the clerk of the county of original registration.

(5) If the owner junks or otherwise renders a motor vehicle unfit for future use, he shall deliver the registration plate and registration receipt to the county clerk of the county in which the motor vehicle is junked. The county clerk shall return the plate and ***motor vehicle registration*** receipt to the Transportation Cabinet. The owner shall pay to the county clerk one dollar ($1) for his services.

(6) A licensed motor vehicle dealer shall not be required to pay the transfer fee provided by this section, but shall be required to pay the county clerk's fee provided by this section.

(7) The ***motor vehicle*** registration receipt issued by the clerk under this section shall contain information required by the Department of Vehicle Regulation.

Section 12. KRS 186A.196 is amended to read as follows:

Any lien noted on a Kentucky certificate of title which evidences a security interest perfected after July 1, 1987, but before March 31, 1988, shall be valid whether the security interest was perfected by filing a ***title***[~~motor vehicle~~] lien statement under this chapter or by filing a financing statement under Article 9 of KRS Chapter 355. Such security interests shall be considered perfected as of the date of tender of the ***title***[~~motor vehicle~~] lien statement or financing statement as the case may be. A security interest evidenced by a lien noted on a Kentucky certificate of title, which was perfected by filing a financing statement under Article 9 KRS Chapter 355, remains perfected without the requirement of filing a continuation statement under KRS 355.9-403.

Section 13. KRS 186A.200 is amended to read as follows:

(1) With respect to a vehicle previously titled in the name of its debtor, the secured party shall, within fifteen (15) days after execution of the security agreement, obtain the current certificate of title in the name of the debtor, with no more than one (1) prior lien indicated thereon, and present to the county clerk the certificate of title, which the secured party shall have the right to obtain from the debtor, together with the ***title***[~~motor vehicle~~] lien statement and the required fees in KRS 186A.190 to the county clerk.

(2) For failure to present both the title and ***title***[~~motor vehicle~~] lien statement within the time prescribed by subsection (1) of this section, the secured party shall pay a penalty of two dollars ($2) to the county clerk as a prerequisite for noting the security interest on the title.

(3) The county clerk shall enter the information required by KRS 186A.190(6) into the automated system.

(4) The county clerk shall record upon the title in the appropriate section the information designated by KRS 186A.190(6).

Section 14. The following KRS sections are repealed:

186A.075	Motor vehicle titles -- When to be effective -- Governor may extend effective date by executive order.
186A.135	Issuance of documents processed by system.
186A.140	Issuance of documents in county not equipped with operable automated system.
186A.150	Procedures for receiving application in event of outage of automated system.
186A.155	Duties of county clerk after system becomes operational.
186A.160	County clerk to distribute copies of certificate of registration.
186A.175	Form of certificate of title issued by department.

HB 369, AN ACT relating to the designation of Fleming County as the "Covered Bridge Capital of Kentucky."

WHEREAS, Kentucky is known for its beautiful covered bridges and its efforts to preserve these reminders of the state's pioneer past; and

WHEREAS, Fleming County has more covered bridges in its boundaries than any other Kentucky county; nearly one-fourth of the state's covered bridges are found there, and

WHEREAS, Ringo's Mill Covered Bridge and Hillsboro Covered Bridge that both span the Fox River were designed by one of the earliest builders of covered bridges, Theodore Burr; and

WHEREAS, the Goddard Covered Bridge that spans Sandlick Creek is the oldest covered bridge in the state and the only one in this part of the country designed by world famous bridge builder Ithiel Town; and

WHEREAS, Fleming county has been the home of several covered bridge builders, such as the Bower family that has had three generations of covered bridge builders, and others who have worked to build and restore covered bridges all across the Commonwealth; and

WHEREAS, Fleming County's covered bridges have been listed in the National Register of Historic Places and The World Guide to Covered Bridges, pictured in countless books and magazines, and recognized by the National Society for the Preservation of Covered Bridges; and

WHEREAS, the preeminent authority on covered bridges in the world, Richard Allen, has included Fleming County's covered bridges in his numerous works and called them "mountain marvels"; and

WHEREAS, the people of Fleming County take pride in these wonderful remnants of Americana and make their maintenance and preservation a priority;

NOW, THEREFORE,

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 2 IS CREATED TO READ AS FOLLOWS:

Fleming County is named and designated as the "Covered Bridge Capital of Kentucky."

HB 426, AN ACT relating to vehicles.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 189.010 is amended to read as follows:

As used in this chapter:

(1) "Department" means the Department of Highways.

(2) "Crosswalk" means:

(a) That part of a roadway at an intersection within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or in the absence of curbs, from the edges of the traversable roadway; or

(b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

(3) "Highway" means any public road, street, avenue, alley or boulevard, bridge, viaduct, or trestle and the approaches to them and includes off-street parking facilities offered for public use, whether publicly or privately owned, except for-hire parking facilities listed in KRS 189.700.

(4) "Intersection" means:

(a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two (2) highways which join one another, but do not necessarily continue, at approximately right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come into conflict; or

(b) Where a highway includes two (2) roadways thirty (30) feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. If the intersecting highway also includes two (2) roadways thirty (30) feet or more apart, every crossing of two (2) roadways of the highways shall be regarded as a separate intersection. The junction of a private alley with a public street or highway shall not constitute an intersection.

(5) "Manufactured home" has the same meaning as defined in KRS 186.650.

(6) "Motor truck" means any motor-propelled vehicle designed for carrying freight or merchandise. It shall not include self-propelled vehicles designed primarily for passenger transportation, but equipped with frames, racks, or bodies having a load capacity of not exceeding one thousand (1,000) pounds.

(7) "Operator" means the person in actual physical control of a vehicle.

(8) "Pedestrian" means any person afoot***, or in a wheelchair***.

(9) "Right-of-way" means the right of one (1) vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other.

(10) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. If a highway includes two (2) or more separate roadways, the term "roadway" as used herein shall refer to any roadway separately but not to all such roadways collectively.

(11) "Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

(12) "Semitrailer" means a vehicle designed to be attached to, and having its front end supported by, a motor truck or truck tractor, intended for the carrying of freight or merchandise and having a load capacity of over one thousand (1,000) pounds.

(13) "Truck tractor" means any motor-propelled vehicle designed to draw and to support the front end of a semitrailer. The semitrailer and the truck tractor shall be considered to be one (1) unit.

(14) "Sharp curve" means a curve of not less than thirty (30) degrees.

(15) "State Police" includes any agency for the enforcement of the highway laws established pursuant to law.

(16) "Steep grade" means a grade exceeding seven percent (7%).

(17) "Trailer" means any vehicle designed to be drawn by a motor truck or truck-tractor, but supported wholly upon its own wheels, intended for the carriage of freight or merchandise, and having a load capacity of over one thousand (1,000) pounds.

(18) "Unobstructed highway" means a straight, level, first-class road upon which no other vehicle is passing or attempting to pass, and upon which no other vehicle or pedestrian is approaching in the opposite direction, closer than three hundred (300) yards.

(19) (a) "Vehicle" includes:

1. All agencies for the transportation of persons or property over or upon the public highways of the Commonwealth; and

2. All vehicles passing over or upon the highways.

(b) "Motor vehicle" includes all vehicles, as defined in paragraph (a) of this subsection except:

1. Road rollers;
2. Road graders;
3. Farm tractors;
4. Vehicles on which power shovels are mounted;
5. Construction equipment customarily used only on the site of construction and which is not practical for the transportation of persons or property upon the highways;
6. Vehicles that travel exclusively upon rails;
7. Vehicles propelled by electric power obtained from overhead wires while being operated within any municipality or where the vehicles do not travel more than five (5) miles beyond the city limits of any municipality; and
8. Vehicles propelled by muscular power.

(20) "Reflectance" means the ratio of the amount of total light, expressed in a percentage, which is reflected outward by the product or material to the amount of total light falling on the product or material.

(21) "Sunscreening material" means a product or material, including film, glazing, and perforated sunscreening, which, when applied to the windshield or windows of a motor vehicle, reduces the effects of the sun with respect to light reflectance or transmittance.

(22) "Transmittance" means the ratio of the amount of total light, expressed in a percentage, which is allowed to pass through the product or material, including glazing, to the amount of total light falling on the product or material and the glazing.

(23) "Window" means any device designed for exterior viewing from a motor vehicle, except the windshield, any roof-mounted viewing device, and any viewing device having less than one hundred fifty (150) square inches in area.

(24) "All-terrain vehicle" means any motor vehicle for off-road use, which is fifty (50) inches or less in width; has a dry weight of six hundred (600) pounds or less; travels on three (3) or more low pressure tires; is designed for operator use only with no passengers; and has a seat or saddle designed to be straddled by the operator, and handle bars for steering control.

HB 431, AN ACT relating to traffic regulations.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 189.270 is amended to read as follows:

(1) [~~(a)~~]The department may ***issue***[~~promulgate administrative regulations, pursuant to KRS Chapter 13A, to govern the issuance of~~] permits for the operation of motor vehicles, manufactured homes, recreational vehicles, ***boats, or any other vehicle***[~~vehicles transporting microwave satellite television antennae, and vehicles transporting boats or farm equipment~~], whose gross weight including load, height, width, or length exceeds the limits prescribed by this chapter***, is a nondivisible load,*** or which in other respects fail to comply with the requirements of this chapter. Permits may be issued by the department for stated periods, special purposes, and unusual conditions, and upon terms in the interest of public safety and the preservation of the highways as the department may require.

(2) The department may, at the request of an applicant, issue a single-trip permit regardless of the type of vehicle or equipment being transported that exceeds the weight or dimension limits established by this chapter, except a vehicle shall not exceed sixteen (16) feet in width exclusive of usual and ordinary overhang, one hundred twenty (120) feet in length including a towing vehicle and trailer combination, thirteen (13) feet six (6) inches in height, or one hundred twenty thousand (120,000) pounds. A single-trip permit shall cost sixty dollars ($60) for each overweight or overdimensional permit requested.

(3) The department may, at the request of an applicant, issue an annual permit regardless of the type of vehicle or equipment being transported that exceeds the weight or dimension limits established by this chapter, except a vehicle shall not exceed sixteen (16) feet in width exclusive of usual and ordinary overhang, one hundred twenty (120) feet in length including a towing vehicle and trailer combination, thirteen (13) feet six (6) inches in height, or one hundred twenty thousand (120,000) pounds. Except as provided in subsection (4) of this section, an annual permit for loads less than fourteen (14) feet in width shall cost two hundred fifty dollars ($250). An annual permit for loads exceeding fourteen (14) feet in width shall cost five hundred dollars ($500).

(4) An annual permit to transport farm equipment less than fourteen (14) feet in width shall cost eighty dollars ($80). An annual permit to transport farm equipment that exceeds fourteen (14) feet in width from a dealership to a farm or from a farm to a dealership shall cost one hundred fifty dollars ($150).

(5) Permits issued under this section shall be valid statewide; however, the department may, as a condition of issuing an annual or single-trip permit, limit the overweight or overdimensional vehicle to specified routes, exclude certain highways, or even cancel an applicant's permit if an unreasonable risk of accident or an unreasonable impedance of the flow of traffic would result from the presence of the overweight or overdimensional vehicle. A person who applies for, and accepts, a permit issued under this section is acknowledging that the Kentucky Transportation Cabinet is not guaranteeing safe passage of vehicles by issuing the permit. A person who applies for, and accepts, a permit issued under this section agrees to measure all clearances of highway structures, both laterally and vertically, prior to passage of the person's vehicles along the routes specified in the permit. A person who applies for, and accepts, a permit issued under this section is classified as a bare licensee whose duty is to assume sole risk involved in using Kentucky's highways without warranty of accuracy.

(6) The department shall promulgate administrative regulations under KRS Chapter 13A to establish requirements for escort vehicles, safety markings, and other safety restrictions governing the operation of an overweight or overdimensional vehicle. The department shall provide each applicant for an annual or single-trip permit issued under this section a copy of all restrictions associated with the overweight or overdimensional permit at no charge to the applicant. The department shall be prohibited from raising the permit fee established in subsections (2) and (3) of this section by levying additional fees for an overweight or overdimensional permit through the administrative regulation process

[~~(b) The department shall require an applicant to pay a single trip fee of sixty dollars ($60) for each overweight or overdimensional permit issued except as set forth below:~~

~~1. Twenty dollars ($20) for each single trip manufactured home permit if the manufactured home is fourteen (14) feet wide or less; and~~

~~2. Forty dollars ($40) for each single trip manufactured home permit if the manufactured home exceeds fourteen (14) feet in width.~~

~~(c) The department shall require an applicant to pay a fee as follows for any annual overdimensional permit issued:~~

~~1. Eighty dollars ($80) for each annual permit to transport:~~

~~a. Farm equipment;~~

~~b. Utility equipment transporter including towing vehicle and trailer combination which does not exceed ninety-five (95) feet in length or twelve (12) feet in width;~~

~~c. Boat transporter; or~~

~~d. Microwave antennae transporter permit;~~

~~2. Five hundred dollars ($500) for each annual manufactured home permit if the manufactured home is sixteen (16) feet or less in width;~~

~~3. Eighty dollars ($80) for each annual manufactured home permit if all manufactured homes transported during the year are less than fourteen (14) feet in width; and~~

~~4. Five hundred dollars ($500) for each annual boat permit for units in excess of sixty-five (65) feet in length and sixteen (16) feet in width~~].

(7)[~~(d)~~] The department may require the applicant to give bond, with approved surety, to indemnify the state or counties against damage to highways or bridges resulting from use by the applicant. The operation of[~~ motor~~] vehicles[~~, manufactured homes, and recreational vehicles~~] in accordance with the terms of the permit ***issued under this section*** shall not constitute a violation of this chapter if the operator has the permit, or an authenticated copy of it, in his possession.

[~~(2) Annual boat permits shall be issued for any unit, including towing vehicle and trailer combination which does not exceed ninety-five (95) feet in length or sixteen (16) feet in width exclusive of usual and ordinary overhang. The department may, by administrative regulation, limit annual boat permits for units including towing vehicle and trailer combinations which exceed sixty-five (65) feet in length and sixteen (16) feet in width to manufacturers and dealers, to specified routes or to exclude certain highways from the annual permit in this subsection if an unreasonable risk of accident or an unreasonable impedance of the flow of traffic would result from the presence of the units. Movement of boats in excess of sixty-five (65) feet in length and twelve (12) feet in width shall be preceded by notification to the Department of Vehicle Regulation, Division of Motor Carriers of any trip to be made under the permit. The department may, no later than eighteen (18) hours after the receipt of notice, prohibit the trip if, because of temporary or special conditions, an unreasonable risk of accident or unreasonable impedance of the flow of traffic would be created.~~

~~(3) Any motor carrier transporting equipment used to mold steel which exceeds the dimensional limits for movement over a highway in this state may apply for an annual overdimensional permit pursuant to subsection (1) of this section. The permit shall be limited to a vehicle operating on a round trip basis of not more than twenty-five (25) miles. The material movement shall be limited to the manufacturing facilities of the same corporation. Reporting of these movements shall be on an annual basis, but shall include an estimate of trips which will be made weekly. The cost of the annual permit~~

~~shall be five hundred dollars ($500).~~

~~(4) The department shall, for a fee not to exceed one hundred fifty dollars ($150), issue an annual permit for the operation of a motor vehicle or vehicle described in subsection (1) of this section when the motor vehicle or vehicle exceeds the dimension limits for length or width prescribed by KRS 189.221 or 189.222, if:~~

~~(a) The motor vehicle is engaged in the transporting of farm equipment from the dealership to the farm or from the farm to the dealership; and~~

~~(b) The width of the motor vehicle or vehicle does not exceed sixteen (16) feet, including any part of the body or load.~~

~~(5) Upon the issuance of an annual permit for the operation of a motor vehicle or vehicle described in subsection (4) of this section, the department shall provide each applicant free of charge a publication which contains a description of the administrative regulations that are applicable to the operation of the motor vehicle or vehicle including escort vehicles, safety markings, and other applicable restrictions. The department shall update the publication within thirty (30) days of any change in an administrative regulation that pertains to the operation of a motor vehicle or vehicle described in subsection (4) of this section.~~

~~(6) (a) Annual overlength permits may be issued to any utility pole or pipe transporter under the following conditions:~~

~~1. An annual overlength permit may be issued for a towing vehicle and trailer combination which does not exceed one hundred twenty-five (125) feet in overall length. Restrictions may be placed on routes and the permit use limited if unreasonable risk of accident or unreasonable impedance of traffic flow could be created. An annual permit to transport poles or pipe which are fifty-five (55) feet or less in length shall cost one hundred dollars ($100). An annual permit to transport poles or pipe which are more than fifty-five (55) feet in length shall cost three hundred fifty dollars ($350). The Department of Highways may prescribe the use of escort vehicles for transportation of poles or pipes which exceed fifty-five (55) feet in length, and the permit holder shall notify the Department of Highways of each trip or series of trips to be made that requires an escort. The department may cancel or reroute the trip if an unreasonable risk of accident or impedance of the flow of traffic could be created.~~

~~2. An annual overlength permit may be issued for a straight truck capable of transporting utility poles or pipe on a specially designed pole rack mounted on the body of the truck if the pole or pipe length exceeds forty-five (45) feet. Restrictions may also be placed on routes and the permit use limited if unreasonable risk of accident or unreasonable impedance to traffic flow could be created. The cost of this overlength permit shall be one hundred dollars ($100).~~

~~3. An annual overlength permit may be issued for a straight truck capable of transporting utility poles or pipe on specially designed pole racks mounted on the body of the truck if the pole or pipe length exceeds fifty-five (55) feet, but does not exceed ninety-five (95) feet. The permit shall cost three hundred fifty dollars ($350). The Department of Highways may prescribe the use of escort vehicles, and the permit holder shall notify the Department of Highways of each trip or series of trips made. The department may cancel or reroute the trip if an unreasonable risk of accident or impedance of the flow of traffic could be created.~~

~~4. More than one (1) type of permit authorized in subparagraphs 1. and 2. of this paragraph may be issued for the same vehicle. The maximum cost of the multiple use annual permit shall be three hundred fifty dollars ($350).~~

~~(b) The secretary of transportation shall, by administrative regulation, prescribe additional safety requirements for movements of these vehicles. Administrative regulations promulgated for this subsection and for utility equipment transporters under subsection (1) of this section shall not restrict the ability of a permit holder to respond to an emergency due to an electrical or gas outage.~~

~~(7) Each motor carrier used in transporting prefabricated wood trusses, used in residential and commercial construction, which exceeds the dimensional limits for movement over a highway in this state may apply for an annual overdimensional permit. The Department of Vehicle Regulation shall charge the applicant a fee of five hundred dollars ($500) for each annual permit. A copy of the permit shall be carried at all times in the vehicle and shall be shown to a peace officer upon demand. The department may restrict the use of the permits to specified routes or exclude certain highways from the annual permit in this subsection if an unreasonable risk of accident or impedance of the flow of traffic could result. The department shall promulgate administrative regulations setting forth the safety requirements which shall be met prior to the movement of any vehicle under the provisions of this permit including setting the dimensions at which the transporter shall contact the department for specific, individual authority for the movement under the annual permit.~~]

(8) Any person transporting a parade float which exceeds the dimensional limits on a highway over which it is transported shall be required to obtain a permit as required in subsection ***(2)***[~~(1)~~] of this section. If the float is being used in conjunction with a parade to be held within the boundaries of the Commonwealth, a fee shall not be assessed by the department to issue the permit.

(9) A person shall not operate any~~[motor]~~ vehicle~~[, manufactured home, or recreational vehicle]~~ in violation of the terms of the permit ***issued under this section***.

The Committee Substitute to **HB 431** is as follows:

AN ACT relating to traffic regulations.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 189.270 is amended to read as follows:

(1) ~~[(a)]~~The department may ***issue***~~[promulgate administrative regulations, pursuant to KRS Chapter 13A, to govern the issuance of]~~ permits for the operation of motor vehicles, manufactured homes, recreational vehicles, ***boats, or any other vehicle transporting a nondivisible load***~~[vehicles transporting microwave satellite television antennae, and vehicles transporting boats or farm equipment]~~, whose gross weight including load, height, width, or length exceeds the limits prescribed by this chapter or which in other respects fail to comply with the requirements of this chapter. Permits may be issued by the department for stated periods, special purposes, and unusual conditions, and upon terms in the interest of public safety and the preservation of the highways as the department may require.

(2) Except as provided in subsection (7) of this section, the department may, at the request of an applicant, issue a single-trip permit regardless of the type of vehicle or equipment being transported that exceeds the weight or dimension limits established by this chapter if the load being transported is a nondivisible load. A single-trip permit shall cost sixty dollars ($60) for each overweight or overdimensional permit requested.

(3) Except as provided in subsection (7) of this section, the department may, at the request of an applicant, issue an annual permit regardless of the type of vehicle or equipment being transported that exceeds the weight or dimension limits established by this chapter if the load being transported is a nondivisible load. The vehicle shall not exceed sixteen (16) feet in width exclusive of usual and ordinary overhang, one hundred twenty (120) feet in length including a towing vehicle and trailer combination, thirteen (13) feet six (6) inches in height, or one hundred twenty thousand (120,000) pounds. Except as provided in subsections (4) and (7) of this section, an annual permit for loads less than fourteen (14) feet in width shall cost two hundred fifty dollars ($250). An annual permit for loads exceeding fourteen (14) feet in width shall cost five hundred dollars ($500).

(4) An annual permit to transport farm equipment less than fourteen (14) feet in width shall cost eighty dollars ($80). An annual permit to transport farm equipment that exceeds fourteen (14) feet in width from a dealership to a farm or from a farm to a dealership shall cost one hundred fifty dollars ($150).

(5) Permits issued under this section shall be for nondivisible loads and shall be valid statewide; however, the department may, as a condition of issuing an annual or single-trip permit, limit the overweight or overdimensional vehicle to specified routes, exclude certain highways, or even cancel an applicant's permit if an unreasonable risk of accident or an unreasonable impedance of the flow of traffic would result from the presence of the overweight or overdimensional vehicle. A person who applies for, and accepts, a permit issued under this section is acknowledging that the Kentucky Transportation Cabinet is not guaranteeing safe passage of vehicles by issuing the permit. A person who applies for, and accepts, a permit issued under this section agrees to measure all clearances of highway structures, both laterally and vertically, prior to passage of the person's vehicles along the routes specified in the permit. A person who applies for, and accepts, a permit issued under this section is classified as a bare licensee whose duty is to assume sole risk involved in using Kentucky's highways without warranty of accuracy.

(6) The department shall promulgate administrative regulations under KRS Chapter 13A to establish requirements for escort vehicles, safety markings, and other safety restrictions governing the operation of an overweight or overdimensional vehicle. The department shall provide each applicant for an annual or single-trip permit issued under this section a copy of all restrictions associated with the overweight or overdimensional permit at no charge to the applicant. The department shall be prohibited from raising the permit fee established in subsections (2) and (3) of this section by levying additional fees for an overweight or overdimensional permit through the administrative regulation process.

(7) The cabinet shall not issue an annual permit under this section if the person applying for the permit is eligible for an annual permit issued under KRS 189.2715, 189.2717, or 189.273.

~~[(b) The department shall require an applicant to pay a single trip fee of sixty dollars ($60) for each overweight or overdimensional permit issued except as set forth below:~~

~~1. Twenty dollars ($20) for each single trip manufactured home permit if the manufactured home is fourteen (14) feet wide or less; and~~

~~2. Forty dollars ($40) for each single trip manufactured home permit if the manufactured home exceeds fourteen (14) feet in width.~~

~~(c) The department shall require an applicant to pay a fee as follows for any annual overdimensional permit issued:~~

~~1. Eighty dollars ($80) for each annual permit to transport:~~

~~a. Farm equipment;~~

~~b. Utility equipment transporter including towing vehicle and trailer combination which does not exceed ninety-five (95) feet in length or twelve (12) feet in width;~~

~~c. Boat transporter; or~~

~~d. Microwave antennae transporter permit;~~

~~2. Five hundred dollars ($500) for each annual manufactured home permit if the manufactured home is sixteen (16) feet or less in width;~~

~~3. Eighty dollars ($80) for each annual manufactured home permit if all manufactured homes transported during the year are less than fourteen (14) feet in width; and~~

~~4. Five hundred dollars ($500) for each annual boat permit for units in excess of sixty-five (65) feet in length and sixteen (16) feet in width~~].

(8)[~~(d)~~] The department may require the applicant to give bond, with approved surety, to indemnify the state or counties against damage to highways or bridges resulting from use by the applicant. The operation of[~~ motor~~] vehicles[~~, manufactured homes, and recreational vehicles~~] in accordance with the terms of the permit ***issued under this section*** shall not constitute a violation of this chapter if the operator has the permit, or an authenticated copy of it, in his possession.

[~~(2) Annual boat permits shall be issued for any unit, including towing vehicle and trailer combination which does not exceed ninety-five (95) feet in length or sixteen (16) feet in width exclusive of usual and ordinary overhang. The department may, by administrative regulation, limit annual boat permits for units including towing vehicle and trailer combinations which exceed sixty-five (65) feet in length and sixteen (16) feet in width to manufacturers and dealers, to specified routes or to exclude certain highways from the annual permit in this subsection if an unreasonable risk of accident or an unreasonable impedance of the flow of traffic would result from the presence of the units. Movement of boats in excess of sixty-five (65) feet in length and twelve (12) feet in width shall be preceded by notification to the Department of Vehicle Regulation, Division of Motor Carriers of any trip to be made under the permit. The department may, no later than eighteen (18) hours after the receipt of notice, prohibit the trip if, because of temporary or special conditions, an unreasonable risk of accident or unreasonable impedance of the flow of traffic would be created.~~

~~(3) Any motor carrier transporting equipment used to mold steel which exceeds the dimensional limits for movement over a highway in this state may apply for an annual overdimensional permit pursuant to subsection (1) of this section. The permit shall be limited to a vehicle operating on a round trip basis of not more than twenty-five (25) miles. The material movement shall be limited to the manufacturing facilities of the same corporation. Reporting of these movements shall be on an annual basis, but shall include an estimate of trips which will be made weekly. The cost of the annual permit shall be five hundred dollars ($500).~~

~~(4) The department shall, for a fee not to exceed one hundred fifty dollars ($150), issue an annual permit for the operation of a motor vehicle or vehicle described in subsection (1) of this section when the motor vehicle or vehicle exceeds the dimension limits for length or width prescribed by KRS 189.221 or 189.222, if:~~

~~(a) The motor vehicle is engaged in the transporting of farm equipment from the dealership to the farm or from the farm to the dealership; and~~

~~(b) The width of the motor vehicle or vehicle does not exceed sixteen (16) feet, including any part of the body or load.~~

~~(5) Upon the issuance of an annual permit for the operation of a motor vehicle or vehicle described in subsection (4) of this section, the department shall provide each applicant free of charge a publication which contains a description of the administrative regulations that are applicable to the operation of the motor vehicle or vehicle including escort vehicles, safety markings, and other applicable restrictions. The department shall update the publication within thirty (30) days of any change in an administrative regulation that pertains to the operation of a motor vehicle or vehicle described in subsection (4) of this section.~~

~~(6) (a) Annual overlength permits may be issued to any utility pole or pipe transporter under the following conditions:~~

~~1. An annual overlength permit may be issued for a towing vehicle and trailer combination which does not exceed one hundred twenty-five (125) feet in overall length. Restrictions may be placed on routes and the permit use limited if unreasonable risk of accident or unreasonable impedance of traffic flow could be created. An annual permit to transport poles or pipe which are fifty-five (55) feet or less in length shall cost one hundred dollars ($100). An annual permit to transport poles or pipe which are more than fifty-five (55) feet in length shall cost three hundred fifty dollars ($350). The Department of Highways may prescribe the use of escort vehicles for transportation of poles or pipes which exceed fifty-five (55) feet in length, and the permit holder shall notify the Department of Highways of each trip or series of trips to be~~

~~made that requires an escort. The department may cancel or reroute the trip if an unreasonable risk of accident or impedance of the flow of traffic could be created.~~

~~2. An annual overlength permit may be issued for a straight truck capable of transporting utility poles or pipe on a specially designed pole rack mounted on the body of the truck if the pole or pipe length exceeds forty five (45) feet. Restrictions may also be placed on routes and the permit use limited if unreasonable risk of accident or unreasonable impedance to traffic flow could be created. The cost of this overlength permit shall be one hundred dollars ($100).~~

~~3. An annual overlength permit may be issued for a straight truck capable of transporting utility poles or pipe on specially designed pole racks mounted on the body of the truck if the pole or pipe length exceeds fifty-five (55) feet, but does not exceed ninety five (95) feet. The permit shall cost three hundred fifty dollars ($350). The Department of Highways may prescribe the use of escort vehicles, and the permit holder shall notify the Department of Highways of each trip or series of trips made. The department may cancel or reroute the trip if an unreasonable risk of accident or impedance of the flow of traffic could be created.~~

~~4. More than one (1) type of permit authorized in subparagraphs 1. and 2. of this paragraph may be issued for the same vehicle. The maximum cost of the multiple use annual permit shall be three hundred fifty dollars ($350).~~

~~(b) The secretary of transportation shall, by administrative regulation, prescribe additional safety requirements for movements of these vehicles. Administrative regulations promulgated for this subsection and for utility equipment transporters under subsection (1) of this section shall not restrict the ability of a permit holder to respond to an emergency due to an electrical or gas outage.~~

~~(7) Each motor carrier used in transporting prefabricated wood trusses, used in residential and commercial construction, which exceeds the dimensional limits for movement over a highway in this state may apply for an annual overdimensional permit. The Department of Vehicle Regulation shall charge the applicant a fee of five hundred dollars ($500) for each annual permit. A copy of the permit shall be carried at all times in the vehicle and shall be shown to a peace officer upon demand. The department may restrict the use of the permits to specified routes or exclude certain highways from the annual permit in this subsection if an unreasonable risk of accident or impedance of the flow of traffic could result. The department shall promulgate administrative regulations setting forth the safety requirements which shall be met prior to the movement of any vehicle under the provisions of this permit including setting the dimensions at which the transporter shall contact the department for specific, individual authority for the movement under the annual permit.~~]

(9)[~~(8)~~] Any person transporting a parade float which exceeds the dimensional limits on a highway over which it is transported shall be required to obtain a permit as required in subsection ***(2)***[~~(1)~~] of this section. If the float is being used in conjunction with a parade to be held within the boundaries of the Commonwealth, a fee shall not be assessed by the department to issue the permit.

(10)[~~(9)~~] A person shall not operate any[~~ motor~~] vehicle[~~, manufactured home, or recreational vehicle~~] in violation of the terms of the permit ***issued under this section***.

HJR 53, A JOINT RESOLUTION directing the Transportation Cabinet to name US Highway 23 within the boundaries of Floyd County in honor of Charles A. Gearheart.

WHEREAS, Charles A. Gearheart was born and raised in Goose Creek Hollow in Floyd County; and

WHEREAS, Charles A. Gearheart was one of the founding members of the musical group Goose Creek Symphony; and

WHEREAS, in Charles A. Gearheart's own words: "A Goose Creek song is a musical journey, traversing passages and movements as an orchestra would ... thus the term Symphony"; and

WHEREAS, Charles A. Gearheart has created a distinctive musical style that reflects the influence of his Appalachian roots and his deep love of "mountain music"; and

WHEREAS, Goose Creek Symphony has been recognized as an innovative musical force, experimenting with a free-wheeling, free-spirited blend of folk and country sounds -- an acoustic feel with electronic special effects; and

WHEREAS, playing together for over for twenty-five years, Charles A. Gearheart and the other members of Goose Creek Symphony have developed a loyal national following self-styled as "Gooseheads"; and

WHEREAS, the band's trademark double fiddles, acoustic guitars, high-powered horns, drums, and Charles A. Gearheart's wry vocals led Goose Creek Symphony to appearances on the Ed Sullivan Show as well as sharing top billing at the 1970 Atlanta Pop Festival; and

WHEREAS, Charles A. Gearheart and Goose Creek Symphony helped start the careers of many of today's stars. Opening for Goose Creek were Willie Nelson, Charlie Daniels, and the Marshall Tucker Band; and

WHEREAS, in the 1970's Charles A. Gearheart traded his concert tour schedule and Martin acoustic guitar for a fly rod and fly shop, working as a fly-fishing guide to devote his spare-time energies to raising his children; and

WHEREAS, Charles A. Gearheart has reunited Goose Creek Symphony and has a new CD that is climbing the charts and entitled "The Goose is Loose"; and

WHEREAS, the national following that the group enjoyed twenty-five years ago has only grown in the ensuing years, and Gooseheads are more loyal than ever;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Transportation Cabinet is directed to name US Highway 23 within the boundaries of Floyd County the "Charles A. Gearheart Highway".

Section 2. The Transportation Cabinet shall erect signs naming US Highway 23 in honor of Charles A. Gearheart. The signs shall be erected no later than ninety (90) days following the effective date of this Resolution.

Section 3. A copy of this Resolution shall be sent to Mr. Charles A. Gearheart and Secretary James C. Codell, III, Kentucky Transportation Cabinet.

The Committee Substitute to **HJR 53** is as follows:

A JOINT RESOLUTION directing the Transportation Cabinet to name US Highway 23 within the boundaries of Floyd County in honor of Charles A. Gearheart.

WHEREAS, Charles A. Gearheart was born and raised in Goose Creek Hollow in Floyd County; and

WHEREAS, Charles A. Gearheart was one of the founding members of the musical group Goose Creek Symphony; and

WHEREAS, in Charles A. Gearheart's own words: "A Goose Creek song is a musical journey, traversing passages and movements as an orchestra would ... thus the term Symphony"; and

WHEREAS, Charles A. Gearheart has created a distinctive musical style that reflects the influence of his Appalachian roots and his deep love of "mountain music"; and

WHEREAS, Goose Creek Symphony has been recognized as an innovative musical force, experimenting with a free-wheeling, free-spirited blend of folk and country sounds -- an acoustic feel with electronic special effects; and

WHEREAS, playing together for over for twenty-five years, Charles A. Gearheart and the other members of Goose Creek Symphony have developed a loyal national following self-styled as "Gooseheads"; and

WHEREAS, the band's trademark double fiddles, acoustic guitars, high-powered horns, drums, and Charles A. Gearheart's wry vocals led Goose Creek Symphony to appearances on the Ed Sullivan Show as well as sharing top billing at the 1970 Atlanta Pop Festival; and

WHEREAS, Charles A. Gearheart and Goose Creek Symphony helped start the careers of many of today's stars. Opening for Goose Creek were Willie Nelson, Charlie Daniels, and the Marshall Tucker Band; and

WHEREAS, in the 1970's Charles A. Gearheart traded his concert tour schedule and Martin acoustic guitar for a fly rod and fly shop, working as a fly-fishing guide to devote his spare-time energies to raising his children; and

WHEREAS, Charles A. Gearheart has reunited Goose Creek Symphony and has a new CD that is climbing the charts and entitled "The Goose is Loose"; and

WHEREAS, the national following that the group enjoyed twenty-five years ago has only grown in the ensuing years, and Gooseheads are more loyal than ever;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Transportation Cabinet is directed to name KY 114 in Floyd County the "Charles A. Gearheart Highway".

Section 2. The Transportation Cabinet shall erect signs naming KY 114 in honor of Charles A. Gearheart. The signs shall be erected no later than ninety (90) days following the effective date of this Resolution.

Section 3. A copy of this Resolution shall be sent to Mr. Charles A. Gearheart and Secretary James C. Codell, III, Kentucky Transportation Cabinet.

The Committee Amendment No. 1 Title to **HJR 53** is as follows:

By amending the title to read as follows:

"A JOINT RESOLUTION directing the Transportation Cabinet to name KY 114 in Floyd County in honor of Charles A. Gearheart.".

HJR 58, A JOINT RESOLUTION naming the bridge on KY 40 between Paintsville and Salyersville over State Road Fork, one mile southwest of KY 580, the "Marshall Ealey Bridge".

WHEREAS, Marshall Ealey was born in 1902, and lived all his life in Johnson County; and

WHEREAS, Marshall Ealey was a farmer, grocery store clerk, and member of the Barnetts Creek Baptist Church; and

WHEREAS, Marshall Ealey raised five children with his wife Gladys, and was well regarded as a good man who didn't drink; and

WHEREAS, For seventy-four years Marshall Ealey lived about 100 feet from the old bridge over Barnetts Creek and it became known as the Marshall Ealey Bridge;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Transportation Cabinet is directed to name the bridge on KY 40 between Paintsville and Salyersville over State Road Fork, one mile southwest of KY 580, the "Marshall Ealey Bridge".

Section 2. The Transportation Cabinet shall immediately begin preparing the appropriate highway signs naming the "Marshall Ealey Bridge" to facilitate their erection upon the effective date of this Resolution.

Section 3. A copy of this Resolution shall be transmitted to Herbert Ealey, 4640 Ky. Highway 40 West, Staffordsville, Kentucky 42156.

SB 20, AN ACT relating to instruction permits.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 186.412 is amended to read as follows:

(1) A person ***under the age of twenty-one (21) at the time of application for an instruction permit*** may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed ***the***[~~a~~] valid instruction permit for at least one hundred eighty (180) days. ***A person who is at least twenty-one (21) years of age at the time of application for an instruction permit may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed the valid instruction permit for at least thirty (30) days.*** The person shall apply for an operator's license in the office of the circuit clerk of the county where he lives. The application form shall require the applicant's full legal name and signature, date of birth, Social Security number, sex, present resident address, other information necessary to permit the application to also serve as an application for voter registration, and brief physical description of the applicant. ***If the person is not a United States citizen, the application form shall be accompanied by a photographic copy of the person's I-94 card or I-551 card issued by the United States Department of Immigration Services and, if applicable, a photographic copy of the person's international driving permit. All applications***[~~The application~~] shall state:

(a) If the applicant has previously been licensed as an operator and by what ***nation or*** state; ***and***

(b)[~~If a license is canceled, suspended, revoked, or refused; and~~

~~(c)~~] Other information the cabinet may require by administrative regulation promulgated pursuant to KRS Chapter 13A.

(2) The Transportation Cabinet shall issue a plastic laminated operator's license bearing a color photograph of the applicant. The photograph shall be taken by the circuit clerk so that one (1) exposure will photograph the applicant and the application simultaneously, using the process determined under provisions of KRS 186.413. When taking the photograph, the applicant shall be prohibited from wearing sunglasses or any other attire that obscures any features of the applicant's face as determined by the clerk. The clerk shall require an applicant to remove sunglasses or other obscuring attire before taking the photograph required by this subsection. Any person who refuses to remove sunglasses or other attire prohibited by this section as directed by the clerk shall be prohibited from receiving an operator's license. The plastic laminated operator's license issued by the cabinet shall not contain the applicant's Social Security number. The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A that develop a numbering system that uses an identification system other than Social Security numbers. The license shall also designate by color coding and use the phrase "under (21)" if the licensee is under the age of twenty-one (21); "CDL" if the license is issued pursuant to KRS Chapter 281A; or "under 21 CDL" if the licensee holds a commercial driver's license issued pursuant to KRS Chapter 281A and is under the age of twenty-one (21).

(3) After January 1, 1996, a person may, before the renewal date for his operator's license, request a circuit clerk to issue a new plastic laminated operator's license that does not contain the person's Social Security number. The person shall be charged the fee established by KRS 186.531 for renewing an operator's license if the person requests a license pursuant to this subsection.

(4) Every applicant shall make oath to the circuit clerk as to the truthfulness of the statements contained in the form.

(5) The clerk may, after determining that the applicant has fully complied with the law governing applications, issue a temporary operator's license to be valid for not more than ninety (90) days. The temporary license shall be valid in lieu of the permanent license during the certification period and shall be destroyed upon receipt of the permanent operator's license.

(6) The circuit clerk shall issue a color photo nondriver's identification card to any person who resides in the county who applies in person in the office of the circuit clerk. A nondriver's identification card shall be subject to the provisions of[~~subsection (2) of~~] this section. An application for a nondriver's identification card shall be accompanied by a signed Social Security card and a birth certificate, or other proof of the applicant's date of birth ***provided under subsection (1) of this section. If the person is not a United States citizen, an application for a nondriver's identification card shall be accompanied by a photographic copy of the person's I-94 card or I-551 card issued by the United States Department of Immigration Services***[~~that is satisfactory to the clerk~~]. The application shall require the applicant to provide his most current resident address that may include, but is not limited to, a mailing address, post office box, or an address provided on a voter registration card. If an applicant for a nondriver's identification card is under the age of twenty-one (21), the applicant's most current resident address shall be required unless a current resident address is not available, in which case a mailing address, post office box, or an address provided on a voter registration card may be used. Every applicant for a nondriver's identification card shall make an oath to the circuit clerk as to the truthfulness of the statements contained on the application form. If the applicant is not the legal possessor of the address provided on the application form, the applicant shall swear that he has permission from the legal possessor to use the address for purposes of obtaining the nondriver's identification card. The nondriver's identification card shall designate by color coding and by use of the phrase "under 21" if the applicant is under the age of twenty-one (21).

(7) Military personnel and other licensed drivers temporarily out-of-county may be issued a license without a photograph. The license shall show in the space provided for the photograph the legend "valid without photo and signature." If a citizen of the Commonwealth has been serving in the United States military and has allowed his operator's license to expire, he shall, within ninety (90) days of returning to the Commonwealth, be permitted to renew his license without having to take a written test or road test. A citizen who does not renew his license within ninety (90) days of returning to the Commonwealth shall be required to comply with the provisions of this chapter governing renewal of a license that has expired.

(8) The cabinet shall provide on each license to operate motor vehicles, motorcycles, and mopeds a space for the licensed driver's:

- (a) Blood type;
- (b) Medical insignia if the person provides evidence that a medical identification bracelet noting specific physical ailments or a drug allergy is being worn or other proof as may be required by the cabinet; and
- (c) A statement whereby the owner of the license may certify in the presence of two (2) witnesses his willingness to make an anatomical gift under KRS 311.195.

(9) If the motor vehicle operator denotes a physical ailment or drug allergy on the operator's license, he may apply for and shall receive, for a fee of one dollar ($1) paid to the circuit clerk, a medical insignia decal that may be affixed to the lower left side of the front windshield of a motor vehicle.

(10) An operator's license pursuant to this section shall be designated a Class D license.

(11) A person shall not have more than one (1) license.

Section 2. KRS 186.450 is amended to read as follows:

(1) A person who is at least sixteen (16) years of age may apply for an instruction permit to operate a motor vehicle, motorcycle, or moped in the office of the circuit clerk in the county where the person lives. A person applying for an instruction permit shall be required to comply with the following:

- (a) If the person is under the age of eighteen (18), the instruction permit application shall be signed by the applicant's parent or legal guardian. If the person does not have a living parent or does not have a legal guardian, the instruction permit application shall be signed by a person willing to assume responsibility for the applicant pursuant to KRS 186.590; and
- (b) All applicants for an instruction permit shall comply with the examinations required by KRS 186.480.

(2) If an applicant successfully passes the examinations required by KRS 186.480, the applicant shall be issued an instruction permit upon payment of a six dollar ($6) fee pursuant to KRS 186.531.

(3) An instruction permit shall be valid for one (1) year and may be renewed. A person ***under the age of twenty-one (21) at the time of application for an instruction permit*** shall have ***the***[~~an~~] instruction permit a minimum of one hundred eighty (180) days before applying for an operator's license. ***A person who is at least twenty-one (21) years of age at the time of application for an instruction permit shall have the instruction permit a minimum of thirty (30) days before applying for an operator's license.***

(4) A person shall have the instruction permit in his possession at all times when operating a motor vehicle, motorcycle, or

moped upon the highway. When operating a motor vehicle, an instruction permit holder shall be accompanied by a person with a valid operator's license who is at least twenty-one (21) years of age occupying the seat beside the operator at all times.

(5) A person with an instruction permit who is under the age of eighteen (18) shall not operate a motor vehicle, motorcycle, or moped between the hours of 12 midnight and 6 a.m. unless the person can demonstrate good cause for driving including, but not limited to, emergencies, involvement in school related activities, or involvement in work related activities.

(6) A person under the age of eighteen (18) who accumulates more than six (6) points against his driving privilege may have the driving privilege suspended pursuant to KRS Chapter 186 or probated by the court.

(7) An applicant for relicensing after revocation shall pay the clerk a fee of twenty-five dollars ($25). The twenty-five dollar ($25) fee shall not apply to any person whose license was suspended for failure to meet the conditions described in KRS 186.411 when, within one (1) year of suspension, the driving privileges of such individuals are reinstated and persons reinstated pursuant to KRS 159.051.

The House Committee Substitute to **SB 20** is as follows:

AN ACT relating to instruction permits.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 186.412 is amended to read as follows:

(1) A person ***under the age of twenty-one (21) at the time of application for an instruction permit*** may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed ***the***~~[a]~~ valid instruction permit for at least one hundred eighty (180) days. ***A person who is at least twenty-one (21) years of age at the time of application for an instruction permit may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed the valid instruction permit for at least thirty (30) days.*** The person shall apply for an operator's license in the office of the circuit clerk of the county where he lives. The application form shall require the applicant's full legal name and signature, date of birth, Social Security number, sex, present resident address, other information necessary to permit the application to also serve as an application for voter registration, and brief physical description of the applicant. ***If the person is not a United States citizen, the application form shall be accompanied by a photographic copy of the person's I-94 card, I-551 card, or I-766 card issued by the United States Department of Immigration Services and, if applicable, a photographic copy of the person's international driving permit. All applications***~~[The application]~~ shall state:

(a) If the applicant has previously been licensed as an operator and by what ***nation or*** state; ***and***

(b)~~[If a license is canceled, suspended, revoked, or refused; and~~

~~(c)]~~ Other information the cabinet may require by administrative regulation promulgated pursuant to KRS Chapter 13A.

(2) The Transportation Cabinet shall issue a plastic laminated operator's license bearing a color photograph of the applicant. The photograph shall be taken by the circuit clerk so that one (1) exposure will photograph the applicant and the application simultaneously, using the process determined under provisions of KRS 186.413. When taking the photograph, the applicant shall be prohibited from wearing sunglasses or any other attire that obscures any features of the applicant's face as determined by the clerk. The clerk shall require an applicant to remove sunglasses or other obscuring attire before taking the photograph required by this subsection. Any person who refuses to remove sunglasses or other attire prohibited by this section as directed by the clerk shall be prohibited from receiving an operator's license. The plastic laminated operator's license issued by the cabinet shall not contain the applicant's Social Security number. The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A that develop a numbering system that uses an identification system other than Social Security numbers. The license shall also designate by color coding and use the phrase "under 21" if the licensee is under the age of twenty-one (21); "CDL" if the license is issued pursuant to KRS Chapter 281A; or "under 21 CDL" if the licensee holds a commercial driver's license issued pursuant to KRS Chapter 281A and is under the age of twenty-one (21).

(3) After January 1, 1996, a person may, before the renewal date for his operator's license, request a circuit clerk to issue a new plastic laminated operator's license that does not contain the person's Social Security number. The person shall be charged the fee established by KRS 186.531 for renewing an operator's license if the person requests a license pursuant to this subsection.

(4) Every applicant shall make oath to the circuit clerk as to the truthfulness of the statements contained in the form.

(5) The clerk may, after determining that the applicant has fully complied with the law governing applications, issue a temporary operator's license to be valid for not more than ninety (90) days. The temporary license shall be valid in lieu of the permanent license during the certification period and shall be destroyed upon receipt of the permanent operator's

license.

(6) The circuit clerk shall issue a color photo nondriver's identification card to any person who resides in the county who applies in person in the office of the circuit clerk. A nondriver's identification card shall be subject to the provisions of[~~subsection (2) of~~] this section. An application for a nondriver's identification card shall be accompanied by a signed Social Security card and a birth certificate, or other proof of the applicant's date of birth ***provided under subsection (1) of this section. If the person is not a United States citizen, an application for a nondriver's identification card shall be accompanied by a photographic copy of the person's I-94 card, I-551 card, or I-766 card issued by the United States Department of Immigration Services***[~~that is satisfactory to the clerk~~]. The application shall require the applicant to provide his most current resident address that may include, but is not limited to, a mailing address, post office box, or an address provided on a voter registration card. If an applicant for a nondriver's identification card is under the age of twenty-one (21), the applicant's most current resident address shall be required unless a current resident address is not available, in which case a mailing address, post office box, or an address provided on a voter registration card may be used. Every applicant for a nondriver's identification card shall make an oath to the circuit clerk as to the truthfulness of the statements contained on the application form. If the applicant is not the legal possessor of the address provided on the application form, the applicant shall swear that he has permission from the legal possessor to use the address for purposes of obtaining the nondriver's identification card. The nondriver's identification card shall designate by color coding and by use of the phrase "under 21" if the applicant is under the age of twenty-one (21).

(7) Military personnel and other licensed drivers temporarily out-of-county may be issued a license without a photograph. The license shall show in the space provided for the photograph the legend "valid without photo and signature." If a citizen of the Commonwealth has been serving in the United States military and has allowed his operator's license to expire, he shall, within ninety (90) days of returning to the Commonwealth, be permitted to renew his license without having to take a written test or road test. A citizen who does not renew his license within ninety (90) days of returning to the Commonwealth shall be required to comply with the provisions of this chapter governing renewal of a license that has expired. ***If a citizen of the Commonwealth has been issued an "under 21" or "under 21 CDL" operator's license and the person is unable to renew the license on the date of his twenty-first birthday, the "under 21" or "under 21 CDL" operator's license shall be valid for ninety (90) days beyond the date of the person's twenty-first birthday.***

(8) The cabinet shall provide on each license to operate motor vehicles, motorcycles, and mopeds a space for the licensed driver's:

(a) Blood type;

(b) Medical insignia if the person provides evidence that a medical identification bracelet noting specific physical ailments or a drug allergy is being worn or other proof as may be required by the cabinet; and

(c) A statement whereby the owner of the license may certify in the presence of two (2) witnesses his willingness to make an anatomical gift under KRS 311.195.

(9) If the motor vehicle operator denotes a physical ailment or drug allergy on the operator's license, he may apply for and shall receive, for a fee of one dollar ($1) paid to the circuit clerk, a medical insignia decal that may be affixed to the lower left side of the front windshield of a motor vehicle.

(10) An operator's license pursuant to this section shall be designated a Class D license.

(11) A person shall not have more than one (1) license.

Section 2. KRS 186.450 is amended to read as follows:

(1) A person who is at least sixteen (16) years of age may apply for an instruction permit to operate a motor vehicle, motorcycle, or moped in the office of the circuit clerk in the county where the person lives. A person applying for an instruction permit shall be required to comply with the following:

(a) If the person is under the age of eighteen (18), the instruction permit application shall be signed by the applicant's parent or legal guardian. If the person does not have a living parent or does not have a legal guardian, the instruction permit application shall be signed by a person willing to assume responsibility for the applicant pursuant to KRS 186.590; and

(b) All applicants for an instruction permit shall comply with the examinations required by KRS 186.480.

(2) If an applicant successfully passes the examinations required by KRS 186.480, the applicant shall be issued an instruction permit upon payment of a six dollar ($6) fee pursuant to KRS 186.531.

(3) An instruction permit shall be valid for one (1) year and may be renewed. A person ***under the age of twenty-one (21) at the time of application for an instruction permit*** shall have ***the***[~~an~~] instruction permit a minimum of one hundred eighty (180) days before applying for an operator's license. ***A person who is at least twenty-one (21) years of age at the time of application for an instruction permit shall have the instruction permit a minimum of thirty (30) days before applying for an operator's license.***

(4) A person shall have the instruction permit in his possession at all times when operating a motor vehicle, motorcycle, or moped upon the highway. When operating a motor vehicle, an instruction permit holder shall be accompanied by a

person with a valid operator's license who is at least twenty-one (21) years of age occupying the seat beside the operator at all times.

(5) A person with an instruction permit who is under the age of eighteen (18) shall not operate a motor vehicle, motorcycle, or moped between the hours of 12 midnight and 6 a.m. unless the person can demonstrate good cause for driving including, but not limited to, emergencies, involvement in school related activities, or involvement in work related activities.

(6) A person under the age of eighteen (18) who accumulates more than six (6) points against his driving privilege may have the driving privilege suspended pursuant to KRS Chapter 186 or probated by the court.

(7) An applicant for relicensing after revocation shall pay the clerk a fee of twenty-five dollars ($25). The twenty-five dollar ($25) fee shall not apply to any person whose license was suspended for failure to meet the conditions described in KRS 186.411 when, within one (1) year of suspension, the driving privileges of such individuals are reinstated and persons reinstated pursuant to KRS 159.051.

Section 3. Whereas, the six month waiting period required for an instruction permit poses an undue hardship on individuals over the age of 21, especially when attempting to obtain employment, an emergency is declared to exist, and this Act shall become effective upon its passage and approval by the Governor, or upon its otherwise becoming a law.

The Committee Amendment No. 1 Title to **SB 20** is as follows:

On page 1, by amending the title to read as follows:

"AN ACT relating to instruction permits and declaring an emergency."

The Committee on Banking and Insurance reported **HB 338, HB 415**, with Committee Amendment attached thereto, **HB 448, HB 475, HB 514**, with Committee Substitute attached thereto, and **HB 516**, with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 338, AN ACT relating to insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.17A-300 is amended to read as follows:

(1) A provider-sponsored integrated health delivery network may be created by health care providers for the purpose of providing health care services.

(2) No person shall in this Commonwealth be, act as, or hold itself out as a provider-sponsored integrated health delivery network unless it holds a certificate of filing from the commissioner. Each provider-sponsored integrated health delivery network that seeks to offer services shall first be certified by the department.

(3) Notwithstanding subsection (2) of this section, a provider-sponsored integrated health delivery network which holds a certificate of filing from the Kentucky Health Policy Board as of July 15, 1996, shall have one (1) year from July 15, 1996, to comply with the provisions of this subtitle.

(4) To qualify as a provider-sponsored integrated health delivery network, an applicant shall submit information acceptable to the department to satisfactorily demonstrate that the provider-sponsored integrated health delivery network:

(a) Is licensed and in good standing with the licensure boards for participating providers;

(b) Has demonstrated the capacity to administer the health plans it is offering;

(c) Has the ability, experience, and structure to arrange for the appropriate level and type of health care services;

(d) Has the ability, policies, and procedures to conduct utilization management activities;

(e) Has the ability to achieve, monitor, and evaluate the quality and cost effectiveness of care provided by its provider network;

(f) Is financially solvent;

(g) Has the ability to assure enrollees adequate access to providers, including geographic availability and adequate numbers and types;

(h) Has the ability and procedures to monitor access to its provider network;

(i) Has a satisfactory grievance procedure and the ability to respond to enrollees' inquiries and complaints;

(j) Does not limit the participation of any health care provider in its provider network in another provider network;

(k) Has the ability and policies that allow patients to receive care in the most appropriate, least restrictive setting;

(l) Does not discriminate in enrolling members;

(m) Participates in coordination of benefits;

(n) Uses standardized electronic claims and billing processes and formats;

(o) Discloses to the cooperative reimbursement arrangements with providers; and

(p) Assures that all services covered by the provider-sponsored integrated health delivery network are available to all persons enrolled in the plan within fifty (50) miles of each person's place of residence, to the extent those services are available within that area, and assures that all services not available therein shall be offered at sites as proximate to the enrollee as possible.

(5) Fees for the following services shall be paid to the commissioner by every provider-sponsored integrated health delivery network, and the fees shall be the same as those for insurers as specified in Subtitle 4 of this chapter:

(a) For filing an application for a certificate of filing or amendment thereto;

(b) For filing an annual statement; and

(c) For other services deemed necessary by the commissioner.

(6) Provider-sponsored integrated health delivery networks shall be subject to the provisions of this subtitle, and to the following provisions of this chapter, to the extent applicable and not in conflict with the expressed provisions of this subtitle:

(a) ***Subtitle 1 -- Scope of Code;***

(b) Subtitle 2 -- Insurance Commissioner;

(c) Subtitle 3 -- Authorization of Insurers and General Requirements;

(d) Subtitle 4 -- Fees and Taxes;

(e) Subtitle 5 -- Kinds of Insurance--Limits of Risk--Reinsurance;

(f) Subtitle 6 -- Assets and Liabilities;

(g) Subtitle 7 -- Investments;

(h) Subtitle 8 -- Administration of Deposits;

(i)[~~(b)~~] Subtitle 12 -- Trade Practices and Frauds;[~~ and~~]

(j) Subtitle 14 -- KRS 304.14-500 to 304.14-560;

(k) Subtitle 25 -- Continuity of Management;

(l)[~~(c)~~] Subtitle 33 -- Insurers Rehabilitation and Liquidation***;***

(m) Subtitle 37 -- Insurance Holding Company Systems; and

(n) Subtitle 99 -- Penalties.

Section 2. KRS 304.17A-310 is amended to read as follows:

To qualify as a provider-sponsored integrated health delivery network, the network shall meet the following financial solvency requirements:

(1) Maintenance of a fidelity bond or fidelity insurance in an amount not less than two hundred fifty thousand dollars ($250,000) on employees and officers, directors, and partners who receive, collect, disburse, or invest funds of the provider-sponsored network;

(2) (a) The provider-sponsored network shall have an initial net worth requirement of[~~ or surety bond for~~] one million five hundred thousand dollars ($1,500,000) and shall thereafter maintain the minimum net worth required under paragraph (b) of this subsection.

(b) Every provider-sponsored network shall maintain a minimum net worth equal to the greater of:

1. One million dollars ($1,000,000);

2. Two percent (2%) of annual premium revenues as reported on the most recent annual financial statement filed with the commissioner on the first one hundred fifty million dollars ($150,000,000) of premiums and one percent (1%) of annual premiums on the premiums in excess of one hundred fifty million dollars ($150,000,000);

3. An amount equal to the sum of three (3) months' uncovered health care expenditures as reported on the most recent financial statement filed with the commissioner of insurance; or

4. An amount equal to the sum of eight percent (8%) of annual health care expenditures except those paid on a capitated basis or managed hospital payment basis and four percent (4%) of annual hospital expenditures paid on a managed hospital payment basis as reported on the most recent financial statement filed with the commissioner.

(c) In determining net worth, no debt shall be considered fully subordinated unless the subordination clause is in a form acceptable to the commissioner. Any interest obligation relating to the repayment of any subordinated debt shall be similarly subordinated.

1. The interest expenses relating to the repayment of any fully subordinated debt shall be considered covered expenses.

2. Any debt incurred by a note meeting the requirements of this section, and otherwise acceptable to the commissioner, shall not be considered a liability and shall be recorded as equity.

(3) (a) Unless otherwise provided below, each provider-sponsored network shall deposit with the commissioner or, at the discretion of the commissioner, with any organization or trustee acceptable to the commissioner through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures that are acceptable to the commissioner which at all times shall have a value of not less than three hundred thousand dollars ($300,000).

(b) The deposit shall be an admitted asset of the provider-sponsored network in the determination of net worth.

(c) All income from deposits shall be an asset of the provider-sponsored network. A provider-sponsored network that has made a securities deposit may withdraw that deposit or any part thereof after making a substitute deposit of cash, securities, or any combination of these or other measures of equal amount and value. Any securities shall be approved by the commissioner before being deposited or substituted.

(d) The deposit shall be used to protect the interests of the provider-sponsored network's enrollees and to assure continuation of health care services to enrollees of a provider-sponsored network which is in rehabilitation or conservation. The commissioner may use the deposit for administrative costs directly attributable to a receivership or liquidation. If the provider-sponsored network is placed in receivership or liquidation, the deposit shall be an asset subject to the provisions of Subtitle 33 of this chapter.

(4) Every provider-sponsored network shall, when determining liabilities, include an amount estimated in the aggregate to provide for any unearned premium and for the payment of all claims for health care expenditures which have been incurred, whether reported or unreported, which are unpaid and for which the provider-sponsored network is or may be liable, and to provide for the expense of adjustment or settlement of such claims.

(5) (a) Every contract between a provider-sponsored network and a participating provider of health care services shall be in writing and shall set forth that in the event the provider-sponsored network fails to pay for health care services as set forth in the contract, the enrollee shall not be liable to the provider for any sums owed by the provider-sponsored network.

(b) If the participating provider contract has not been reduced to writing as required by this subsection or if the contract fails to contain the required prohibition, the participating provider shall not collect or attempt to collect from the enrollee sums owed by the provider-sponsored network.

(6) Each provider-sponsored network shall have a plan for handling insolvency which guarantees the continuation of benefits for the duration of the contract period for which premiums have been paid and continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge or expiration of benefits.

(7) If at any time uncovered expenditures exceed ten percent (10%) of total health care expenditures, a provider-sponsored network shall place an uncovered expenditures insolvency deposit with the commissioner or with any organization or trustee acceptable to the commissioner through which a custodial or controlled account is maintained, in cash or securities that are acceptable to the commissioner. This deposit shall at all times have a fair market value in an amount of one hundred twenty percent (120%) of the provider-sponsored network's outstanding liability for uncovered expenditures for enrollees, including incurred but not reported claims, and shall be calculated as of the first day of the month and maintained for the remainder of the month. The provider-sponsored network shall file a report within forty-five (45) days of the end of the calendar quarter with information sufficient to demonstrate compliance with this subsection. The provisions of subsection (6) of this section shall apply to the deposit required in this subsection.

Section 3. KRS 304.38-200 is amended to read as follows:

Health maintenance organizations shall be subject to the provisions of this subtitle, and to the following provisions of this chapter, to the extent applicable and not in conflict with the expressed provisions of this subtitle:

(1) Subtitle 1 -- Scope -- General Definitions and Provisions;

(2) Subtitle 2 -- Insurance Commissioner;

(3) Subtitle 3 -- Authorization of Insurers and General Requirements;

(4) Subtitle 4 -- Fees and Taxes;

(5) Subtitle 5 -- Kinds of Insurance -- Limits of Risk -- Reinsurance;

(6) ***Subtitle 6 -- Assets and Liabilities;***

(7) Subtitle 7 -- Investments;

(8) Subtitle 8 -- Administration of Deposits;

(9)[~~(7)~~] Subtitle 12 -- Trade Practices and Frauds;
(10)[~~(8)~~] Subtitle 14 -- KRS 304.14-500 to 304.14-560;
(11)[~~(9)~~] Subtitle 17A -- Health Benefit Plans;
(12)[~~(10)~~] Subtitle 18 -- KRS 304.18-050;
(13)[~~(11)~~] Subtitle 25 -- Continuity of Management;
(14)[~~(12)~~] Subtitle 33 -- Insurers Rehabilitation and Liquidation;
(15)[~~(13)~~] Subtitle 37 -- Insurance Holding Company Systems; and
(16)[~~(14)~~] Subtitle 99 -- Penalties.

The provisions of KRS 304.18-050 are hereby declared not to be in conflict with the expressed provisions of this subtitle.

HB 415, AN ACT relating to insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.36-020 is amended to read as follows:

The purpose of this subtitle is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to ***the extent provided in this subtitle to minimize***[~~avoid~~] financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide ***a means of funding***[~~an association to assess~~] the cost of such protection among insurers.

Section 2. KRS 304.36-030 is amended to read as follows:

(1) This subtitle shall apply to all kinds of direct insurance, except***:***

(a) Life, annuity, health, or disability;

(b) Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks;

(c) Credit insurance, vendors' single interest insurance, or collateral protection insurance or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction;

(d) Insurance of warranties or service contracts, including insurance that provides for the repair, replacement, or service of goods or property, indemnification for repair, replacement, or service for the operational or structural failure of the goods or property due to a defect in materials, workmanship, or normal wear and tear, or that provides reimbursement for the liability incurred by the issuer of agreements or service contracts that provide these benefits;

(e) Title insurance;

(f) Ocean marine insurance;

(g) Any transaction or combination of transactions between a person, including affiliates of the person, and an insurer, including affiliates of the insurer, that involves the transfer of investment or credit risk and that is unaccompanied by transfer of insurance risk; or

(h) Any insurance provided, written, reinsured, or guaranteed by any government or governmental agencies[~~life, health, title, credit, mortgage guaranty, and ocean marine insurance~~].

(2) Notwithstanding subsection (1) of this section, this subtitle shall apply to health insurance where such insurance is written by a member of the Kentucky Insurance Guaranty Association.

Section 3. KRS 304.36-040 is amended to read as follows:

This subtitle shall be[~~ liberally~~] construed to effect the purpose under KRS 304.36-020 which shall constitute an aid and guide to interpretation.

Section 4. KRS 304.36-050 is amended to read as follows:

As used in this subtitle, unless the context otherwise requires:

(1) ***"Affiliate" means a person who directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year immediately preceding the date that the insurer becomes an insolvent insurer.***

(2) "Association" means the Kentucky Insurance Guaranty Association created under KRS 304.36-060.

(3) "Claimant" means any insured making a first-party claim or any person instituting a liability claim, provided that no person who is an affiliate of the insolvent insurer may be a claimant.

(4)[~~(2)~~] "Commissioner" means the commissioner of insurance of Kentucky.

(5) "Control" means the possession, direct or indirect, of power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a loan contract or a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of any other person. This presumption may be rebutted by a showing that control does not exist in fact.

(6) (a)[~~(3)~~] "Covered claim" means an unpaid claim, including one for unearned premiums, ***submitted by a claimant,*** which arises out of and is within the coverage ***and is subject to the applicable limits*** of an insurance policy to which this subtitle applies issued by an insurer, if ***the***[~~such~~] insurer becomes an insolvent insurer after June 16, 1972, and***:***

1.[~~(a)~~] The claimant or insured is a resident of this state at the time of the insured event***, provided that for entities other than an individual, the residence of a claimant, insured, or policyholder is the state in which its principal place of business is located at the time of the insured event***; or

2.[~~(b)~~] The ***claim is a first-party claim for damage to property with a permanent location***[~~property from which the claim arises is permanently located~~] in this state.

(b) "Covered claim" shall not include ***the following:***

1. Any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise***;***

2. Any amount sought as a return of premium under any retrospective rating plan or dividends plan;

3. Legal expenses for policyholders who were not Kentucky residents on the date of the insured event;

4. Legal expenses for policyholders who were Kentucky residents at the time of the insured event if the legal expenses exceed the association's statutory cap;

5. Any first-party claim by an insured whose net worth exceeds twenty-five million dollars ($25,000,000) on December 31 of the year prior to the year in which the insurer becomes an insolvent insurer, provided that an insurer's net worth on that date shall be deemed to include the aggregate net worth of the insured and all of its subsidiaries as calculated on a consolidated basis;

6. Any first-party claim by an insured that is an affiliate of an insolvent insurer; or

7. Any amount awarded as punitive or exemplary damages.

(7)[~~(4)~~] "Insolvent insurer" means***:***

(a) An insurer licensed to transact insurance in this state either at the time the policy was issued or when the insured event occurred***;***[~~, and~~]

(b) Against whom a final order of liquidation, with a finding of insolvency, has been entered by a court of competent jurisdiction in the company's state of domicile after June 16, 1972***;***[~~,~~] and[~~,~~]

(c) With respect to which no order, decree, or finding relating to the solvency of the insurer, whether preliminary or temporary in nature or otherwise has been issued by a court of competent jurisdiction or by any insurance commissioner, insurance department or similar official or body before June 16, 1972, or which was in fact insolvent before June 16, 1972, and ***the***[~~such~~] de facto insolvency was known by the chief insurance regulatory official of the state of its domicile.

(8)[~~(5)~~] "Member insurer" means***:***

(a) Any person who[~~ (a)~~] writes any kind of insurance to which this subtitle applies under KRS 304.36-030, including the exchange of reciprocal or inter-insurance contracts***;***[~~,~~] and

(b) ***Any person who*** is licensed to transact insurance in this state. ***For purposes of determining a withdrawing member's assessment liability, an insurer shall cease to be a member insurer effective on the day following the termination or expiration of his license to transact the kinds of insurance to which this subtitle applies. However, the insurer shall remain liable as a member insurer for any and all obligations, including obligations for assessments levied prior to the termination or expiration of the insurer's license and assessments levied after the termination or expiration, that relate to any insurer that became an insolvent insurer prior to the termination or expiration of the insurer's license.***

(9)[~~(6)~~] "Net direct written premiums" means direct gross premiums written, or in the case of an insurer organized under KRS Chapter 299, assessments, membership fees and policy fees levied and collected in this state, less returns thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(10) "Ocean marine insurance" includes any form of insurance, regardless of name, label, or marketing designation of

the insurance policy, that insures against maritime perils or risks and other related perils or risks, that are usually insured against by traditional marine insurance such as hull and machinery, marine builders risk, and marine protection and indemnity. These perils and risks insured against include without limitation loss, damage, or expense or legal liability of the insured for loss, damage, or expense arising out of or incident to ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft, or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, or death or for loss or damage to the property of the insured or another person. "Ocean marine insurance" includes that coverage written in accordance with the following:

(a) The Jones Act (46 U.S.C. sec. 688);

(b) The Longshore and Harbor Workers' Compensation Act D(33 U.S.C. sec. 901 et seq.); or

(c) Any other similar federal statutory enactment, or any endorsement or policy affording protection and indemnity coverage.

(11) "Insured event," in an occurrence policy and claims-made policy, means the act that gave rise to the claim.

[~~(7) "Person" means any individual, corporation, partnership, association or voluntary organization.~~]

Section 5. KRS 304.36-080 is amended to read as follows:

(1) The association shall:

(a) Be obligated to the extent of the covered claims existing prior to the ***order of liquidation***[~~determination of insolvency~~] and arising within thirty (30) days after the ***order of liquidation***[~~determination of insolvency~~], or before the policy expiration date if less than thirty (30) days after the ***order of liquidation***[~~determination~~], or before the insured replaces the policy or on request effects cancellation, if he does so within thirty (30) days of the ***order of liquidation***[~~determination~~]. ***The obligation shall be satisfied by paying to the claimant an amount as follows:***

1. The full amount of a covered claim for benefits arising from a workers' compensation insurance policy purchased to satisfy the requirements of KRS 342.340;

2. An amount not exceeding ten thousand dollars ($10,000) per policy for a covered claim for the return of unearned premium; or

3. An amount not exceeding three hundred thousand dollars ($300,000) per claimant for all other covered claims.

(b) Not be obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises. Notwithstanding any other provisions of this subtitle, a covered claim shall not include a claim filed with the association after the earlier of twelve (12) months after the date of the order of liquidation, or the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer and shall not include any claim filed with the association or a liquidator for protection afforded under the insured's policy for incurred but not reported losses. Any obligation of the association to defend an insured shall cease upon the association's payment or tender of an amount equal to the lesser of the association's covered claim obligation limit or the applicable policy limit. Notwithstanding any other provisions of this subtitle, except in the case of a claim for benefits under workers' compensation coverage, any obligation of the association to any and all persons shall cease when ten million dollars ($10,000,000) shall have been paid in the aggregate by the association and any one (1) or more associations similar to the association of any other state or states or any property/casualty security fund that obtains contributions from insurers on a pre-insolvency basis to or on behalf of any insured and its affiliates on covered claims or allowed claims arising under the policy or policies of any one (1) insolvent insurer. For purposes of this section, the term "affiliate" shall mean a person who directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with another person. If the claimant has a covered claim or allowed claim against the association or any associations similar to the association or any property and casualty insurance security fund of another states, under the policy or policies of any one (1) insolvent insurer, the association may establish a plan to allocate amounts payable by the association in a manner as the association in its discretion deems equitable[~~Except in the case of a policy of workers' compensation insurance purchased to satisfy the requirements of KRS 342.340, such obligation shall include only that amount of each covered claim which is less than one hundred thousand dollars ($100,000). In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the face amount of the policy from which the claim arises~~];

(c)[~~(b)~~]Be deemed the insurer to the extent of its obligation on the covered claims and to ***that***[~~such~~] extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent***, including but not limited to, the right to pursue and retain salvage and subrogation recoverable on paid covered claim***

obligations;

(d)[~~(c)~~]Assess insurers amounts necessary to pay the obligations of the association under paragraph (a) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, and the cost of examinations under KRS 304.36-130 and other expenses authorized by this subtitle. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment. Each member insurer shall be notified of the assessment not later than thirty (30) days before it is due. No member insurer may be assessed in any year an amount greater than one percent (1%) of that member insurer's net direct written premiums for the calendar year preceding the assessment. If the maximum assessment, together with the other assets of the association, does not provide in any one (1) year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association shall pay claims in any order which it may deem reasonable including the payment of claims as such are received from the claimants or in groups or categories of claims. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance; provided, however, that during the period of deferment no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when such payment will not reduce capital and surplus below required minimums. Such payments shall be refunded to those companies receiving larger assessments by virtue of such deferment, or at the election of any such company, credited against future assessments. Each member insurer serving as a servicing facility may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by such member insurer;

(e)[~~(d)~~]Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims;

(f)[~~(e)~~] Notify such persons as the commissioner directs under KRS 304.36-100(2)(a);

(g)[~~(f)~~] Handle claims through its employees or through one (1) or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer; and

(h)[~~(g)~~] Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this subtitle.

(2) The association may:

(a) Appear in, defend, and appeal any action on a claim brought against the association;

(b) Employ or retain such persons as are necessary to handle claims and perform other duties of the association;

(c) Borrow funds necessary to effect the purposes of this subtitle in accord with the plan of operation;

(d) Sue or be sued;

(e) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this subtitle;

(f) Perform such other acts as are necessary or proper to effectuate the purpose of this subtitle; and

(g) Refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year.

Section 6. KRS 304.36-090 is amended to read as follows:

(1) (a) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

(b) If the association fails to submit a suitable plan of operation within ninety (90) days following June 16, 1972, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this subtitle. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall:

(a) Establish the procedures whereby all the powers and duties of the association under KRS 304.36-080 will be performed.

(b) Establish procedures for handling assets of the association.

(c) Establish the amount and method of reimbursing members of the board of directors under KRS 304.36-070.

(d) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

(e) Establish regular places and times for meetings of the board of directors.

(f) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.

(g) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within thirty (30) days after the action or decision.

(h) Establish the procedures whereby selections for the board of directors will be submitted to the commissioner.

(i) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under KRS 304.36-080(1)(c) and (2)(c), are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two (2) or more states. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this subtitle.

(5) The plan of operation may ***establish procedures by which claims may be***[~~provide that covered claims not~~] filed with the association ***and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent, and a list of claims shall be periodically submitted to the association or similar organization in another state by the receiver or***[~~within the time limits required by law for the filing of claims with the~~] liquidator[~~ shall be barred~~].

Section 7. KRS 304.36-110 is amended to read as follows:

(1) Any person recovering under this subtitle shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this subtitle shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out***, except as follows:***

(a) Any insured whose net worth on December 31 of the year next preceding the date the insurer becomes an insolvent insurer exceeds twenty-five million dollars ($25,000,000) and whose liability obligations to other persons are satisfied in whole or in part by payments made under this subtitle;

(b) Any person who is an affiliate of the insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under this subtitle; and

(c) No limitation is placed on the ability of the association to recover from the principal all claim payments and expenses arising from a surety contract that is a covered claim to the association.

(2) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this subtitle against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

(3) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the rights of the association against the assets of the insolvent insurer.

Section 8. KRS 304.36-120 is amended to read as follows:

(1) Any person having a claim against ***an***[~~his~~] insurer under any provision in ***an***[~~his~~] insurance policy ***other than the policy of an insolvent insurer*** which is also a covered claim shall be required to exhaust first his right under ***the***[~~such~~] policy. Any amount payable on a covered claim under this subtitle shall be reduced by the amount of[~~ such~~] recovery under the[~~ claimant's~~] insurance policy. ***Any provision in an insurance policy includes but is not limited to the following coverages: basic reparation benefits under KRS Chapter 304, Subtitle 39, uninsured motorist, underinsured motorist, workers' compensation, and health care.***

(2) Any person having a claim which may be recovered under more than one (1) insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, from the association of the location of the property, and if it is a workers' compensation claim, from the association of the residence of the claimant. Any recovery under this subtitle shall be reduced by the amount of the recovery from any other insurance guaranty association or its equivalent.

(3) The guaranty association shall receive the benefit of any reinsurance contract or treaties entered into by the insolvent insurer which cover any of the liabilities incurred by the insolvent insurer with respect to covered claims.

SECTION 9. A NEW SECTION OF SUBTITLE 36 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state shall, subject to waiver by the association in specific cases involving covered claims, be stayed for six (6) months and any additional time that may be determined by the court from the date that the insolvency is determined or an ancillary proceeding is instituted in the state, whichever is later, to permit proper defense by the association of all pending causes of action. As to covered claims arising from a judgment under decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured, the association, either on its own behalf or on behalf of an insured, may apply to have the judgment, order, decision, verdict, or finding vacated or set aside and shall be permitted to defend the claim on its merits.

The Committee Amendment No. 1 to **HB 415** is as follows:

On page 8, line 24, after "than" by inserting "***two percent (2%)***" and by placing brackets around and striking through "one percent (1%)".

HB 448, AN ACT relating to assessment companies.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 299 IS CREATED TO READ AS FOLLOWS:

(1) When any company licensed under this chapter transfers or suspends its business or fails to actively and in good faith to operate its corporate franchises, powers, and privileges in the due course of business and in the fulfillment of the design and purpose of its creation for the period of one (1) year, it shall be deemed to have abandoned the purpose of its creation, and it shall not thereafter, directly or indirectly, resume its business or operate in any manner any of its corporate franchises, powers, or privileges, and they shall for all purposes thereby become and remain forever inoperative and void.

(2) On the effective date of this Act, no company not previously licensed shall be licensed to engage in the business of assessment or cooperative insurance as set forth in KRS 299.310 to 299.470, and 299.990.

Section 2. KRS 299.460 is amended to read as follows:

The commissioner shall examine into the management of any company whenever he deems it prudent for the protection of policyholders in this state, but not less frequently than once in every four (4) years. He shall also examine into the management of a company upon the application of ten (10) of its members, or twenty-five percent (25%) of its board of directors, or its president or secretary. The company shall pay all expenses of the examination which shall promptly be deposited in the State Treasury "Examination Expense Revolving Fund" established in KRS 304.2-300. If the commissioner finds that ***the company or*** any ***director, agent, adjuster, employee, administrator, or*** officer has been or is violating the provisions of KRS 299.310 to 299.450, or the bylaws of the company, he shall proceed in like manner as with other ***insurers***~~[insurance companies]~~ guilty of like violations. ***The commissioner may issue orders, conduct investigations, hold hearings, issue subpoenas, assess penalties, and take other reasonable and necessary actions as with other insurers.***

SECTION 3. A NEW SECTION OF KRS CHAPTER 299 IS CREATED TO READ AS FOLLOWS:

(1) Every company licensed under this chapter shall provide to the commissioner a list of its officers and directors, their names, addresses, principal business activities, and occupations or employment.

(2) Every company licensed under this chapter shall file with the commissioner a copy of any management contract, third party administrator contract, agency contract, or any other agreement, contract, or document whereby rights or duties of the company are assigned or delegated to another entity. No agreement shall be effective until approved by the commissioner. An agreement may be disapproved if, after a hearing under KRS Chapter 13B, the commissioner finds that the agreement does not comply with the following conditions:

(a) The agreement shall be the result of an arms length transaction between the company and any other party;

(b) The terms of the agreement shall be fair and reasonable to the parties, and the charges or fees for all services provided shall be reasonable;

(c) The books, accounts, and records of each party to the agreement shall be maintained to clearly and accurately disclose the precise nature and details of the transaction; and

(d) The agreement shall be made for the benefit of the policyholders of the company.

HB 475, AN ACT relating to insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.9-260 is amended to read as follows:

(1) Each solicitor, consultant, adjuster, and surplus lines broker license issued under this code shall continue in force until expired, suspended, revoked or otherwise terminated, but subject to payment to the commissioner at his office in Frankfort on or before March 31 of the applicable continuation fee ***for any appointment, or license in the case of a limited license, not terminated on or prior to December 31 of the preceding calendar year*** as stated in KRS 304.4-010, accompanied by written request for[~~ such~~] continuation. Request for continuation shall be made as follows:

(a) As to adjuster, and surplus lines broker licenses, request made and signed by the licensee.

(b) As to solicitor licenses, request made and signed by the employer as to whom licensed.

(c) As to limited licenses issued under KRS 304.9-230, request made and signed by the insurer so represented.

(2) ***Biennially, before January 31, the department shall distribute to each respective licensee, employer, and insurer a listing of the names and addresses of that person's licensees referred to in subsection (1) whose appointments were in effect during the preceding calendar year and who were not terminated on or prior to December 31 of that calendar year. Any appointment or license not expressly terminated shall continue in effect as to the kinds of insurance or classifications thereof for which the respective licensees are currently appointed and subject to payment of the fees specified under KRS 304.4-010. On or before March 31, each licensee, employer, or insurer shall make payment of the continuation of appointment fee, as specified in KRS 304.4-010, for each appointment or license not terminated on or prior to December 31 of the preceding calendar year.*** Any license referred to in subsection (1) of this section as to which request for continuation and fee are not so received by the commissioner shall be deemed to have expired at midnight on[~~ such~~] March 31; except that any[~~ such~~] request ***and fees*** received by the commissioner after[~~ such~~] March 31 and prior to the next following June 30 may be accepted and effectuated by the commissioner, in his discretion, if accompanied by a penalty as provided in Subtitle 99 of this chapter.

(3) The license of an agent shall continue in force as long as there is in effect as to ***the***[~~such~~] licensee, as shown by the commissioner's records, an appointment or appointments as agent of authorized insurers covering collectively all of the kinds of insurance or classifications thereof included in the agent's license. Upon termination of all of the licensee's agency appointments as to a particular kind of insurance or classification thereof and failure to replace ***an***[~~such~~] appointment within sixty (60) days thereafter, the license shall thereupon expire and terminate as to ***the***[~~such~~] kind or classification of insurance and the licensee shall promptly deliver his license to the commissioner for reissuance, without fee or charge, as to the kinds of insurance or classifications thereof, if any, covered by the licensee's remaining agency appointments. Upon termination of all of the licensee's agency appointments the license shall forthwith terminate.

(4) As a condition to or in connection with the continuation of any agent, consultant, or solicitor license the commissioner may require the licensee to file with him information relative to use made of the license during the next preceding calendar year, and especially as to whether the license has been used principally for the writing of controlled business, as defined in KRS 304.9-100.

(5) As a condition to or in connection with the continuation of any agent or solicitor license the commissioner shall require continuous demonstration of financial responsibility as required by KRS 304.9-105(5) and any[~~ such~~] license shall terminate and be surrendered to the commissioner, as provided for therein, if and when such demonstration becomes impaired whether or not valid appointments under the license are then existent.

(6) Except as to the provisions of subsection (5) hereof, this section does not apply to temporary licenses issued under KRS 304.9-300.

Section 2. KRS 304.9-270 is amended to read as follows:

(1) Each insurer appointing an agent in this state shall file with the commissioner the appointment in writing, specifying the kinds of insurance or classifications thereof to be transacted by the agent for the insurer, and pay the appointment fee, or license fee in the case of limited licenses, as specified in KRS 304.4-010.

(2) Subject to continuation by the insurer as provided in subsection (3) of this section, each appointment shall remain in effect until the agent's license is revoked or otherwise terminated, unless the insurer earlier terminates the appointment as provided in KRS 304.9-280.

(3) Biennially***, before January 31, the department shall distribute to each insurer a listing of the names and addresses of that insurer's agents whose appointment, or licenses in the case of limited licenses, were in effect during the***

proceeding calendar year and who were not terminated on or prior to December 31 of that calendar year. Any appointment or license not expressly terminated shall~~[on or before March 31 each insurer shall file with the commissioner an alphabetical list of the names and addresses of all its agents in this state whose appointments or licenses in the case of limited licenses were in effect during the preceding calendar year and are to]~~ remain in effect as to the kinds of insurance or classifications thereof for which the respective agents are currently~~[so]~~ appointed, ***and subject to the fees specified under KRS 304.4-010. On or before March 31, each insurer shall make***~~[accompanied by]~~ payment of the continuation of appointment fee, or license fee in the case of limited licenses, as specified in KRS 304.4-010***, for each appointment not terminated on or prior to December 31 of the preceding calendar year***.~~[At the same time, the insurer shall also file with the commissioner an alphabetical list of the names and addresses of all its agents whose appointments in this state are not to remain in effect, or whose appointment as to certain kinds or classifications of insurance are not to remain in effect as designated in such list.]~~ Any appointment or license not~~[so continued and not otherwise]~~ expressly terminated shall ***continue, unless otherwise terminated, canceled, suspended, or revoked by the department of insurance***~~[be deemed to have expired at midnight on March 31, except that any request for continuation received by the commissioner after such March 31 and prior to the next following June 30 may be accepted and effectuated by the commissioner, in his discretion, if accompanied by a penalty as provided in Subtitle 99 of this chapter]~~.

Section 3. KRS 304.9-280 is amended to read as follows:

(1) Subject to the agent's contract rights, if any, an insurer may terminate an agency appointment at any time. ***However, if any agency appointment is not terminated on or prior to December 31, then on January 1 the insurer shall be subject to the fees designated in KRS 304.9-270.*** The insurer shall promptly give written notice of such termination and the effective date thereof to the commissioner and to the agent where reasonably possible.~~[The list of appointments not being continued referred to in KRS 304.9-270 shall constitute such notice to the commissioner as to the terminations so listed.]~~ The commissioner may require of the insurer reasonable proof that the insurer has given~~[such]~~ notice to the agent where reasonably possible.

(2) Accompanying the notice of termination given the commissioner the insurer shall file with him a statement of all the facts constituting the cause, if any, for termination. Any information, document, record or statement so disclosed or furnished to the commissioner shall be deemed an absolutely privileged communication and shall not be admissible as evidence in any action or proceeding unless consented to in writing by the insurer.

(3) An agent terminating the employment as solicitor of a licensed solicitor shall give like notice of ***the***~~[such]~~ termination to the commissioner, and like information as to the reasons for ***the***~~[such]~~ termination, with like status as privileged communication unless ***the***~~[such]~~ privilege is waived in writing by the agent.

HB 514, AN ACT relating to consumer loan companies.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 288.430 is amended to read as follows:

(1) Each application for a license under this chapter shall be made in writing, under oath or affirmation, in such form as the commissioner prescribes.

(2) The application shall contain:

(a) In the case of an individual, his name and the address of his residence and place of business;

(b) In the case of a partnership or association, the name and address of every member thereof and the address of the place where the business is to be conducted;

(c) In the case of a corporation, the names and addresses of the ***principal*** officers and directors thereof and the address of the place where the business is to be conducted; and

(d) Such additional information as the commissioner prescribes.

Section 2. KRS 288.450 is amended to read as follows:

(1) The commissioner shall, after investigation, issue to the applicant a license to make loans in accordance with this chapter, if the commissioner:

(a) Approves the form of the application;

(b) Finds that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant is a partnership or association, and of the officers and directors thereof if the applicant is a corporation, are such as to command the confidence of the community and to warrant the belief that the business of the applicant will be operated honestly, fairly, and efficiently in accordance with the purposes of this chapter; ***and***

(c)~~[Finds that permitting such applicant to engage in such business will promote the convenience and advantage of~~

~~the community; and~~

~~(d)~~] Finds that the applicant has complied with KRS 288.440.

(2) If the commissioner does not so find, he shall not issue a license and shall notify the applicant of the denial and return the sum paid by the applicant as a license fee, retaining the fifty dollars ($50) investigation fee to cover the cost of investigating the application.

(3) The commissioner shall approve or deny every application for license within sixty (60) days from the filing thereof with the fees unless the time is extended by a written agreement between the applicant and the commissioner. If the commissioner denies a license, the applicant may appeal, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

(4) The official record of the hearing shall be filed in the office of the commissioner as public records, open to public inspection.

Section 3. KRS 288.470 is amended to read as follows:

(1) No licensee shall conduct the business authorized by this chapter in any office, room, or place of business in which any other business***, except purchase of retail and installment sales contracts and motor club memberships,*** is solicited or engaged in, or in association or conjunction therewith, except upon a written authorization from the commissioner.

(2) Nothing in this chapter shall be construed to limit the loans of any licensee to residents of the community in which the licensed place of business is situated, nor to prohibit the making and collecting of loans by mail.

(3) Nothing in this chapter shall be construed to limit the ability of any licensee to make a loan or loans in the principal amount greater than fifteen thousand dollars ($15,000) at the licensed location at the same rates as provided in KRS 360.010.

Section 4. KRS 288.533 is amended to read as follows:

Notwithstanding the provisions of KRS 288.530(10) or of any other law, in any extension of credit pursuant to KRS Chapter 288, the licensee may charge and collect the following:

(1) A fee, or premium for insurance, in lieu of perfecting a security interest to the extent that the fee or premium does not exceed the fee payable to public officials for perfecting the security interest; and

(2) A bad check charge of fifteen dollars ($15), or the amount passed on from other financial institutions, whichever is greater, for any check, draft, negotiable order of withdrawal, or like instrument returned or dishonored for any reason by a depository institution, which charge licensee may charge and collect, through regular billing procedures, or otherwise from the borrower; and

(3) A reasonable attorney's fee, in connection with the collection of a loan, actually incurred by the licensee and paid to an attorney who is not an employee of the licensee***; and***

(4) A charge for credit investigations of one dollar ($1) for each fifty dollars ($50) or fraction thereof of the principal amount of the loan. This charge shall be permitted only on the first two thousand dollars ($2,000) of the principal amount of the loan. No charge shall be collected unless a loan has been made as a result of the investigation.

Section 5. KRS 288.600 is amended to read as follows:

Each licensee shall keep and use in his business and shall preserve for at least two (2) years after making the final entry therein, such books, accounts, records, or card systems in accordance with sound accounting principles and practices to enable the commissioner to determine whether the licensee is complying with the provisions of this chapter, and with the regulations made pursuant thereto***, and for at least three (3) years on loans secured by residential property***.

Section 6. KRS 288.610 is amended to read as follows:

(1) The provisions of this chapter shall be enforced by the commissioner, who may, after notice to licensees and a hearing, promulgate regulations, referenced to the section or sections which set forth the legislative standards they interpret or apply, for the proper conduct application shall state the date of promulgation and the effective date. A copy of every such regulation shall be sent to all licensees before the effective date thereof and a copy shall be kept in an indexed permanent book in the office of the commissioner as a public record.

(2) The commissioner shall make an annual examination of the affairs, business, office, and records of every licensee, and such further examinations or investigations as he deems necessary for the purpose of discovering violations of this chapter or of securing information necessary for its proper enforcement. ***Every licensee shall pay a fee sufficient to cover the cost of each examination based upon fair compensation for time and actual expenses.***

(3) For the purpose of making such examinations or investigations the commissioner and his representatives may require the attendance of and examine under oath all persons whose testimony he may require, relative to the loans or business of any such licensee, and shall have free access to the accounts, papers, records, files, safes, vaults, offices, and places of business used in connection with any business conducted under any license issued in accordance with this chapter.

Section 7. KRS 288.615 is amended to read as follows:

In undertaking the examination of a ***consumer***[~~petty~~] loan company neither the Commonwealth of Kentucky, the commissioner of the department of financial institutions, nor any examiner employed by the Commonwealth shall become liable to any depositor, investor, or other obligor of said ***consumer***[~~petty~~] loan company by reason of said examination or omission of said examination to fully and effectively disclose the financial condition of said ***consumer***[~~petty~~] loan company, it being the policy of the Commonwealth of Kentucky that such examinations as are required by KRS 288.610 are for the purpose of determining compliance with state law and not for the purpose of protecting or guaranteeing the depositors, investors or other obligors of said ***consumer***[~~petty~~] loan companies.

Section 8. KRS 288.620 is amended to read as follows:

(1) [~~No person, except as authorized by statute shall directly or indirectly by any device, subterfuge or pretense whatsoever, charge, contract for or receive or participate as agent, broker or in any other capacity in charging, contracting for or receiving any interest, discount or consideration greater than six percent (6%) per annum upon any loan in the amount of or the value of fifteen thousand dollars ($15,000).~~

~~(2)~~]Any loan in the amount of fifteen thousand dollars ($15,000) or less for which there has been charged, contracted for or received a greater rate of interest, discount or consideration, except as provided for by statute, is against the public policy of this state.

(2)[~~(3)~~] No such loan made outside this state shall be enforced in the state and every person participating therein in this state shall be subject to the provisions of this chapter, but this section does not apply to loans legally made in any state, country, commonwealth, territory or district.

Section 9. The following KRS sections are repealed:

288.510 Financial condition of licensee.

288.515 Advertising statement required where institution not fully insured.

The Committee Substitute to **HB 514** is as follows:

AN ACT relating to consumer loan companies.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 288.430 is amended to read as follows:

(1) Each application for a license under this chapter shall be made in writing, under oath or affirmation, in such form as the commissioner prescribes.

(2) The application shall contain:

  (a) In the case of an individual, his name and the address of his residence and place of business;

  (b) In the case of a partnership or association, the name and address of every member thereof and the address of the place where the business is to be conducted;

  (c) In the case of a corporation, the names and addresses of the ***principal*** officers and directors thereof and the address of the place where the business is to be conducted; and

  (d) Such additional information as the commissioner prescribes.

Section 2. KRS 288.450 is amended to read as follows:

(1) The commissioner shall, after investigation, issue to the applicant a license to make loans in accordance with this chapter, if the commissioner:

  (a) Approves the form of the application;

  (b) Finds that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant is a partnership or association, and of the officers and directors thereof if the applicant is a corporation, are such as to command the confidence of the community and to warrant the belief that the business of the applicant will be operated honestly, fairly, and efficiently in accordance with the purposes of this chapter; ***and***

  (c)[~~Finds that permitting such applicant to engage in such business will promote the convenience and advantage of the community; and~~

  ~~(d)~~] Finds that the applicant has complied with KRS 288.440.

(2) If the commissioner does not so find, he shall not issue a license and shall notify the applicant of the denial and return the sum paid by the applicant as a license fee, retaining the fifty dollars ($50) investigation fee to cover the cost of investigating the application.

(3) The commissioner shall approve or deny every application for license within sixty (60) days from the filing thereof with the fees unless the time is extended by a written agreement between the applicant and the commissioner. If the

commissioner denies a license, the applicant may appeal, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

(4) The official record of the hearing shall be filed in the office of the commissioner as public records, open to public inspection.

Section 3. KRS 288.470 is amended to read as follows:

(1) No licensee shall conduct the business authorized by this chapter in any office, room, or place of business in which any other business***, except purchase of retail and installment sales contracts and motor club memberships,*** is solicited or engaged in, or in association or conjunction therewith, except upon a written authorization from the commissioner.

(2) Nothing in this chapter shall be construed to limit the loans of any licensee to residents of the community in which the licensed place of business is situated, nor to prohibit the making and collecting of loans by mail.

(3) Nothing in this chapter shall be construed to limit the ability of any licensee to make a loan or loans in the principal amount greater than fifteen thousand dollars ($15,000) at the licensed location at the same rates as provided in KRS 360.010.

Section 4. KRS 288.533 is amended to read as follows:

Notwithstanding the provisions of KRS 288.530(10) or of any other law, in any extension of credit pursuant to KRS Chapter 288, the licensee may charge and collect the following:

(1) A fee, or premium for insurance, in lieu of perfecting a security interest to the extent that the fee or premium does not exceed the fee payable to public officials for perfecting the security interest; and

(2) A bad check charge of fifteen dollars ($15), or the amount passed on from other financial institutions, whichever is greater, for any check, draft, negotiable order of withdrawal, or like instrument returned or dishonored for any reason by a depository institution, which charge licensee may charge and collect, through regular billing procedures, or otherwise from the borrower; and

(3) A reasonable attorney's fee, in connection with the collection of a loan, actually incurred by the licensee and paid to an attorney who is not an employee of the licensee***; and***

(4) A charge for credit investigations of one dollar ($1) for each fifty dollars ($50) or fraction thereof of the principal amount of the loan. This charge shall be permitted only on the first two thousand dollars ($2,000) of the principal amount of the loan. No charge shall be collected unless a loan has been made as a result of the investigation.

Section 5. KRS 288.600 is amended to read as follows:

Each licensee shall keep and use in his business and shall preserve for at least two (2) years after making the final entry therein, such books, accounts, records, or card systems in accordance with sound accounting principles and practices to enable the commissioner to determine whether the licensee is complying with the provisions of this chapter, and with the regulations made pursuant thereto***, and for at least three (3) years on loans secured by residential property***.

Section 6. KRS 288.610 is amended to read as follows:

(1) The provisions of this chapter shall be enforced by the commissioner, who may, after notice to licensees and a hearing, promulgate regulations, referenced to the section or sections which set forth the legislative standards they interpret or apply, for the proper conduct application shall state the date of promulgation and the effective date. A copy of every such regulation shall be sent to all licensees before the effective date thereof and a copy shall be kept in an indexed permanent book in the office of the commissioner as a public record.

(2) The commissioner shall make an annual examination of the affairs, business, office, and records of every licensee, and such further examinations or investigations as he deems necessary for the purpose of discovering violations of this chapter or of securing information necessary for its proper enforcement. ***Every licensee shall pay a fee sufficient to cover the cost of each examination based upon fair compensation for time and actual expenses.***

(3) For the purpose of making such examinations or investigations the commissioner and his representatives may require the attendance of and examine under oath all persons whose testimony he may require, relative to the loans or business of any such licensee, and shall have free access to the accounts, papers, records, files, safes, vaults, offices, and places of business used in connection with any business conducted under any license issued in accordance with this chapter.

Section 7. KRS 288.615 is amended to read as follows:

In undertaking the examination of a ***consumer***[~~petty~~] loan company neither the Commonwealth of Kentucky, the commissioner of the department of financial institutions, nor any examiner employed by the Commonwealth shall become liable to any depositor, investor, or other obligor of said ***consumer***[~~petty~~] loan company by reason of said examination or omission of said examination to fully and effectively disclose the financial condition of said ***consumer***[~~petty~~] loan company, it being the policy of the Commonwealth of Kentucky that such examinations as are required by KRS 288.610 are for the purpose of determining compliance with state law and not for the purpose of protecting or guaranteeing the depositors, investors or other obligors of said ***consumer***[~~petty~~] loan companies.

Section 8. KRS 288.620 is amended to read as follows:

(1) [~~No person, except as authorized by statute shall directly or indirectly by any device, subterfuge or pretense whatsoever, charge, contract for or receive or participate as agent, broker or in any other capacity in charging, contracting for or receiving any interest, discount or consideration greater than six percent (6%) per annum upon any loan in the amount of or the value of fifteen thousand dollars ($15,000).~~

~~(2)~~]Any loan in the amount of fifteen thousand dollars ($15,000) or less for which there has been charged, contracted for or received a greater rate of interest, discount or consideration, except as provided for by statute, is against the public policy of this state.

(2)[~~(3)~~] No such loan made outside this state shall be enforced in the state and every person participating therein in this state shall be subject to the provisions of this chapter, but this section does not apply to loans legally made in any state, country, commonwealth, territory or district.

Section 9. KRS 288.440 is amended to read as follows:

(1) Each applicant at the time of making application shall pay ***two hundred*** fifty dollars ***($250)***[~~($50)~~] to the commissioner as a fee for investigating the application ***for the initial location in Kentucky, or a fee of one hundred fifty dollars ($150) for additional locations,*** and the additional sum of ***three hundred seventy-five dollars ($375)***[~~two hundred and fifty dollars ($250)~~] as an annual license fee ***for each location*** for the period terminating on the last day of the current calendar year. If the application is filed after June 30 in any year, the payment shall be ***one hundred eighty-seven dollars ($187)***[~~one hundred and twenty five dollars ($125)~~] as a license fee in addition to the fee for investigation.[~~In addition to the annual license fee every licensee hereunder shall pay the same fees for each examination as are allowed by statute for the examination of banks~~]

(2) If any person regulated by the department desires to purchase an existing licensed location or locations, the person shall submit an application to the commissioner containing the information as the commissioner may prescribe. The fee for this application shall be one hundred dollars ($100) per location not to exceed one thousand dollars ($1,000).

Section 10. The following KRS sections are repealed:

288.510 Financial condition of licensee.

288.515 Advertising statement required where institution not fully insured.

HB 516, AN ACT relating to banking.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 287.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Bank or state bank" means any bank which is now or may hereafter be organized under the laws of this state or a combined bank and trust company;

(2) "National bank" or "national bank association" means a bank created by Congress and organized pursuant to the provisions of federal law***, including savings and loan associations***;

(3) "Out-of-state bank" means a bank chartered under the laws of any state other than Kentucky;

(4) "Home state" means:

(a) With respect to a state bank or out-of-state state bank, the state by which the bank is chartered; and

(b) With respect to a national bank, the state in which the main office of the bank is located;

(5) "Home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which such bank is chartered;

(6) "Host state" means a state, other than the home state, in which the bank maintains, or seeks to establish and maintain, a branch;

(7) "Commissioner" means the commissioner of financial institutions;

(8) "Department" means the Department of Financial Institutions;

(9) "Population" means the population as indicated by the latest regular United States census;

(10) "Trust company" includes every corporation authorized by this chapter to do a trust business;

(11) "Undivided profits" means the composite of the bank's net retained earnings from current and prior years' operations;

(12) "Capital stock" shall mean, at any particular time, the sum of:

(a) The par value of all shares of the corporation having a par value that have been issued;

(b) The amount of the consideration received by the corporation for all shares of the corporation that have been issued without par value except such part of the consideration as has been allocated to surplus in a manner permitted by law; and

(c) Such amounts not included in paragraphs (a) and (b) of this subsection as have been transferred to stated capital of the corporation, whether through the issuance of stock dividends, resolution of the bank's board of directors under applicable corporate law or otherwise by law; and

(13) "Surplus" means the amount of consideration received by the corporation for all shares issued without par value that has not been allocated to capital stock or the amount of consideration received by the corporation in excess of par value for all shares with a par value or both.

Section 2. KRS 287.013 is amended to read as follows:

(1) There is created a Financial Institutions Board. The board shall consist of twelve (12) members appointed by the Governor who shall serve terms of four (4) years, except the initial terms shall be established as hereafter provided. It is recommended that the board appointments made by the Governor be selected from the following:

(a) ***Three (3)***[~~Four (4)~~] members selected from the banking industry regulated by the department with appropriate recognition as to bank size and geographic diversity;

(b) ***Three (3) members***[~~One (1) member~~] selected from the broker/dealer securities industry regulated by the department;

(c) One (1) member selected from the credit union industry regulated by the department;

(d) One (1) member selected from the consumer finance or industrial loan industry regulated by the department;

(e)[~~ One (1) member selected from the savings and loan industry regulated by the department;~~

~~(f)~~] Three (3) members selected from the public at large who are knowledgeable concerning financial institutions, the legislative process and consumer interests, two (2) of whom are not employees, officers or directors of any financial institution; and

(f)[~~(g)~~] The commissioner, who shall also serve as chairman of the board.

(2) All members of the board from the banking industry, securities industry, credit union industry, consumer finance, ***or*** industrial loan industry[~~ or savings and loan industry~~] shall be persons with practical experience in the industry so represented and currently serving at the executive level of that industry at the time of their appointment.

(3) At the first meeting of the board, a drawing by lot shall be conducted to determine the length of each original member's term. Initially, there shall be four (4) four (4) year terms, five (5) three (3) year terms, and two (2) two (2) year terms. Vacancies in the membership of the board shall be filled in the same manner as original appointments. Appointments to fill vacancies occurring before the expiration of a term shall be for the remainder of the unexpired term.

(4) No member of the board, other than the commissioner, shall serve more than two (2) consecutive terms on the board.

(5) The board shall first meet at the call of the Governor and thereafter as the board shall determine, but at least quarterly, at a time and place determined by the chairman. The board may elect other officers for the conduct of its business. A majority of board members shall constitute a quorum, and a decision shall require the majority vote of those present. Each board member shall have one (1) vote, and voting by proxy shall be prohibited.

(6) Board members shall receive one hundred dollars ($100) per diem for each board meeting which they attend and shall be reimbursed for other reasonable and necessary expenses incurred while engaged in carrying out the duties of the board.

(7) The board shall:

(a) Prepare and submit at the Governor's request a list of candidates qualified to serve as commissioner and recommend to the Governor a proposed salary for each nomination for commissioner;

(b) Recommend to the Governor a proposed salary structure for other departmental staff in order to provide competitive salaries for recruitment and retention of staff;

(c) Receive and comment on various reports relating to the department and its activities as submitted to the board by the commissioner or the Governor; and

(d) Review, consider and make recommendations to the commissioner on any matters referred to the board by the commissioner or the Governor.

(8) In no event shall the board or its members interfere with the statutory duties of the commissioner whose decisions shall be governed by law.

Section 3. KRS 287.020 is amended to read as follows:

(1) The commissioner may promulgate, amend, and repeal any administrative regulations, forms, and orders as are necessary to interpret and carry out the provisions and intent of this chapter. He shall devise a seal for his department, a description of which, together with an impression thereof and a certificate of approval by the Governor, shall be filed in the office of the Secretary of State. The seal shall be renewed whenever necessary.

(2) The commissioner of financial institutions and his deputies shall be allowed their necessary traveling and other expenses of conducting their office.

(3) The commissioner of financial institutions may issue a finding of permissible activities, services, or products to authorize banks to engage in any banking activity in which the banks could engage were they operating as national banks at the time the authority is granted. Any finding shall be specifically limited to the activity, service, or products contained therein and shall be mailed to all banks. This section shall not apply to activities prohibited under Subtitle 9 of KRS Chapter 304.~~[The hearing procedures of KRS 287.061 shall be applicable to the issuance of a finding.]~~

(4) Nothing herein contained shall be construed to repeal, modify, or alter the restrictions of KRS 287.105 relative to the leasing of motor vehicles, or of KRS 287.180 relative to the establishment of branches.

(5) The commissioner may designate the deputy commissioner, division directors, general counsel, or branch managers to sign documents under his instructions.

Section 4. KRS 287.030 is amended to read as follows:

(1) As used in this section, "person" includes a natural person, partnership, corporation, association, business trust, voting trust, or similar organization.

(2) No persons, except corporations, shall engage in the business of private banking in this state.

(3) No bank incorporated under the laws of another state or national bank having its principal place of business outside this state shall transact any banking business in this state except to lend money, unless specifically authorized by law or administrative regulation, or except as permitted following a merger transaction within the meaning of Section 44 of the Federal Deposit Insurance Act pursuant to 12 U.S.C. sec. 1811 et seq., approved after June 1, 1997.

(4) No person who after July 13, 1984, owns or acquires more than one-half (1/2) of the capital stock of a bank shall act as insurance agent or broker with respect to any insurance except credit life insurance, credit health insurance, insurance of the interest of a real property mortgagee in mortgaged property, other than title insurance.

(5) No bank incorporated under the laws of the Commonwealth of Kentucky shall make any loan or discount on the security of the shares of its own capital stock, or the shares of stock of a bank holding company which controls the bank to the extent that such loan or discount secured by such shares exceeds the amounts permitted by Section 23(A) of the Federal Reserve Act (12 U.S.C. sec. 371c) as that section reads on July 15, 1986, nor be the purchaser or holder of any such shares, except that a bank may take property of any kind to satisfy or protect a loan previously made in good faith and in the ordinary course of business; and stock so purchased or acquired, shall, within six (6) months from the time of its purchase or acquisition, be sold or disposed of at public or private sale. This subsection shall not affect or modify in any way KRS 386.025, but said section shall remain in full force and effect.

(6) Any state or national bank with branch offices in Kentucky shall use at all times the same name for all its branch offices in Kentucky.

Section 5. KRS 287.050 is amended to read as follows:

(1) Before filing the articles of incorporation of any financial institution mentioned in KRS 287.040, the incorporators shall present a copy of their proposed articles to the commissioner who shall investigate the financial standing, moral character and capability of each of the incorporators and proposed executive officers and directors, if known, and determine whether there is reasonable assurance of sufficient volume of business for the proposed corporation to be successful, and whether the public convenience and advantage will be promoted by the opening of the proposed corporation.

(2) In the event that the institution for which a charter is sought is to be created solely for the purpose of effectuating a merger or consolidation to facilitate the formation of a bank holding company, the commissioner may waive all or any part of the requirements of ***this chapter***~~[subsection (1) of this section]~~.

(3) If the commissioner determines that it is expedient and desirable to permit the proposed corporation to engage in business, he shall approve the articles of incorporation in writing, and the articles then may be filed and recorded as provided in the general corporation law.

(4) All amendments to the articles of incorporation of any financial institution mentioned in KRS 287.040 shall be approved by the commissioner before filing with the Secretary of State.

Section 6. KRS 287.060 is amended to read as follows:

(1) Before any financial institution mentioned in KRS 287.040 may transact any banking or trust business, it shall file a written oath with the commissioner. The oath shall be taken by each director of the institution, and shall state in substance:

   (a) That such director is a citizen of the United States, and the State of Kentucky, or, if not, the place of his residence;

   (b) That he will faithfully discharge the duties of his office and administer the affairs of the institution, so far as the duties of his office require;

   (c) That he will uphold the laws of the state, and particularly the banking and trust laws.

(2) The oath shall be taken before any officer authorized to administer oaths, and shall be taken upon the election of any subsequent director or reelection of any director. The oath shall be ***maintained by the bank and be subject to review at examinations***[~~transmitted to the commissioner immediately upon its execution and shall be filed and preserved by the commissioner~~].

(3) The commissioner shall issue to the institution a certificate entitling it to transact the business for which it was organized after the following requirements have been met:

(a) The oath mentioned in subsections (1) and (2) of this section has been filed; and

(b) The commissioner has received satisfactory proof that the accounts of the banking institution's depositors will be insured by the Federal Deposit Insurance Corporation; and

(c) The commissioner has received satisfactory proof that the institution has subscribed and paid-in the required capital and has otherwise fully complied with all pertinent laws and regulations; and

(d) A period of thirty (30) days has elapsed since the rendition by the commissioner of a final order, as defined in KRS 13B.010, and an appeal to the appropriate court has not been taken from such order.

(e) If an appeal from a final order of the commissioner has been timely filed, no certificate shall be issued until all the requirements of paragraphs (a) to (c) of this subsection have been met and until:

1. The appeal has been finally disposed of by the last possible court of review, including the United States Supreme Court; or

2. All further opportunities for appeal have expired as a result of the failure to timely file an appeal.

Section 7. KRS 287.065 is amended to read as follows:

(1)[~~Each director of a bank or trust company shall own in his own right unpledged capital stock of that bank or trust company, or of a corporation holding at least eighty percent (80%) of the outstanding capital stock of that bank or trust company, having a book value of at least one thousand dollars ($1,000) at the time such person becomes a director, and the certificates of such stock shall remain in the exclusive custody and control of that bank or trust company during his term of office.~~

~~(2)~~] A majority of the directors of any board must be residents of Kentucky during their term of office.

(2)[~~(3)~~] Each director shall exercise such ordinary care and diligence as necessary and reasonable to administer the affairs of the bank in a safe and sound manner. In this regard, the bank shall furnish each director with a copy of an appropriate publication outlining the duties of a bank director and an updated copy of the Kentucky banking law, and maintain in the bank updated copies of federal banking laws, as determined by administrative regulations.

Section 8. KRS 287.070 is amended to read as follows:

[~~(1) The capital stock of any financial institution mentioned in KRS 287.040 organized prior to May 31, 1938, shall be maintained in the amount required by the law in effect on May 30, 1938.~~

~~(2)~~]The minimum capital stock of any bank or trust company organized after May 30, 1938 shall be ***two million five hundred thousand dollars ($2,500,000). Additional capital may be required depending upon an investigation of the application, at the discretion of the commissioner***[~~as follows, according to the city in which it is located:~~

~~Cities of up to 7,999 population~~	~~$ 25,000~~
~~Cities of 7,999 to 19,999 population~~	~~$ 50,000~~
~~Cities of 20,000 to 100,000 population~~	~~$100,000~~
~~Cities of over 100,000 population~~	~~$200,000~~

~~(3) The minimum capital stock of any combined bank and trust company, combined bank and real estate title insurance company or combined trust and real estate title insurance company or combined bank trust and real estate title insurance company, organized after May 30, 1938, shall be not less than twice the amount stated in subsection (2) of this section~~].

Section 9. KRS 287.080 is amended to read as follows:

The minimum capital required of a financial institution by KRS 287.070 shall be paid in full in money***. Not less than fifty percent (50%) of the minimum capital required shall be designated as surplus***[~~, and in addition thereto there shall be so paid in a surplus of not less than fifty percent (50%) of the minimum capital required~~]. Such money shall be in the custody of the directors before the corporation may commence business. None of the original minimum capital of a financial institution may be designated as undivided profits.

Section 10. KRS 287.103 is amended to read as follows:

(1) It is hereby declared to be the policy of the Commonwealth of Kentucky that the investment of funds, by a bank chartered under the laws of Kentucky or a national banking association having its principal office in Kentucky, in real and personal property as now or hereafter provided by this chapter, be recognized as a normal, proper, necessary, and integral part of the legitimate business of such state or national banks.

(2)[~~ Upon approval of the commissioner in the case of a state bank, or the proper federal supervisory authority in the case of a national bank, the institution may invest its funds in real property and/or improvements on such real property when all or a portion of the improvements are for use as its home office or for branch offices so long as the said real estate is used for carrying on its legitimate business as permitted by Section 192 of the Constitution of the State of Kentucky.~~

~~(3)~~] All property owned and held by a state or national bank under this section shall be deemed to be property that is proper and necessary for carrying out its legitimate business within the meaning of KRS Chapter 271B or any section of the Kentucky Revised Statutes relating to escheat.

Section 11. KRS 287.105 is amended to read as follows:

Subject to such limitations and conditions as the commissioner may from time to time prescribe by general regulations, any bank or trust company organized under the laws of this state may purchase, hold and become the owner and lessor of personal property[~~ acquired upon the specific request of and for the use of a customer~~] and may incur such additional obligations as may be incident to becoming an owner and lessor of such personal property, provided, however, that the net unrecovered investment of such bank or trust company in such personal property shall, for the purposes of KRS 287.280 only, be deemed to be an indebtedness of the lessee thereof, and such personal property shall be considered to be collateral securing such indebtedness.

Section 12. KRS 287.214 is amended to read as follows:

Notwithstanding the provisions of any other law, a bank[~~ or trust company~~] may take, receive, reserve and charge on money due or to become due on any contract or other obligation in writing, where the original principal amount is fifteen thousand dollars ($15,000) or less, interest at any rate allowed national banking associations by the laws of the United States of America. A trust company shall not make any extensions of credit on its own account, but may make extensions of credit for trust assets under management.

Section 13. KRS 287.350 is amended to read as follows:

(1) The board of directors of any bank or trust company organized under the laws of this state may declare a dividend of so much of the net profits as they deem expedient. The net profits shall be computed by deducting all expenses, losses,[~~ bad or suspended debts~~] and interest and taxes accrued or due from the bank.

(2) Before any dividend is declared, other than upon its preferred stock, not less than ten percent (10%) of the net profits of the bank for the period covered by the dividend applicable to its common stock shall be carried to its surplus fund until such surplus fund amounts to a sum equal to the amount of its common capital stock.

(3)[~~ All debts due to a bank or trust company on which interest is due and unpaid for six (6) months, unless the debts are well secured or in the process of collection, are bad or suspended debts within the meaning of this section.~~

~~(4)~~] The approval of the commissioner shall be required if the total of all dividends declared by such institution in any calendar year shall exceed the total of its net profits of that year combined with its retained net profits of the preceding two (2) years, less any required transfers to surplus or a fund for the retirement of preferred stock or debt.

Section 14. KRS 287.385 is amended to read as follows:

For the purpose of borrowing money from a state or national bank for their own higher educational purposes, the disabilities of nonage of minors are removed for all purposes, whether male or female. Any minor is authorized to make and execute any and all promissory notes, contracts, or other instruments necessary to be executed by him in order to borrow money for his own higher educational purposes, and such promissory notes, contracts or other instruments shall have the same force and effect as though they were the obligations of persons over the age of their majority[~~; provided that no such obligation shall be valid if the rate of interest thereon exceeds six percent (6%) per annum, simple interest~~]. Any promissory note, contract or other instrument entered into by any such person pursuant to the provisions of this section shall have the approval of the parent or guardian of such minor and of the financial officer of the institution of higher learning.

Section 15. KRS 287.420 is amended to read as follows:

Within ten (10) days after the commissioner calls upon a bank or trust company, it shall publish pursuant to KRS Chapter 424 on a form furnished by the commissioner, a condensed statement of its financial condition, at the close of business on the date named in the call. The commissioner may make the call at any time he desires[~~ and shall make at least two (2) calls in each year~~]. Such published statement shall ***contain all information as the commissioner shall require***[~~show the total amounts of loans, overdrafts, money invested in bonds and other securities, money due from banks, checks and other cash items, cash on hand, capital paid in, surplus fund, undivided profits (less expense and taxes paid), money due to other banks, individual deposits subject to check, demand certificates of deposit, time deposits, outstanding certified checks and cashier's checks and such other items as will show the actual financial condition of the bank or trust company making the report~~]. The reports shall be signed and sworn to ***either*** by the president, vice president***,***[~~ or~~] cashier, ***or one (1)***[~~and signed by at least three (3)~~] of the directors. A copy of the report, certified to by the publisher, shall be kept in the files of the bank or trust company for review by the department.

Section 16. KRS 287.450 is amended to read as follows:

(1) Every state bank, branch of an out-of-state state bank, or trust company doing business under the laws of this state shall be subject to inspection by the commissioner or by an examiner appointed by the commissioner. Examination shall be

made of each institution at least once every twenty-four (24) months, unless other examinations are accepted as provided in subsections (3), (4), and (5) of this section, and not more than twice unless it appears from examination or from the reports of the institution that it has failed to comply with laws or regulations relating to banks or trust companies, or has engaged in unsafe or unsound banking practices.

(2) The commissioner, deputy commissioner, and each examiner may compel the appearance of any person for the purpose of the examination, which shall be made in the presence of one (1) of the officers of the institution being examined.

(3) Any bank that becomes a member of a Federal Reserve Bank shall be subject to the examination required by the Federal Reserve Act, (38 Stat. 251) as amended, and the commissioner may, in his discretion, accept examinations made by the Federal Reserve authorities in lieu of examinations made under state laws. The commissioner shall furnish to the Federal Reserve agent of the district in which the member bank is situated, copies of reports and examinations made of the member bank.

(4) The commissioner may, in his discretion, accept examinations made by the Federal Deposit Insurance Corporation in lieu of examinations made under state laws.

(5) The commissioner may, in his discretion, enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch of an out-of-state state bank, or any branch of a state bank in any host state. The commissioner may accept reports of examinations and reports of investigation from other bank supervisory agencies and home state regulators in lieu of examinations made under state law. The commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch of an out-of-state state bank or any branch of a state bank located in any host state. ***Information produced or provided under this section shall be considered confidential as provided in KRS 287.470.***

Section 17. KRS 287.480 is amended to read as follows:

(1) The following fees shall be paid to the commissioner by corporations engaged in a banking or trust business:

(a) For the investigation incident to the approval of articles of incorporation, applications for branch banks and loan production offices, and applications to relocate a main or branch office, the fee shall be sufficient to cover the cost of the investigation based upon fair compensation for time and actual expense;

(b)[~~For each report, a filing fee of twenty-five dollars ($25);~~

~~(c)~~] For each state bank and branch of an out-of-state state bank subject to inspection and examination by the commissioner, an annual assessment based on the assets of the banks and branches, other than assets held by it in a fiduciary capacity, as reported to the department by the banks and branches as of the thirty-first day of December of the previous year. The assessment schedule shall be at the rates the commissioner shall determine to be necessary to carry out the duties of the department and shall be reasonably related to the costs[~~, other than costs of examination,~~] incurred by the department in regulating banks and branches. ***The assessment schedule shall be set by administrative regulation***[~~The assessments for any one (1) year shall not exceed a sum equal to five cents ($0.05) per each one thousand dollars ($1,000) and any fraction thereof of the total nontrust assets;~~

~~(d) For any examinations under KRS 287.450, a fee shall be collected sufficient to cover the cost of the examination based upon fair compensation for time and actual expense~~];

(c)[~~(e)~~]For the examination of the assets held by the institution in a fiduciary capacity, the fee shall be sufficient to cover the cost of the investigation based upon fair compensation for time and actual expense. The commissioner may accept examinations made of the trust department in combined banks and trust companies by examiners for the Federal Reserve System, Federal Deposit Insurance Corporation, or a certified public accountant; and

(d)[~~(f)~~] Extraordinary services performed, in addition to examinations, for any financial institution, including institutions in liquidation under the supervision of the commissioner, shall be paid for by the institution upon the basis of fair compensation for time and actual expense.

(2) The commissioner, in his discretion, may enter into cooperative agreements with other bank supervisory agencies having concurrent jurisdiction over any branch of an out-of-state state bank or any branch of a state bank located in any host state, or any organization affiliated with one (1) or more bank supervisory agencies for the collection, remittance, and sharing of fees authorized in subsection (1) of this section.

Section 18. KRS 287.490 is amended to read as follows:

(1) Every institution under the supervision of the department shall make a[~~ written~~] report to the commissioner whenever required by him to do so. The commissioner shall not require more than five (5) reports from any one (1) institution in any one (1) year, unless he deems it necessary in order to obtain complete information[~~, and each report shall be verified by the oath of the corporation's president or vice president, and its secretary or cashier, or two (2) principal officers~~].

(2) The reports shall show the actual condition of the bank making the report at the close of business on a date designated by

the commissioner and shall specify ***any information required by the commissioner***~~[:~~

~~(a) The amount of its capital stock and the number of shares into which it is divided;~~

~~(b) The names of the directors, and the number of shares of stock held by them;~~

~~(c) The total amount of capital actually paid in, and the total amount of surplus and other reserve funds;~~

~~(d) The total amount due depositors, and all other liabilities;~~

~~(e) The total amount and character of overdrafts secured, overdrafts not secured and all other assets;~~

~~(f) The amount at which the lot and building occupied by the bank for the transaction of its business stands debited on its books, and the market value of all other real estate held, and how acquired, the amount at which it stands debited on the books, and where situated;~~

~~(g) The amount loaned on real estate;~~

~~(h) The indebtedness or liability of each officer, and of each director to the bank;~~

~~(i) The amount invested in bonds and stocks;~~

~~(j) The amount loaned on stocks and bonds, on other securities, commercial paper and other notes and bills;~~

~~(k) The actual amount of money on hand and on deposit in other banks, and the name of such banks where deposited;~~

~~(l) Any other property held, or money loaned, deposited, invested or placed, not otherwise mentioned in this section, and the place where situated and the value of the property, and the amount loaned, deposited, or placed; and~~

~~(m) Any other information required by the commissioner]~~.

(3) Any officer, director or board of directors of a bank or trust company shall immediately notify the commissioner concerning any information relating to that financial institution of which they have personal knowledge, involving fraud, defalcation, misfeasance or violations of this chapter. Failure to so notify the commissioner shall be grounds for officer or director removal pursuant to KRS 287.690.

Section 19. KRS 287.710 is amended to read as follows:

As used in KRS 287.720 to 287.770, unless the context otherwise requires:

(1) "Bank" means a bank organized under the laws of this state or of the United States, or any assignee of the bank's rights under a revolving credit plan.

(2) "Credit card" means any single card, plate or other credit device that is reusable by a debtor from time to time to obtain extensions of credit under a revolving credit plan. Checks, drafts and similar instruments that can be used only once to obtain a single credit extension are not credit cards.

(3) "Debtor" means a person to whom or for whose benefit credit is extended pursuant to a revolving credit plan and any other person having actual, implied or apparent authority to obtain extensions of credit under such plan for the debtor.

(4) To "extend credit" or "extension of credit" means the right granted by a bank to a debtor to defer payment of debt, incur debt and defer its payment, or purchase goods, services or anything else of value and defer payment therefor pursuant to a revolving credit plan.

(5) "Finance charge" means the sum of all charges, payable directly or indirectly by the debtor, and imposed directly or indirectly by a bank as an incident to an extension of credit pursuant to a revolving credit plan, including interest and any amount payable under a point, discount or other system of additional charges, service or carrying charges, loan fee, finder's fee or similar charge, fees for an investigation or credit report or premiums or other charges required by the bank to be purchased from or through it or an agency named by it for any guarantee or insurance protecting the bank against the debtor's default or other credit loss. The term does not include amounts, if any, collected by the bank, or included in the extension of credit which are fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to credit extended pursuant to the plan or taxes.

(6) "Revolving credit plan" or "plan" means an arrangement between a bank and a debtor pursuant to which:

  (a) The bank may extend credit to the debtor by permitting the debtor to make purchases of goods, services and anything else of value or obtain loans, from time to time, directly from the bank or indirectly by use of a credit card~~[, check or other device, as the plan may provide]~~;

  (b) The unpaid balances of purchases made, the principal of loans obtained and finance and other appropriate charges are debited to the debtor's account;

  (c) A finance charge, if made, is not precomputed, but is computed on the outstanding unpaid balances of the debtor's account from time to time; and

  (d) The bank renders bills or statements to the debtor at regular intervals, which need not be a calendar month (the "billing cycle"), the amount of which bills or statements is payable by and due from the debtor on a specified date stated in such bill or statement or, at the debtor's option, may be paid in installments.

Section 20. KRS 287.905 is amended to read as follows:

(1) Any bank holding company which proposes to acquire control of a bank chartered in this state or a bank holding company which includes a bank chartered in this state, shall concurrently file with the commissioner copies of the application filed with the federal reserve board under applicable federal law. The commissioner shall approve such acquisition within ninety (90) days of acceptance of a complete application if he finds that:

(a) The terms of the acquisition are in accordance with the laws of this state;

(b) The financial condition, or the competence, experience and integrity of the acquiring company or its principals are such as will not jeopardize the financial stability of the acquired bank or bank holding company;

(c) The public convenience and advantage will be served by the acquisition; and

(d) No federal regulatory authority whose approval is required has disapproved the transaction because it would result in a monopoly or substantially lessen competition.

(2) A nonrefundable fee shall accompany each application and shall be set by the commissioner in accordance with KRS 287.480.

(3) The commissioner may examine or elect to participate in a joint examination, with the applicable federal or state regulatory agency, of any holding company or nonbank subsidiary of the holding company that controls or is affiliated with a state-chartered bank. ***The provisions of KRS 287.690 apply to the holding company or nonbank subsidiary of the holding company that controls or is affiliated with a state-chartered bank.***

(4) The commissioner may enter into cooperative agreements with federal or state regulatory authorities to examine an out-of-state bank that is controlled by a Kentucky bank holding company or is controlled by a bank holding company which includes a state-chartered bank, or accept reports of examinations of such out-of-state banks from federal or state regulatory authorities in lieu of conducting examinations.

(5) The commissioner may enter into cooperative agreements with federal or state regulatory authorities to exchange confidential information and reports of examination relating to interstate acquisitions of banks and bank holding companies.

(6) The cost of an examination shall be assessed against and paid by the company examined. The assessment for the examination shall be calculated in the same manner as that used for bank examinations.

Section 21. KRS 287.915 is amended to read as follows:

(1) Notwithstanding any other provision of KRS Chapter 287:

(a) An individual or bank holding company that controls two (2) or more banks having their principal offices in this Commonwealth may, from time to time, combine any or all of the commonly controlled banks in this Commonwealth into and with any one (1) of the banks, and thereafter the surviving bank, which shall have its principal office in this Commonwealth, shall continue to operate its principal office and may operate the other authorized offices of the banks so combined as branches of the surviving bank; and

(b) Any combination authorized by this section shall not require the approval of the commissioner of financial institutions, but on or before thirty (30) days prior to consummation of any combination, the proposed surviving bank shall notify the commissioner of the combination, and on the effective date of any such combination the charter of any combined bank organized under the laws of this Commonwealth shall be surrendered.

(2) Following any combination authorized by this section:

(a) The surviving bank may, subject to the approval of the commissioner as provided in KRS 287.180(2), establish and operate additional branches in any county where any bank involved in the combination had established a branch or main office;

(b) Any combined bank which is being operated as a branch of the surviving bank shall have a board of directors, a majority of which shall be residents of the combined bank's community, which shall meet not less often than ***quarterly***[~~monthly~~] to advise the branch in a nonfiduciary capacity with respect to the branch's community activities and affairs, customer relations, and local charitable activities;

(c) The surviving bank shall maintain a record of the deposits in each of its offices resulting from such combination or thereafter established as provided in paragraph (a) of this subsection; and

(d) With the approval of the commissioner, ***all of a bank's offices in a county***[~~a combined bank's former main office and all of the branches in one (1) county existing on the date of the combination authorized by this section~~] may be transferred, by a purchase and assumption or other transaction, by the[~~ surviving~~] bank to a newly chartered bank having its principal office in the same county[~~ where the main office of the combined bank was located prior to the combination~~], or to an existing bank***. If transferred to a newly chartered bank, the years in existence of the newly chartered bank shall be deemed to be in excess of five (5) years***[~~or bank holding company. If transferred to a newly chartered bank, the years in existence of the newly chartered bank shall be deemed to be the same as the combined bank prior to the combination~~].

(3) For purposes of this section:

(a) The term "combine" or "combination" includes a merger or the acquisition of all or substantially all of the assets of a bank already controlled by an individual or bank holding company;

(b) An individual or bank holding company "controls" a bank if that individual or company, directly or indirectly, owns, controls, or has the power to vote at least eighty percent (80%) of the issued and outstanding voting securities of the bank;

(c) "Combined bank" means any bank participating in a combination authorized by this section other than the surviving bank;

(d) "Surviving bank" means a bank into which a combined bank has been combined;

(e) "Bank" includes a national bank, savings and loan association, and federal savings bank but does not include a bank which has been in existence less than five (5) years; and

(f) "Individual", "bank holding company" and "deposit" shall have the same meanings attributed to them in KRS 287.900(1).

Section 22. KRS 287.920 is amended to read as follows:

(1) As used in this section, unless the context requires otherwise:

(a) "Interstate merger transaction" means the merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; and

(b) "Resulting bank" means a bank that has resulted from an interstate merger transaction under this section.

(2) A Kentucky state bank may establish, maintain, and operate one (1) or more branches in a state other than Kentucky pursuant to an interstate merger transaction in which the Kentucky state bank is the resulting bank***, or if the other state permits, by acquisition of a branch or branches in the other state***. Not later than the date on which the required application for the interstate merger transaction ***or branch acquisition*** is filed with the responsible federal bank supervisory agency, the applicant shall file an application on a form prescribed by the commissioner and pay the fee prescribed by KRS 287.480. The applicant shall also comply with the applicable provisions of KRS 287.180(2) and the commissioner shall base his approval or disapproval in the same manner as prescribed in KRS 287.180(2).

(3) An out-of-state state bank may establish, maintain, and operate one (1) or more branches in Kentucky pursuant to an interstate merger transaction in which the out-of-state state bank is the resulting bank. Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant shall file an application on a form prescribed by the commissioner, pay the fee prescribed by KRS 287.480, and agree in writing to comply with the laws of this state applicable to its operation of branches in Kentucky. The applicant shall also comply with the applicable provisions of KRS 287.180(2) and the commissioner shall base his approval or disapproval in the same manner as prescribed in KRS 287.180(2).

(4) The bank to be acquired in an interstate merger transaction under the provisions of ***subsection***[~~subsections (2) and~~] (3) of this section shall have been involved in operation for a period of five (5) years or more. No interstate merger transaction under subsections (2) or (3) of this section shall be approved if the transaction would result in a bank holding company having control of banks or branches in this state holding more than fifteen percent (15%) of the total deposits and member accounts in the offices of all federally-insured depository institutions in this state as reported in the most recent year-end reports made by the institutions to their respective supervisory authorities which are available at the time of the transaction.

(5) An individual or bank holding company that controls two (2) or more banks may, from time to time, combine any or all of the commonly controlled banks in this Commonwealth into and with any one (1) of the banks, and thereafter the surviving bank shall continue to operate its principal office and may operate the other authorized offices of the banks so combined as branches of the surviving bank.

(6) A branch of an out-of-state state bank may conduct any activities that are authorized under the laws of this state for state banks. Additionally, the branch of an out-of-state state bank is authorized to conduct any activities relating to the administration of trusts that are authorized under the laws of its home state, if the activities are conducted in conformity with the laws of its home state.

(7) A branch of a Kentucky state bank located in a host state may conduct any activities that are:

(a) Authorized under the laws of the host state for banks chartered by the host state; or

(b) Authorized for branches of national banks located in the host state, but whose principal location is in a state other than the host state.

Section 23. KRS 386.735 is amended to read as follows:

Unless previously barred by adjudication, consent or ***any*** limitation ***established by KRS Chapter 413***, any claim against a trustee for breach of trust is barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the claim is commenced within six (6) months after receipt of the final account or statement. In any event and notwithstanding lack of full disclosure a trustee who has issued a final account or statement received by the beneficiary and has informed the beneficiary of the location and availability of records for his examination is protected after three (3) years. A beneficiary is deemed to have received a final account or statement if, being an adult, it is received by him personally or if, being a minor or disabled person, it is received by his representative.

Section 24. KRS 391.315 is amended to read as follows:

(1) ***(a)*** Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties ***to the account*** as against the estate of the decedent unless there is clear and convincing ***written*** evidence of a different intention at the time the account is created. If there are two or more surviving parties their respective ownerships during lifetime shall be in proportion to their previous ownership interests under KRS 391.310 augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death; and the right of survivorship continues between the surviving parties.

(b) In transferring or releasing joint account funds subsequent to the date of death of one (1) or more of the named joint account holders, a financial institution or other appropriate third party may rely conclusively on the form and terms of the account to pay in accordance with paragraph (a) of this subsection. The transfer or release of those joint account funds has no bearing on the actual rights of ownership of the funds as between the surviving party or parties to the account and the dower or curtesy interest of any surviving spouse. The transfer or release by a financial institution or third party in accordance with this section shall constitute a full release and discharge of the financial institution or third party from all claims relating to ownership.

(2) If the account is a P.O.D. account, on death of the original payee or of the survivor of two or more original payees, any sums remaining on deposit belong to the P.O.D. payee or payees if surviving, or to the survivor of them if one or more die before the original payee; if two or more P.O.D. payees survive, there is no right of survivorship in event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(3) If the account is a trust account, on death of the trustee or the survivor of two or more trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries, if surviving, or to the survivor of them if one or more die before the trustee, unless there is clear and convincing evidence of a contrary intent; if two or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(4) In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of his estate.

(5) A right of survivorship arising from the express terms of the account or under this section, a beneficiary designation in a trust account, or a P.O.D. payee designation, cannot be changed by will.

Section 25. KRS 413.120 is amended to read as follows:

The following actions shall be commenced within five (5) years after the cause of action accrued:

(1) An action upon a contract not in writing, express or implied.

(2) An action upon a liability created by statute, when no other time is fixed by the statute creating the liability.

(3) An action for a penalty or forfeiture when no time is fixed by the statute prescribing it.

(4) An action for trespass on real or personal property.

(5) An action for the profits of or damages for withholding real or personal property.

(6) ***An action for an injury by a trustee to the rights of a beneficiary of a trust.***

(7) An action for an injury to the rights of the plaintiff, not arising on contract and not otherwise enumerated.

(8)[~~(7)~~] An action upon a bill of exchange, check, draft or order, or any endorsement thereof, or upon a promissory note, placed upon the footing of a bill of exchange.

(9)[~~(8)~~] An action to enforce the liability of a steamboat or other vessel.

(10)[~~(9)~~] An action upon a merchant's account for goods sold and delivered, or any article charged in such store account.

(11)[~~(10)~~] An action upon an account concerning the trade of merchandise, between merchant and merchant or their agents.

(12)[~~(11)~~] An action for relief or damages on the ground of fraud or mistake.

(13)[~~(12)~~] An action to enforce the liability of bail.

(14)[~~(13)~~] An action for personal injuries suffered by any person against the builder of a home or other improvements. This cause of action shall be deemed to accrue at the time of original occupancy of the improvements which the builder caused to be erected.

Section 26. KRS 413.340 is amended to read as follows:

The provisions of this chapter shall not apply to ***an express***[~~a continuing and subsisting~~] trust ***that is both continuing and subsisting***, nor to an action by a vendee of real property in possession to obtain a conveyance. ***For purposes of this subsection, a subsisting trust is an express trust with respect to which the trustee is acting within its powers and with respect to which no beneficiary has a cause of action against the trustee.***

Section 27. KRS 41.220 is amended to read as follows:

(1) Not less than three (3) solvent banks shall be designated as depositories for state funds. Each bank designated shall have not less than the minimum capital stock as required in[~~ paragraphs (2) and (3) of~~] KRS 287.070. Banks shall be designated as depositories for state funds upon agreement of the State Treasurer and the secretary of the Finance and Administration Cabinet. Those designated shall be entered in the executive journal. If at any time it appears that the capital of any depository has become impaired, the state's deposits shall be withdrawn and another depository named.

(2) The State Treasurer and the secretary of the Finance and Administration Cabinet shall determine the needs for moving state funds from one (1) designated depository to another.

Section 28. KRS 287.820 is amended to read as follows:

(1) For the purpose of this section:

  (a) "Loan production office" means a bank office located at a place other than the principal or branch office, at which bank employees solicit and originate loans for final approval and disbursement of funds at the principal or branch office; and

  (b) "Disbursement of funds" is the process by which a bank officer in a principal or branch office issues a negotiable instrument at the principal or branch office.

(2) No bank shall operate a loan production office without prior approval of the commissioner. The commissioner shall approve the application unless he finds that:

  (a) The proposed operation of the loan production office is not in accordance with this section;

  (b) The financial standing, moral character, and capability of the bank and its management which proposes to operate a loan production office will jeopardize the financial stability of the bank;

  (c) There is no reasonable assurance of sufficient volume of business for the proposed loan production office to be successful; and

  (d) The public convenience and advantage will not be promoted by the opening of the proposed loan production office.

(3) All extensions of credit originated in a loan production office shall be in accordance with disclosure provisions, usury rates, and other fees and charges authorized by law for banks.

(4) Loan production offices shall not accept deposits or conduct any other banking functions except those enumerated in paragraph (a) of subsection (1) of this section.

(5) The department may examine the operations of any loan production office for the purpose of determining that the scope of its activities does not exceed that allowed in this section. Banks operating loan production offices shall maintain copies of records relating to extensions of credit originated in loan production offices at the principal office for examination purposes.

(6) The application and appeal process set forth in[~~ KRS 287.061 and~~] KRS Chapter 13B and the cease and desist powers of the commissioner set forth in KRS 287.690 shall apply to loan production offices.

Section 29. KRS 287.990 is amended to read as follows:

(1) Any person who violates subsection (2) of KRS 287.030 may be fined not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000) for each day he is engaged in the private banking business.

(2) Any institution that fails to make the report required by KRS 287.420 to the commissioner within five (5) days after the report is due or demanded, or that fails to have the report published as required by KRS 287.420, may be assessed and, if assessed, shall pay a penalty of two hundred dollars ($200).

(3) If any person violates subsection (3) of KRS 287.440 his office shall ipso facto become vacant. The president or cashier of any bank or trust company to which any person becomes indebted in violation of subsection (3) of KRS 287.440 shall immediately report such fact to the commissioner, who may remove the person so offending.

(4) Any receiver of an insolvent institution who fails to comply with the provisions of this chapter shall be subject to the same penalties provided for solvent institutions and officers so offending.

(5) Any directors of a bank who knowingly violate, or knowingly permit any officer or employee of the bank to violate, any of the laws relating to banks, shall be jointly and severally liable to the creditors and stockholders for any loss or damage resulting from such violation. If the loss or damage is not made good within a reasonable time, the commissioner, with the consent of the Attorney General, shall institute proceedings to revoke the corporate powers of the bank.

(6) Any deputy commissioner or any examiner who has knowledge of the insolvency or unsafe condition of a state bank or trust company, or that it is inexpedient to permit the bank or trust company to continue business, and who fails to immediately present a signed report of such facts to the commissioner, or who violates any of the provisions of this chapter, shall forfeit his office and shall be fined not less than one hundred ($100) nor more than two thousand dollars ($2,000) for each offense.

(7) Any commissioner who has knowledge of the insolvency or unsafe condition of a state bank or trust company, or that it is inexpedient to permit the bank or trust company to continue business, and who willfully fails to take the action prescribed by this chapter, or who violates any of the provisions of this chapter, shall forfeit his office and shall be fined not less than five hundred ($500) nor more than five thousand dollars ($5,000) for each offense.

(8) Any bank or trust company that knowingly fails to make a report required by law or by the commissioner within the time designated for the making thereof, or fails to include in such report any matter required by law or by the commissioner, or fails to publish a report within thirty (30) days after it should have been published, or fails to pay when due the fees for filing reports or for an examination of the bank, shall be subject to a penalty of one hundred dollars ($100) for each day of delinquency, but the aggregate penalty for each kind of offense shall not exceed one thousand dollars ($1,000).

(9) Each person, bank, or trust company that willfully makes or transmits a false report or refuses to submit its books, papers, and assets for examination, or any officer of a bank who refuses to be examined under oath concerning the affairs of the bank, shall be severally fined not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000).

(10) Whenever any fine imposed by subsection (1), (2), (4), (6), (7), (8), (9), (15), (16), (17), or (18) of this section is not paid, the Attorney General shall institute an action, in the name of the state, in the Franklin Circuit Court or the Circuit Court of the county in which the offense was committed, for the recovery of the fine.

(11) Any person violating any of the provisions of KRS 287.225 shall be guilty of a misdemeanor and fined not less than fifty dollars ($50) nor more than two thousand dollars ($2,000).

(12) Any person who willfully makes charges in excess of those permitted by KRS 287.720 to 287.770 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding five hundred dollars ($500) or by imprisonment for not more than six (6) months, or both.

(13) Any bank which violates any provision of KRS 287.720 to 287.770, except as a result of an accidental or bona fide error, shall be barred from the recovery of any finance charges permitted by KRS 287.740 and 287.750, and the debtor, or his legal representatives, may recover back, in an action against the bank, any amounts paid to the bank on account of such finance charge; provided such action is commenced within two (2) years from the date such violation first occurred; but the bank may nevertheless recover from the debtor an amount equal to the principal of extensions of credit made pursuant to a revolving credit plan and any charges not prohibited by KRS 287.760.

(14) Notwithstanding the provisions of subsections (12) and (13) of this section, any failure, other than a willful and intentional failure, to comply with any provisions of KRS 287.710 to 287.770 may be corrected during the billing cycle next succeeding the receipt by the bank of written notice thereof from the debtor, and if so corrected, the bank shall not be subject to any penalty under KRS 287.710 to 287.770.

(15) Any bank or trust company which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of a bank who violates the terms of any order issued under KRS 287.690 which has become final shall forfeit and pay a fine of not more than one thousand dollars ($1,000) per day for each day such violation continues. The fine shall be assessed by the commissioner by written notice. As used in this subsection, the term "violates" includes any action causing, participating in, counseling, aiding, or abetting a violation. In determining the amount of the fine the commissioner shall consider the financial resources and good faith of the bank or person charged, the gravity of the violation, the history of previous violations and such other factors as justice requires.

(16) Any bank which violates the provisions of KRS 287.065***(2)***[~~(3)~~] may be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500). The fines may be assessed by the commissioner by written notice.

(17) Any bank which violates any provisions of KRS 287.100(10) may be fined not less than one thousand dollars ($1,000) nor more than two thousand dollars ($2,000) for the first violation, and may be fined not less than two thousand dollars ($2,000) nor more than five thousand dollars ($5,000) for any subsequent violations.

(18) Any officer or director who violates the provisions of KRS 287.280(1) may be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each violation, and any officer or director who violates the provisions of KRS 287.280(2) may be fined not less than five hundred dollars ($500) nor more than two thousand dollars ($2,000) for each violation. The fine may be assessed by the commissioner by written notice.

Section 30. KRS 413.130 is amended to read as follows:

(1) In every action upon a merchants' account as described in subsection ***(10)***[~~(9)~~] of KRS 413.120, the limitation shall be computed from January 1 next succeeding the respective dates of the delivery of the several articles charged in the account. Judgment shall be rendered for no more than the amount of articles actually charged or delivered within five (5)

years preceding that in which the action was brought. If any merchant willfully postdates any article charged in such account, or the receipt for the delivery of it, he shall forfeit ten (10) times the amount of the article postdated, to be credited against the account. This credit shall be allowed in an action on the account, without any written pleadings setting it up.

(2) In an action to recover a balance due upon a mutual open and current account concerning the trade of merchandise between merchant and merchant or their agents, as described in subsection ***(11)***[~~(10)~~] of KRS 413.120, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account claimed, or proved to be chargeable on the adverse side.

(3) In an action for relief or damages for fraud or mistake, referred to in subsection ***(12)***[~~(11)~~] of KRS 413.120, the cause of action shall not be deemed to have accrued until the discovery of the fraud or mistake. However, the action shall be commenced within ten (10) years after the time of making the contract or the perpetration of the fraud.

Section 31. The following KRS sections are repealed:

287.061 Application for approval -- Hearing.
287.205 When national bank may act as fiduciary.

The Committee Substitute to **HB 516** is as follows:

AN ACT relating to banking.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 287.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Bank or state bank" means any bank which is now or may hereafter be organized under the laws of this state or a combined bank and trust company;

(2) "National bank" or "national bank association" means a bank created by Congress and organized pursuant to the provisions of federal law***, including savings and loan associations***;

(3) "Out-of-state bank" means a bank chartered under the laws of any state other than Kentucky;

(4) "Home state" means:

(a) With respect to a state bank or out-of-state state bank, the state by which the bank is chartered; and

(b) With respect to a national bank, the state in which the main office of the bank is located;

(5) "Home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which such bank is chartered;

(6) "Host state" means a state, other than the home state, in which the bank maintains, or seeks to establish and maintain, a branch;

(7) "Commissioner" means the commissioner of financial institutions;

(8) "Department" means the Department of Financial Institutions;

(9) "Population" means the population as indicated by the latest regular United States census;

(10) "Trust company" includes every corporation authorized by this chapter to do a trust business;

(11) "Undivided profits" means the composite of the bank's net retained earnings from current and prior years' operations;

(12) "Capital stock" shall mean, at any particular time, the sum of:

(a) The par value of all shares of the corporation having a par value that have been issued;

(b) The amount of the consideration received by the corporation for all shares of the corporation that have been issued without par value except such part of the consideration as has been allocated to surplus in a manner permitted by law; and

(c) Such amounts not included in paragraphs (a) and (b) of this subsection as have been transferred to stated capital of the corporation, whether through the issuance of stock dividends, resolution of the bank's board of directors under applicable corporate law or otherwise by law; and

(13) "Surplus" means the amount of consideration received by the corporation for all shares issued without par value that has not been allocated to capital stock or the amount of consideration received by the corporation in excess of par value for all shares with a par value or both.

Section 2. KRS 287.013 is amended to read as follows:

(1) There is created a Financial Institutions Board. The board shall consist of twelve (12) members appointed by the Governor who shall serve terms of four (4) years, except the initial terms shall be established as hereafter provided. It is

recommended that the board appointments made by the Governor be selected from the following:

(a) ***Three (3)***[~~Four (4)~~] members selected from the banking industry regulated by the department with appropriate recognition as to bank size and geographic diversity;

(b) ***Three (3) members***[~~One (1) member~~] selected from the broker/dealer securities industry regulated by the department;

(c) One (1) member selected from the credit union industry regulated by the department;

(d) One (1) member selected from the consumer finance or industrial loan industry regulated by the department;

(e)[~~One (1) member selected from the savings and loan industry regulated by the department;~~

~~(f)~~] Three (3) members selected from the public at large who are knowledgeable concerning financial institutions, the legislative process and consumer interests, two (2) of whom are not employees, officers or directors of any financial institution; and

(f)[~~(g)~~] The commissioner, who shall also serve as chairman of the board.

(2) All members of the board from the banking industry, securities industry, credit union industry, consumer finance, ***or*** industrial loan industry[~~ or savings and loan industry~~] shall be persons with practical experience in the industry so represented and currently serving at the executive level of that industry at the time of their appointment.

(3) At the first meeting of the board, a drawing by lot shall be conducted to determine the length of each original member's term. Initially, there shall be four (4) four (4) year terms, five (5) three (3) year terms, and two (2) two (2) year terms. Vacancies in the membership of the board shall be filled in the same manner as original appointments. Appointments to fill vacancies occurring before the expiration of a term shall be for the remainder of the unexpired term.

(4) No member of the board, other than the commissioner, shall serve more than two (2) consecutive terms on the board.

(5) The board shall first meet at the call of the Governor and thereafter as the board shall determine, but at least quarterly, at a time and place determined by the chairman. The board may elect other officers for the conduct of its business. A majority of board members shall constitute a quorum, and a decision shall require the majority vote of those present. Each board member shall have one (1) vote, and voting by proxy shall be prohibited.

(6) Board members shall receive one hundred dollars ($100) per diem for each board meeting which they attend and shall be reimbursed for other reasonable and necessary expenses incurred while engaged in carrying out the duties of the board.

(7) The board shall:

(a) Prepare and submit at the Governor's request a list of candidates qualified to serve as commissioner and recommend to the Governor a proposed salary for each nomination for commissioner;

(b) Recommend to the Governor a proposed salary structure for other departmental staff in order to provide competitive salaries for recruitment and retention of staff;

(c) Receive and comment on various reports relating to the department and its activities as submitted to the board by the commissioner or the Governor; and

(d) Review, consider and make recommendations to the commissioner on any matters referred to the board by the commissioner or the Governor.

(8) In no event shall the board or its members interfere with the statutory duties of the commissioner whose decisions shall be governed by law.

Section 3. KRS 287.020 is amended to read as follows:

(1) The commissioner may promulgate, amend, and repeal any administrative regulations, forms, and orders as are necessary to interpret and carry out the provisions and intent of this chapter. He shall devise a seal for his department, a description of which, together with an impression thereof and a certificate of approval by the Governor, shall be filed in the office of the Secretary of State. The seal shall be renewed whenever necessary.

(2) The commissioner of financial institutions and his deputies shall be allowed their necessary traveling and other expenses of conducting their office.

(3) The commissioner of financial institutions may issue a finding of permissible activities, services, or products to authorize banks to engage in any banking activity in which the banks could engage were they operating as national banks at the time the authority is granted. Any finding shall be specifically limited to the activity, service, or products contained therein and shall be mailed to all banks. This section shall not apply to activities prohibited under Subtitle 9 of KRS Chapter 304.[~~ The hearing procedures of KRS 287.061 shall be applicable to the issuance of a finding.~~]

(4) Nothing herein contained shall be construed to repeal, modify, or alter the restrictions of KRS 287.105 relative to the leasing of motor vehicles, or of KRS 287.180 relative to the establishment of branches.

(5) The commissioner may designate the deputy commissioner, division directors, general counsel, or branch managers to sign documents under his instructions.

Section 4. KRS 287.030 is amended to read as follows:

(1) As used in this section, "person" includes a natural person, partnership, corporation, association, business trust, voting trust, or similar organization.

(2) No persons, except corporations, shall engage in the business of private banking in this state.

(3) No bank incorporated under the laws of another state or national bank having its principal place of business outside this state shall transact any banking business in this state except to lend money, unless specifically authorized by law or administrative regulation, or except as permitted following a merger transaction within the meaning of Section 44 of the Federal Deposit Insurance Act pursuant to 12 U.S.C. sec. 1811 et seq., approved after June 1, 1997.

(4) No person who after July 13, 1984, owns or acquires more than one-half (1/2) of the capital stock of a bank shall act as insurance agent or broker with respect to any insurance except credit life insurance, credit health insurance, insurance of the interest of a real property mortgagee in mortgaged property, other than title insurance.

(5) No bank incorporated under the laws of the Commonwealth of Kentucky shall make any loan or discount on the security of the shares of its own capital stock, or the shares of stock of a bank holding company which controls the bank to the extent that such loan or discount secured by such shares exceeds the amounts permitted by Section 23(A) of the Federal Reserve Act (12 U.S.C. sec. 371c) as that section reads on July 15, 1986, nor be the purchaser or holder of any such shares, except that a bank may take property of any kind to satisfy or protect a loan previously made in good faith and in the ordinary course of business; and stock so purchased or acquired, shall, within six (6) months from the time of its purchase or acquisition, be sold or disposed of at public or private sale. This subsection shall not affect or modify in any way KRS 386.025, but said section shall remain in full force and effect.

(6) Any state or national bank with branch offices in Kentucky shall use at all times the same name for all its branch offices in Kentucky.

Section 5. KRS 287.050 is amended to read as follows:

(1) Before filing the articles of incorporation of any financial institution mentioned in KRS 287.040, the incorporators shall present a copy of their proposed articles to the commissioner who shall investigate the financial standing, moral character and capability of each of the incorporators and proposed executive officers and directors, if known, and determine whether there is reasonable assurance of sufficient volume of business for the proposed corporation to be successful, and whether the public convenience and advantage will be promoted by the opening of the proposed corporation.

(2) In the event that the institution for which a charter is sought is to be created solely for the purpose of effectuating a merger or consolidation to facilitate the formation of a bank holding company, the commissioner may waive all or any part of the requirements of ***this chapter***[~~subsection (1) of this section~~].

(3) If the commissioner determines that it is expedient and desirable to permit the proposed corporation to engage in business, he shall approve the articles of incorporation in writing, and the articles then may be filed and recorded as provided in the general corporation law.

(4) All amendments to the articles of incorporation of any financial institution mentioned in KRS 287.040 shall be approved by the commissioner before filing with the Secretary of State.

Section 6. KRS 287.060 is amended to read as follows:

(1) Before any financial institution mentioned in KRS 287.040 may transact any banking or trust business, it shall file a written oath with the commissioner. The oath shall be taken by each director of the institution, and shall state in substance:

- (a) That such director is a citizen of the United States, and the State of Kentucky, or, if not, the place of his residence;
- (b) That he will faithfully discharge the duties of his office and administer the affairs of the institution, so far as the duties of his office require;
- (c) That he will uphold the laws of the state, and particularly the banking and trust laws.

(2) The oath shall be taken before any officer authorized to administer oaths, and shall be taken upon the election of any subsequent director or reelection of any director. The oath shall be ***maintained by the bank and be subject to review at examinations***[~~transmitted to the commissioner immediately upon its execution and shall be filed and preserved by the commissioner~~].

(3) The commissioner shall issue to the institution a certificate entitling it to transact the business for which it was organized after the following requirements have been met:

- (a) The oath mentioned in subsections (1) and (2) of this section has been filed; and
- (b) The commissioner has received satisfactory proof that the accounts of the banking institution's depositors will be insured by the Federal Deposit Insurance Corporation; and
- (c) The commissioner has received satisfactory proof that the institution has subscribed and paid-in the required

capital and has otherwise fully complied with all pertinent laws and regulations; and

(d) A period of thirty (30) days has elapsed since the rendition by the commissioner of a final order, as defined in KRS 13B.010, and an appeal to the appropriate court has not been taken from such order.

(e) If an appeal from a final order of the commissioner has been timely filed, no certificate shall be issued until all the requirements of paragraphs (a) to (c) of this subsection have been met and until:

1. The appeal has been finally disposed of by the last possible court of review, including the United States Supreme Court; or
2. All further opportunities for appeal have expired as a result of the failure to timely file an appeal.

Section 7. KRS 287.065 is amended to read as follows:

(1)[~~ Each director of a bank or trust company shall own in his own right unpledged capital stock of that bank or trust company, or of a corporation holding at least eighty percent (80%) of the outstanding capital stock of that bank or trust company, having a book value of at least one thousand dollars ($1,000) at the time such person becomes a director, and the certificates of such stock shall remain in the exclusive custody and control of that bank or trust company during his term of office.~~

~~(2)~~] A majority of the directors of any board must be residents of Kentucky during their term of office.

(2)[~~(3)~~] Each director shall exercise such ordinary care and diligence as necessary and reasonable to administer the affairs of the bank in a safe and sound manner. In this regard, the bank shall furnish each director with a copy of an appropriate publication outlining the duties of a bank director and an updated copy of the Kentucky banking law, and maintain in the bank updated copies of federal banking laws, as determined by administrative regulations.

Section 8. KRS 287.070 is amended to read as follows:

[~~(1) The capital stock of any financial institution mentioned in KRS 287.040 organized prior to May 31, 1938, shall be maintained in the amount required by the law in effect on May 30, 1938.~~

~~(2)~~]The minimum capital stock of any bank or trust company organized after May 30, 1938 shall be ***two million five hundred thousand dollars ($2,500,000). Additional capital may be required depending upon an investigation of the application, at the discretion of the commissioner***[~~as follows, according to the city in which it is located:~~

~~Cities of up to 7,999 population~~	~~$ 25,000~~
~~Cities of 7,999 to 19,999 population~~	~~$ 50,000~~
~~Cities of 20,000 to 100,000 population~~	~~$100,000~~
~~Cities of over 100,000 population~~	~~$200,000~~

~~(3) The minimum capital stock of any combined bank and trust company, combined bank and real estate title insurance company or combined trust and real estate title insurance company or combined bank trust and real estate title insurance company, organized after May 30, 1938, shall be not less than twice the amount stated in subsection (2) of this section~~].

Section 9. KRS 287.080 is amended to read as follows:

The minimum capital required of a financial institution by KRS 287.070 shall be paid in full in money***. Not less than fifty percent (50%) of the minimum capital required shall be designated as surplus***[~~, and in addition thereto there shall be so paid in a surplus of not less than fifty percent (50%) of the minimum capital required~~]. Such money shall be in the custody of the directors before the corporation may commence business. None of the original minimum capital of a financial institution may be designated as undivided profits.

Section 10. KRS 287.103 is amended to read as follows:

(1) It is hereby declared to be the policy of the Commonwealth of Kentucky that the investment of funds, by a bank chartered under the laws of Kentucky or a national banking association having its principal office in Kentucky, in real and personal property as now or hereafter provided by this chapter, be recognized as a normal, proper, necessary, and integral part of the legitimate business of such state or national banks.

(2)[~~ Upon approval of the commissioner in the case of a state bank, or the proper federal supervisory authority in the case of a national bank, the institution may invest its funds in real property and/or improvements on such real property when all or a portion of the improvements are for use as its home office or for branch offices so long as the said real estate is used for carrying on its legitimate business as permitted by Section 192 of the Constitution of the State of Kentucky.~~

~~(3)~~] All property owned and held by a state or national bank under this section shall be deemed to be property that is proper and necessary for carrying out its legitimate business within the meaning of KRS Chapter 271B or any section of the Kentucky Revised Statutes relating to escheat.

Section 11. KRS 287.105 is amended to read as follows:

Subject to such limitations and conditions as the commissioner may from time to time prescribe by general regulations, any bank or trust company organized under the laws of this state may purchase, hold and become the owner and lessor of personal property[~~ acquired upon the specific request of and for the use of a customer~~] and may incur such additional obligations as may be incident to becoming an owner and lessor of such personal property, provided, however, that the net unrecovered investment of such bank or trust company in such personal property shall, for the purposes of KRS 287.280 only, be deemed to be an indebtedness of the lessee thereof, and such personal property shall be considered to be collateral securing such indebtedness.

Section 12. KRS 287.214 is amended to read as follows:

Notwithstanding the provisions of any other law, a bank[~~ or trust company~~] may take, receive, reserve and charge on money due or to become due on any contract or other obligation in writing, where the original principal amount is fifteen thousand dollars ($15,000) or less, interest at any rate allowed national banking associations by the laws of the United States of America. A trust company shall not make any extensions of credit on its own account, but may make extensions of credit for trust assets under management.

Section 13. KRS 287.350 is amended to read as follows:

(1) The board of directors of any bank or trust company organized under the laws of this state may declare a dividend of so much of the net profits as they deem expedient. The net profits shall be computed by deducting all expenses, losses,[~~ bad or suspended debts~~] and interest and taxes accrued or due from the bank.

(2) Before any dividend is declared, other than upon its preferred stock, not less than ten percent (10%) of the net profits of the bank for the period covered by the dividend applicable to its common stock shall be carried to its surplus fund until such surplus fund amounts to a sum equal to the amount of its common capital stock.

(3)[~~ All debts due to a bank or trust company on which interest is due and unpaid for six (6) months, unless the debts are well secured or in the process of collection, are bad or suspended debts within the meaning of this section.~~

~~(4)~~] The approval of the commissioner shall be required if the total of all dividends declared by such institution in any calendar year shall exceed the total of its net profits of that year combined with its retained net profits of the preceding two (2) years, less any required transfers to surplus or a fund for the retirement of preferred stock or debt.

Section 14. KRS 287.385 is amended to read as follows:

For the purpose of borrowing money from a state or national bank for their own higher educational purposes, the disabilities of nonage of minors are removed for all purposes, whether male or female. Any minor is authorized to make and execute any and all promissory notes, contracts, or other instruments necessary to be executed by him in order to borrow money for his own higher educational purposes, and such promissory notes, contracts or other instruments shall have the same force and effect as though they were the obligations of persons over the age of their majority[~~; provided that no such obligation shall be valid if the rate of interest thereon exceeds six percent (6%) per annum, simple interest~~]. Any promissory note, contract or other instrument entered into by any such person pursuant to the provisions of this section shall have the approval of the parent or guardian of such minor and of the financial officer of the institution of higher learning.

Section 15. KRS 287.420 is amended to read as follows:

Within ten (10) days after the commissioner calls upon a bank or trust company, it shall publish pursuant to KRS Chapter 424 on a form furnished by the commissioner, a condensed statement of its financial condition, at the close of business on the date named in the call. The commissioner may make the call at any time he desires[~~ and shall make at least two (2) calls in each year~~]. Such published statement shall ***contain all information as the commissioner shall require***[~~show the total amounts of loans, overdrafts, money invested in bonds and other securities, money due from banks, checks and other cash items, cash on hand, capital paid in, surplus fund, undivided profits (less expense and taxes paid), money due to other banks, individual deposits subject to check, demand certificates of deposit, time deposits, outstanding certified checks and cashier's checks and such other items as will show the actual financial condition of the bank or trust company making the report~~]. The reports shall be signed and sworn to ***either*** by the president, vice president***,***[~~ or~~] cashier, ***or one (1)***[~~and signed by at least three (3)~~] of the directors. A copy of the report, certified to by the publisher, shall be kept in the files of the bank or trust company for review by the department.

Section 16. KRS 287.450 is amended to read as follows:

(1) Every state bank, branch of an out-of-state state bank, or trust company doing business under the laws of this state shall be subject to inspection by the commissioner or by an examiner appointed by the commissioner. Examination shall be made of each institution at least once every twenty-four (24) months, unless other examinations are accepted as provided in subsections (3), (4), and (5) of this section, and not more than twice unless it appears from examination or from the reports of the institution that it has failed to comply with laws or regulations relating to banks or trust companies, or has engaged in unsafe or unsound banking practices.

(2) The commissioner, deputy commissioner, and each examiner may compel the appearance of any person for the purpose of the examination, which shall be made in the presence of one (1) of the officers of the institution being examined.

(3) Any bank that becomes a member of a Federal Reserve Bank shall be subject to the examination required by the Federal Reserve Act, (38 Stat. 251) as amended, and the commissioner may, in his discretion, accept examinations made by the Federal Reserve authorities in lieu of examinations made under state laws. The commissioner shall furnish to the Federal Reserve agent of the district in which the member bank is situated~~,~~ copies of reports and examinations made of the

member bank.

(4) The commissioner may, in his discretion, accept examinations made by the Federal Deposit Insurance Corporation in lieu of examinations made under state laws.

(5) The commissioner may, in his discretion, enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch of an out-of-state state bank, or any branch of a state bank in any host state. The commissioner may accept reports of examinations and reports of investigation from other bank supervisory agencies and home state regulators in lieu of examinations made under state law. The commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch of an out-of-state state bank or any branch of a state bank located in any host state. ***Information produced or provided under this section shall be considered confidential as provided in KRS 287.470.***

Section 17. KRS 287.480 is amended to read as follows:

(1) The following fees shall be paid to the commissioner by corporations engaged in a banking or trust business:

(a) For the investigation incident to the approval of articles of incorporation, applications for branch banks and loan production offices, and applications to relocate a main or branch office, the fee shall be sufficient to cover the cost of the investigation based upon fair compensation for time and actual expense;

(b)[~~For each report, a filing fee of twenty-five dollars ($25);~~

~~(c)~~] For each state bank and branch of an out-of-state state bank subject to inspection and examination by the commissioner, an annual assessment based on the assets of the banks and branches, other than assets held by it in a fiduciary capacity, as reported to the department by the banks and branches as of the thirty-first day of December of the previous year. The assessment schedule shall be at the rates the commissioner shall determine to be necessary to carry out the duties of the department and shall be reasonably related to the costs[~~, other than costs of examination,~~] incurred by the department in regulating banks and branches. ***The assessment schedule shall be set by administrative regulation***[~~The assessments for any one (1) year shall not exceed a sum equal to five cents ($0.05) per each one thousand dollars ($1,000) and any fraction thereof of the total nontrust assets;~~

~~(d) For any examinations under KRS 287.450, a fee shall be collected sufficient to cover the cost of the examination based upon fair compensation for time and actual expense~~];

(c)[~~(e)~~] For the examination of the assets held by the institution in a fiduciary capacity, the fee shall be sufficient to cover the cost of the investigation based upon fair compensation for time and actual expense. The commissioner may accept examinations made of the trust department in combined banks and trust companies by examiners for the Federal Reserve System, Federal Deposit Insurance Corporation, or a certified public accountant; and

(d)[~~(f)~~] Extraordinary services performed, in addition to examinations, for any financial institution, including institutions in liquidation under the supervision of the commissioner, shall be paid for by the institution upon the basis of fair compensation for time and actual expense.

(2) The commissioner, in his discretion, may enter into cooperative agreements with other bank supervisory agencies having concurrent jurisdiction over any branch of an out-of-state state bank or any branch of a state bank located in any host state, or any organization affiliated with one (1) or more bank supervisory agencies for the collection, remittance, and sharing of fees authorized in subsection (1) of this section.

Section 18. KRS 287.490 is amended to read as follows:

(1) Every institution under the supervision of the department shall make a[~~ written~~] report to the commissioner whenever required by him to do so. The commissioner shall not require more than five (5) reports from any one (1) institution in any one (1) year, unless he deems it necessary in order to obtain complete information[~~, and each report shall be verified by the oath of the corporation's president or vice president, and its secretary or cashier, or two (2) principal officers~~].

(2) The reports shall show the actual condition of the bank making the report at the close of business on a date designated by the commissioner and shall specify ***any information required by the commissioner***[~~:~~

~~(a) The amount of its capital stock and the number of shares into which it is divided;~~

~~(b) The names of the directors, and the number of shares of stock held by them;~~

~~(c) The total amount of capital actually paid in, and the total amount of surplus and other reserve funds;~~

~~(d) The total amount due depositors, and all other liabilities;~~

~~(e) The total amount and character of overdrafts secured, overdrafts not secured and all other assets;~~

~~(f) The amount at which the lot and building occupied by the bank for the transaction of its business stands debited on its books, and the market value of all other real estate held, and how acquired, the amount at which it stands debited on the books, and where situated;~~

~~(g) The amount loaned on real estate;~~

~~(h) The indebtedness or liability of each officer, and of each director to the bank;~~

~~(i) The amount invested in bonds and stocks;~~

~~(j) The amount loaned on stocks and bonds, on other securities, commercial paper and other notes and bills;~~

~~(k) The actual amount of money on hand and on deposit in other banks, and the name of such banks where deposited;~~

~~(l) Any other property held, or money loaned, deposited, invested or placed, not otherwise mentioned in this section, and the place where situated and the value of the property, and the amount loaned, deposited, or placed; and~~

~~(m) Any other information required by the commissioner~~].

(3) Any officer, director or board of directors of a bank or trust company shall immediately notify the commissioner concerning any information relating to that financial institution of which they have personal knowledge, involving fraud, defalcation, misfeasance or violations of this chapter. Failure to so notify the commissioner shall be grounds for officer or director removal pursuant to KRS 287.690.

Section 19. KRS 287.710 is amended to read as follows:

As used in KRS 287.720 to 287.770, unless the context otherwise requires:

(1) "Bank" means a bank organized under the laws of this state or of the United States, or any assignee of the bank's rights under a revolving credit plan.

(2) "Credit card" means any single card, plate or other credit device that is reusable by a debtor from time to time to obtain extensions of credit under a revolving credit plan. Checks, drafts and similar instruments that can be used only once to obtain a single credit extension are not credit cards.

(3) "Debtor" means a person to whom or for whose benefit credit is extended pursuant to a revolving credit plan and any other person having actual, implied or apparent authority to obtain extensions of credit under such plan for the debtor.

(4) To "extend credit" or "extension of credit" means the right granted by a bank to a debtor to defer payment of debt, incur debt and defer its payment, or purchase goods, services or anything else of value and defer payment therefor pursuant to a revolving credit plan.

(5) "Finance charge" means the sum of all charges, payable directly or indirectly by the debtor, and imposed directly or indirectly by a bank as an incident to an extension of credit pursuant to a revolving credit plan, including interest and any amount payable under a point, discount or other system of additional charges, service or carrying charges, loan fee, finder's fee or similar charge, fees for an investigation or credit report or premiums or other charges required by the bank to be purchased from or through it or an agency named by it for any guarantee or insurance protecting the bank against the debtor's default or other credit loss. The term does not include amounts, if any, collected by the bank, or included in the extension of credit which are fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to credit extended pursuant to the plan or taxes.

(6) "Revolving credit plan" or "plan" means an arrangement between a bank and a debtor pursuant to which:

(a) The bank may extend credit to the debtor by permitting the debtor to make purchases of goods, services and anything else of value or obtain loans, from time to time, directly from the bank or indirectly by use of a credit card~~[, check or other device, as the plan may provide]~~;

(b) The unpaid balances of purchases made, the principal of loans obtained and finance and other appropriate charges are debited to the debtor's account;

(c) A finance charge, if made, is not precomputed, but is computed on the outstanding unpaid balances of the debtor's account from time to time; and

(d) The bank renders bills or statements to the debtor at regular intervals, which need not be a calendar month (the "billing cycle"), the amount of which bills or statements is payable by and due from the debtor on a specified date stated in such bill or statement or, at the debtor's option, may be paid in installments.

Section 20. KRS 287.905 is amended to read as follows:

(1) Any bank holding company which proposes to acquire control of a bank chartered in this state or a bank holding company which includes a bank chartered in this state, shall concurrently file with the commissioner copies of the application filed with the federal reserve board under applicable federal law. The commissioner shall approve such acquisition within ninety (90) days of acceptance of a complete application if he finds that:

(a) The terms of the acquisition are in accordance with the laws of this state;

(b) The financial condition, or the competence, experience and integrity of the acquiring company or its principals are such as will not jeopardize the financial stability of the acquired bank or bank holding company;

(c) The public convenience and advantage will be served by the acquisition; and

(d) No federal regulatory authority whose approval is required has disapproved the transaction because it would result in a monopoly or substantially lessen competition.

(2) A nonrefundable fee shall accompany each application and shall be set by the commissioner in accordance with KRS 287.480.

(3) The commissioner may examine or elect to participate in a joint examination, with the applicable federal or state regulatory agency, of any holding company or nonbank subsidiary of the holding company that controls or is affiliated with a state-chartered bank. ***The provisions of KRS 287.690 apply to the holding company or nonbank subsidiary of the holding company that controls or is affiliated with a state-chartered bank.***

(4) The commissioner may enter into cooperative agreements with federal or state regulatory authorities to examine an out-of-state bank that is controlled by a Kentucky bank holding company or is controlled by a bank holding company which includes a state-chartered bank, or accept reports of examinations of such out-of-state banks from federal or state regulatory authorities in lieu of conducting examinations.

(5) The commissioner may enter into cooperative agreements with federal or state regulatory authorities to exchange confidential information and reports of examination relating to interstate acquisitions of banks and bank holding companies.

(6) The cost of an examination shall be assessed against and paid by the company examined. The assessment for the examination shall be calculated in the same manner as that used for bank examinations.

Section 21. KRS 287.915 is amended to read as follows:

(1) Notwithstanding any other provision of KRS Chapter 287:

(a) An individual or bank holding company that controls two (2) or more banks having their principal offices in this Commonwealth may, from time to time, combine any or all of the commonly controlled banks in this Commonwealth into and with any one (1) of the banks, and thereafter the surviving bank, which shall have its principal office in this Commonwealth, shall continue to operate its principal office and may operate the other authorized offices of the banks so combined as branches of the surviving bank; and

(b) Any combination authorized by this section shall not require the approval of the commissioner of financial institutions, but on or before thirty (30) days prior to consummation of any combination, the proposed surviving bank shall notify the commissioner of the combination, and on the effective date of any such combination the charter of any combined bank organized under the laws of this Commonwealth shall be surrendered.

(2) Following any combination authorized by this section:

(a) The surviving bank may, subject to the approval of the commissioner as provided in KRS 287.180(2), establish and operate additional branches in any county where any bank involved in the combination had established a branch or main office;

(b) Any combined bank which is being operated as a branch of the surviving bank shall have a board of directors, a majority of which shall be residents of the combined bank's community, which shall meet not less often than ***quarterly***[~~monthly~~] to advise the branch in a nonfiduciary capacity with respect to the branch's community activities and affairs, customer relations, and local charitable activities;

(c) The surviving bank shall maintain a record of the deposits in each of its offices resulting from such combination or thereafter established as provided in paragraph (a) of this subsection; and

(d) With the approval of the commissioner, ***all of a bank's offices in a county***[~~a combined bank's former main office and all of the branches in one (1) county existing on the date of the combination authorized by this section~~] may be transferred, by a purchase and assumption or other transaction, by the[~~ surviving~~] bank to a newly chartered bank having its principal office in the same county[~~ where the main office of the combined bank was located prior to the combination~~], or to an existing bank***. If transferred to a newly chartered bank, the years in existence of the newly chartered bank shall be deemed to be in excess of five (5) years***[~~or bank holding company. If transferred to a newly chartered bank, the years in existence of the newly chartered bank shall be deemed to be the same as the combined bank prior to the combination~~].

(3) For purposes of this section:

(a) The term "combine" or "combination" includes a merger or the acquisition of all or substantially all of the assets of a bank already controlled by an individual or bank holding company;

(b) An individual or bank holding company "controls" a bank if that individual or company, directly or indirectly, owns, controls, or has the power to vote at least eighty percent (80%) of the issued and outstanding voting securities of the bank;

(c) "Combined bank" means any bank participating in a combination authorized by this section other than the surviving bank;

(d) "Surviving bank" means a bank into which a combined bank has been combined;

(e) "Bank" includes a national bank, savings and loan association, and federal savings bank but does not include a bank which has been in existence less than five (5) years; and

(f) "Individual", "bank holding company" and "deposit" shall have the same meanings attributed to them in KRS 287.900(1).

Section 22. KRS 287.920 is amended to read as follows:

(1) As used in this section, unless the context requires otherwise:

(a) "Interstate merger transaction" means the merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; and

(b) "Resulting bank" means a bank that has resulted from an interstate merger transaction under this section.

(2) A Kentucky state bank may establish, maintain, and operate one (1) or more branches in a state other than Kentucky pursuant to an interstate merger transaction in which the Kentucky state bank is the resulting bank***, or if the other state permits, by acquisition of a branch or branches in the other state***. Not later than the date on which the required application for the interstate merger transaction ***or branch acquisition*** is filed with the responsible federal bank supervisory agency, the applicant shall file an application on a form prescribed by the commissioner and pay the fee prescribed by KRS 287.480. The applicant shall also comply with the applicable provisions of KRS 287.180(2) and the commissioner shall base his approval or disapproval in the same manner as prescribed in KRS 287.180(2).

(3) An out-of-state state bank may establish, maintain, and operate one (1) or more branches in Kentucky pursuant to an interstate merger transaction in which the out-of-state state bank is the resulting bank. Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant shall file an application on a form prescribed by the commissioner, pay the fee prescribed by KRS 287.480, and agree in writing to comply with the laws of this state applicable to its operation of branches in Kentucky. The applicant shall also comply with the applicable provisions of KRS 287.180(2) and the commissioner shall base his approval or disapproval in the same manner as prescribed in KRS 287.180(2).

(4) The bank to be acquired in an interstate merger transaction under the provisions of ***subsection***[~~subsections (2) and~~] (3) of this section shall have been involved in operation for a period of five (5) years or more. No interstate merger transaction under subsections (2) or (3) of this section shall be approved if the transaction would result in a bank holding company having control of banks or branches in this state holding more than fifteen percent (15%) of the total deposits and member accounts in the offices of all federally-insured depository institutions in this state as reported in the most recent year-end reports made by the institutions to their respective supervisory authorities which are available at the time of the transaction.

(5) An individual or bank holding company that controls two (2) or more banks may, from time to time, combine any or all of the commonly controlled banks in this Commonwealth into and with any one (1) of the banks, and thereafter the surviving bank shall continue to operate its principal office and may operate the other authorized offices of the banks so combined as branches of the surviving bank.

(6) A branch of an out-of-state state bank may conduct any activities that are authorized under the laws of this state for state banks. Additionally, the branch of an out-of-state state bank is authorized to conduct any activities relating to the administration of trusts that are authorized under the laws of its home state, if the activities are conducted in conformity with the laws of its home state.

(7) A branch of a Kentucky state bank located in a host state may conduct any activities that are:

(a) Authorized under the laws of the host state for banks chartered by the host state; or

(b) Authorized for branches of national banks located in the host state, but whose principal location is in a state other than the host state.

Section 23. KRS 386.735 is amended to read as follows:

Unless previously barred by adjudication, consent or ***any*** limitation ***established by KRS Chapter 413***, any claim against a trustee for breach of trust is barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the claim is commenced within six (6) months after receipt of the final account or statement. In any event and notwithstanding lack of full disclosure a trustee who has issued a final account or statement received by the beneficiary and has informed the beneficiary of the location and availability of records for his examination is protected after three (3) years. A beneficiary is deemed to have received a final account or statement if, being an adult, it is received by him personally or if, being a minor or disabled person, it is received by his representative.

Section 24. KRS 391.315 is amended to read as follows:

(1) ***(a)*** Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties ***to the account*** as against the estate of the decedent unless there is clear and convincing ***written*** evidence of a different

intention at the time the account is created. If there are two or more surviving parties their respective ownerships during lifetime shall be in proportion to their previous ownership interests under KRS 391.310 augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death; and the right of survivorship continues between the surviving parties.

(b) In transferring or releasing joint account funds subsequent to the date of death of one (1) or more of the named joint account holders, a financial institution or other appropriate third party may rely conclusively on the form and terms of the account to pay in accordance with paragraph (a) of this subsection. The transfer or release of those joint account funds has no bearing on the actual rights of ownership of the funds as between the surviving party or parties to the account and the dower or curtesy interest of any surviving spouse. The transfer or release by a financial institution or third party in accordance with this section shall constitute a full release and discharge of the financial institution or third party from all claims relating to ownership.

(2) If the account is a P.O.D. account, on death of the original payee or of the survivor of two or more original payees, any sums remaining on deposit belong to the P.O.D. payee or payees if surviving, or to the survivor of them if one or more die before the original payee; if two or more P.O.D. payees survive, there is no right of survivorship in event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(3) If the account is a trust account, on death of the trustee or the survivor of two or more trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries, if surviving, or to the survivor of them if one or more die before the trustee, unless there is clear and convincing evidence of a contrary intent; if two or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(4) In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of his estate.

(5) A right of survivorship arising from the express terms of the account or under this section, a beneficiary designation in a trust account, or a P.O.D. payee designation, cannot be changed by will.

Section 25. KRS 413.120 is amended to read as follows:

The following actions shall be commenced within five (5) years after the cause of action accrued:

(1) An action upon a contract not in writing, express or implied.

(2) An action upon a liability created by statute, when no other time is fixed by the statute creating the liability.

(3) An action for a penalty or forfeiture when no time is fixed by the statute prescribing it.

(4) An action for trespass on real or personal property.

(5) An action for the profits of or damages for withholding real or personal property.

(6) ***An action for an injury by a trustee to the rights of a beneficiary of a trust.***

(7) An action for an injury to the rights of the plaintiff, not arising on contract and not otherwise enumerated.

(8)[~~(7)~~] An action upon a bill of exchange, check, draft or order, or any endorsement thereof, or upon a promissory note, placed upon the footing of a bill of exchange.

(9)[~~(8)~~] An action to enforce the liability of a steamboat or other vessel.

(10)[~~(9)~~] An action upon a merchant's account for goods sold and delivered, or any article charged in such store account.

(11)[~~(10)~~] An action upon an account concerning the trade of merchandise, between merchant and merchant or their agents.

(12)[~~(11)~~] An action for relief or damages on the ground of fraud or mistake.

(13)[~~(12)~~] An action to enforce the liability of bail.

(14)[~~(13)~~] An action for personal injuries suffered by any person against the builder of a home or other improvements. This cause of action shall be deemed to accrue at the time of original occupancy of the improvements which the builder caused to be erected.

Section 26. KRS 413.340 is amended to read as follows:

The provisions of this chapter shall not apply to ***an express***[~~a continuing and subsisting~~] trust ***that is both continuing and subsisting***, nor to an action by a vendee of real property in possession to obtain a conveyance. ***For purposes of this subsection, a subsisting trust is an express trust with respect to which the trustee is acting within its powers and with respect to which no beneficiary has a cause of action against the trustee.***

Section 27. KRS 41.220 is amended to read as follows:

(1) Not less than three (3) solvent banks shall be designated as depositories for state funds. Each bank designated shall have not less than the minimum capital stock as required in[~~ paragraphs (2) and (3) of~~] KRS 287.070. Banks shall be designated as depositories for state funds upon agreement of the State Treasurer and the secretary of the Finance and

Administration Cabinet. Those designated shall be entered in the executive journal. If at any time it appears that the capital of any depository has become impaired, the state's deposits shall be withdrawn and another depository named.

(2) The State Treasurer and the secretary of the Finance and Administration Cabinet shall determine the needs for moving state funds from one (1) designated depository to another.

Section 28. KRS 287.820 is amended to read as follows:

(1) For the purpose of this section:

(a) "Loan production office" means a bank office located at a place other than the principal or branch office, at which bank employees solicit and originate loans for final approval and disbursement of funds at the principal or branch office; and

(b) "Disbursement of funds" is the process by which a bank officer in a principal or branch office issues a negotiable instrument at the principal or branch office.

(2) No bank shall operate a loan production office without prior approval of the commissioner. The commissioner shall approve the application unless he finds that:

(a) The proposed operation of the loan production office is not in accordance with this section;

(b) The financial standing, moral character, and capability of the bank and its management which proposes to operate a loan production office will jeopardize the financial stability of the bank;

(c) There is no reasonable assurance of sufficient volume of business for the proposed loan production office to be successful; and

(d) The public convenience and advantage will not be promoted by the opening of the proposed loan production office.

(3) All extensions of credit originated in a loan production office shall be in accordance with disclosure provisions, usury rates, and other fees and charges authorized by law for banks.

(4) Loan production offices shall not accept deposits or conduct any other banking functions except those enumerated in paragraph (a) of subsection (1) of this section.

(5) The department may examine the operations of any loan production office for the purpose of determining that the scope of its activities does not exceed that allowed in this section. Banks operating loan production offices shall maintain copies of records relating to extensions of credit originated in loan production offices at the principal office for examination purposes.

(6) The application and appeal process set forth in~~[KRS 287.061 and]~~ KRS Chapter 13B and the cease and desist powers of the commissioner set forth in KRS 287.690 shall apply to loan production offices.

Section 29. KRS 287.990 is amended to read as follows:

(1) Any person who violates subsection (2) of KRS 287.030 may be fined not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000) for each day he is engaged in the private banking business.

(2) Any institution that fails to make the report required by KRS 287.420 to the commissioner within five (5) days after the report is due or demanded, or that fails to have the report published as required by KRS 287.420, may be assessed and, if assessed, shall pay a penalty of two hundred dollars ($200).

(3) If any person violates subsection (3) of KRS 287.440 his office shall ipso facto become vacant. The president or cashier of any bank or trust company to which any person becomes indebted in violation of subsection (3) of KRS 287.440 shall immediately report such fact to the commissioner, who may remove the person so offending.

(4) Any receiver of an insolvent institution who fails to comply with the provisions of this chapter shall be subject to the same penalties provided for solvent institutions and officers so offending.

(5) Any directors of a bank who knowingly violate, or knowingly permit any officer or employee of the bank to violate, any of the laws relating to banks, shall be jointly and severally liable to the creditors and stockholders for any loss or damage resulting from such violation. If the loss or damage is not made good within a reasonable time, the commissioner, with the consent of the Attorney General, shall institute proceedings to revoke the corporate powers of the bank.

(6) Any deputy commissioner or any examiner who has knowledge of the insolvency or unsafe condition of a state bank or trust company, or that it is inexpedient to permit the bank or trust company to continue business, and who fails to immediately present a signed report of such facts to the commissioner, or who violates any of the provisions of this chapter, shall forfeit his office and shall be fined not less than one hundred ($100) nor more than two thousand dollars ($2,000) for each offense.

(7) Any commissioner who has knowledge of the insolvency or unsafe condition of a state bank or trust company, or that it is inexpedient to permit the bank or trust company to continue business, and who willfully fails to take the action prescribed by this chapter, or who violates any of the provisions of this chapter, shall forfeit his office and shall be fined not less than five hundred ($500) nor more than five thousand dollars ($5,000) for each offense.

(8) Any bank or trust company that knowingly fails to make a report required by law or by the commissioner within the time designated for the making thereof, or fails to include in such report any matter required by law or by the commissioner, or fails to publish a report within thirty (30) days after it should have been published, or fails to pay when due the fees for filing reports or for an examination of the bank, shall be subject to a penalty of one hundred dollars ($100) for each day of delinquency, but the aggregate penalty for each kind of offense shall not exceed one thousand dollars ($1,000).

(9) Each person, bank, or trust company that willfully makes or transmits a false report or refuses to submit its books, papers, and assets for examination, or any officer of a bank who refuses to be examined under oath concerning the affairs of the bank, shall be severally fined not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000).

(10) Whenever any fine imposed by subsection (1), (2), (4), (6), (7), (8), (9), (15), (16), (17), or (18) of this section is not paid, the Attorney General shall institute an action, in the name of the state, in the Franklin Circuit Court or the Circuit Court of the county in which the offense was committed, for the recovery of the fine.

(11) Any person violating any of the provisions of KRS 287.225 shall be guilty of a misdemeanor and fined not less than fifty dollars ($50) nor more than two thousand dollars ($2,000).

(12) Any person who willfully makes charges in excess of those permitted by KRS 287.720 to 287.770 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding five hundred dollars ($500) or by imprisonment for not more than six (6) months, or both.

(13) Any bank which violates any provision of KRS 287.720 to 287.770, except as a result of an accidental or bona fide error, shall be barred from the recovery of any finance charges permitted by KRS 287.740 and 287.750, and the debtor, or his legal representatives, may recover back, in an action against the bank, any amounts paid to the bank on account of such finance charge; provided such action is commenced within two (2) years from the date such violation first occurred; but the bank may nevertheless recover from the debtor an amount equal to the principal of extensions of credit made pursuant to a revolving credit plan and any charges not prohibited by KRS 287.760.

(14) Notwithstanding the provisions of subsections (12) and (13) of this section, any failure, other than a willful and intentional failure, to comply with any provisions of KRS 287.710 to 287.770 may be corrected during the billing cycle next succeeding the receipt by the bank of written notice thereof from the debtor, and if so corrected, the bank shall not be subject to any penalty under KRS 287.710 to 287.770.

(15) Any bank or trust company which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of a bank who violates the terms of any order issued under KRS 287.690 which has become final shall forfeit and pay a fine of not more than one thousand dollars ($1,000) per day for each day such violation continues. The fine shall be assessed by the commissioner by written notice. As used in this subsection, the term "violates" includes any action causing, participating in, counseling, aiding, or abetting a violation. In determining the amount of the fine the commissioner shall consider the financial resources and good faith of the bank or person charged, the gravity of the violation, the history of previous violations and such other factors as justice requires.

(16) Any bank which violates the provisions of KRS 287.065***(2)***[~~(3)~~] may be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500). The fines may be assessed by the commissioner by written notice.

(17) Any bank which violates any provisions of KRS 287.100(10) may be fined not less than one thousand dollars ($1,000) nor more than two thousand dollars ($2,000) for the first violation, and may be fined not less than two thousand dollars ($2,000) nor more than five thousand dollars ($5,000) for any subsequent violations.

(18) Any officer or director who violates the provisions of KRS 287.280(1) may be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each violation, and any officer or director who violates the provisions of KRS 287.280(2) may be fined not less than five hundred dollars ($500) nor more than two thousand dollars ($2,000) for each violation. The fine may be assessed by the commissioner by written notice.

Section 30. KRS 413.130 is amended to read as follows:

(1) In every action upon a merchants' account as described in subsection ***(10)***[~~(9)~~] of KRS 413.120, the limitation shall be computed from January 1 next succeeding the respective dates of the delivery of the several articles charged in the account. Judgment shall be rendered for no more than the amount of articles actually charged or delivered within five (5) years preceding that in which the action was brought. If any merchant willfully postdates any article charged in such account, or the receipt for the delivery of it, he shall forfeit ten (10) times the amount of the article postdated, to be credited against the account. This credit shall be allowed in an action on the account, without any written pleadings setting it up.

(2) In an action to recover a balance due upon a mutual open and current account concerning the trade of merchandise between merchant and merchant or their agents, as described in subsection ***(11)***[~~(10)~~] of KRS 413.120, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account claimed, or proved to be chargeable on the adverse side.

(3) In an action for relief or damages for fraud or mistake, referred to in subsection ***(12)***[~~(11)~~] of KRS 413.120, the cause of

action shall not be deemed to have accrued until the discovery of the fraud or mistake. However, the action shall be commenced within ten (10) years after the time of making the contract or the perpetration of the fraud.

Section 31. KRS 287.235 is amended to read as follows:

(1) Common trust funds shall not be considered as an entity for income or other tax purposes, nor shall investment in such fund make taxable any property which is otherwise exempt therefrom; and for purposes of taxation, the status of the common trust fund and of each participant therein shall be determined as though there were no common fund and as though each participant was the owner of its proportionate share of every asset held in the common fund. The bank or trust company maintaining said fund shall file a report of said fund with the property valuation administrator as of the ad valorem tax date and shall file annually such income tax information as may be required by the Revenue Cabinet.

(2) Notwithstanding subsection (1) of this section, if a common trust fund transfers substantially all of its assets to one (1) or more regulated investment companies in exchange solely for stock in the company or companies to which such assets are transferred and such stock is distributed by such common trust fund to the participants in such common trust fund in a transaction which would qualify under Section 584(h) of the Internal Revenue Code of 1986, as amended, for the nonrecognition of gain or loss of such transfer or distribution by the common trust fund, then no gain or loss shall be recognized for Kentucky income tax purposes by the common trust fund by reason of such transfer or distribution or by the participants in such common trust fund by reason of such exchange.

Section 32. The following KRS sections are repealed:

287.061 Application for approval -- Hearing.
287.205 When national bank may act as fiduciary.

The Committee on Labor and Industry reported **HB 353** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 353, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 336.020 is amended to read as follows:

(1) The Department of Workplace Standards shall be headed by a commissioner, and shall be divided for administrative purposes into the Divisions of Employment Standards and Mediations; Occupational Safety and Health Compliance; and Education and Training for Occupational Safety and Health.

(2) The Department of Workers' Claims shall be administered by a commissioner and shall be divided for administrative purposes into the Divisions of Claims Processing and Appeals, Administrative Law Judges, ***Arbitration,*** Insurance, and Special Fund.

Section 2. KRS 342.230 is amended to read as follows:

(1) The commissioner, within the limits of appropriations therefor and except as otherwise specifically provided in this chapter, shall establish and fill any positions, including medical services and advice, necessary to carry on the department's work. The employees of the Department of Workers' Claims, except the commissioner, arbitrators, administrative law judges, and board members, shall be members of the classified service.

(2) The commissioner of the Department of Workers' Claims shall have immediate supervision of the employees of the department, perform duties assigned him, and have complete authority to carry out all the administrative functions relating to the Department of Workers' Claims. The commissioner with the assistance of the board shall train and instruct the administrative law judges and arbitrators on an ongoing basis; assign cases; and monitor the caseloads of the administrative law judges, arbitrators, and the Workers' Compensation Board to ensure timely disposition of cases; keep and be the custodian of the records of the board, the administrative law judges, and arbitrators; annually report the activities of the board, administrative law judges, and arbitrators to the Governor; and devote his full time to the duties of his office. The commissioner shall be paid a salary not less than the salary of a member of the board.

(3) The Governor shall appoint, with the consent of the Senate in accordance with KRS 11.160 for a term of four (4) years, not more than sixteen (16) administrative law judges, each of whom shall be an attorney and shall have five (5) years' experience in the Commonwealth in the practice of workers' compensation law or a related field, and extensive knowledge of workers' compensation law, and shall be paid the same salary as a Circuit Judge. Each administrative law judge may be employed for additional terms with the consent of the Senate in accordance with KRS 11.160. The Governor, at least thirty (30) days prior to the expiration of a term of an administrative law judge, shall provide the name of the individual whom he intends to appoint to the position to the chairman of the Senate Labor and Industry Committee. These administrative law judges shall conduct hearings, and otherwise supervise the presentation of evidence and perform any other duties assigned to them by statute and shall render final decisions, orders, or awards. Administrative law judges may, in receiving evidence, make rulings affecting the competency, relevancy, and materiality of the evidence about to be presented and upon motions presented during the taking of evidence as will expedite the

preparation of the case. To carry out the intent of this chapter and to implement its provisions, the commissioner shall have the authority to assign the duties of an arbitrator to an administrative law judge who shall work in that capacity as deemed necessary by the commissioner.

(4) To ensure that the administrative law judges and arbitrators perform their responsibilities competently and issue decisions consistent with this chapter, the commissioner shall, at least twice annually, conduct training and education seminars in workers' compensation law; administrative law; and methods and procedures for writing well-reasoned, clear, correct, and concise opinions, orders, or awards.

(5) The Governor may at any time remove the commissioner or any member of the board. The commissioner may remove any administrative law judge or arbitrator. A member of the board or an administrative law judge or an arbitrator may be removed for good cause including: violation of the code of judicial ethics or the code of ethics applicable to the executive branch of the Commonwealth. In addition, an administrative law judge, an arbitrator, or a member of the board may be removed for the persistent or repeated failure to perform satisfactorily the specific duties assigned in this chapter, including the requirement of timely disposition of cases, review of attorney's fees, and failure to attend training and continuing education programs required by this section.

(6) Any vacancy in the term of an administrative law judge or an arbitrator, which occurs prior to the expiration of the term, shall be filled if necessary by appointment of the Governor in accordance with subsection (3) of this section within sixty (60) days from the date the vacancy occurs, with the consent of the Senate in accordance with KRS 11.160, for the remainder of the term.

(7) (a) Effective at 12 midnight, December 31, 1997, the terms of administrative law judges who were appointed to fill the five (5) administrative law judge positions which were created in 1990 shall end, and the term of the chief administrative law judge who was appointed under subsection (8) of this section shall end. On January 1, 1998, the Governor shall make four (4) year appointments to fill as many of these positions as are necessary to fulfill the duties assigned to administrative law judges under this chapter.

(b) Effective at 12 midnight, December 31, 1999, the terms of administrative law judges who were appointed to fill the ten (10) administrative law judge positions which were created in 1987 shall end. On January 1, 2000, the Governor shall make four (4) year appointments to fill as many of these positions as are necessary to fulfill the duties assigned to administrative law judges under this chapter.

(8) One (1) of the administrative law judges appointed pursuant to this section shall be appointed as a chief administrative law judge, to have the same qualifications, powers, duties, and requirements as those of other administrative law judges. The chief administrative law judge shall not be assigned regular dockets but shall instead assist the commissioner by doing all scheduling of the administrative law judges, handling dockets assigned to the administrative law judges in case of an emergency, providing supervision of the administrative law judges, and providing educational opportunities for the administrative law judges. The chief administrative law judge shall be paid at the same rate as the administrative law judges plus an additional three thousand dollars ($3,000) per year. At any time the commissioner may replace the chief administrative law judge with one (1) of the other administrative law judges at which time the former chief administrative law judge shall resume the duties assigned to the other administrative law judges pursuant to this chapter. The term of the chief administrative law judge employed in 1994 shall expire on December 31, 1997. On January 1, 1998, the commissioner shall employ a person in this position for a four (4) year term.

(9) The Governor shall appoint, with the consent of the Senate in accordance with KRS 11.160 for a term of four (4) years except as set forth in subsection (11) of this section, not more than eight (8) arbitrators, each of whom shall have extensive knowledge in workers' compensation law and shall be paid the same salary as a District Judge. Each arbitrator may be employed for additional terms with the consent of the Senate in accordance with KRS 11.160. The Governor, at least thirty (30) days prior to the expiration of a term of an arbitrator, shall provide the name of the individual he intends to appoint to the position to the chairman of the Senate Economic Development and Labor Committee. The arbitrators shall conduct benefit review conferences, shall supervise the presentation of evidence, and shall render final decisions, orders, and awards. Arbitrators may, in receiving evidence, make rulings affecting the competency, relevancy, and materiality of the evidence about to be presented as will expedite the preparation of the case.

(10) One (1) of the arbitrators appointed pursuant to this section shall be appointed chief arbitrator and in addition to the duties otherwise assigned arbitrators shall assist the commissioner in the scheduling of the activities of the arbitrators and in the supervision and training of arbitrators. The chief arbitrator shall be paid the same rate as the arbitrators plus an additional two thousand dollars ($2,000) per year. At any time, the commissioner may replace the chief arbitrator with one (1) of the other arbitrators at which time the former chief arbitrator shall resume the duties assigned to the other arbitrators pursuant to this chapter. ***The chief arbitrator shall head the Division of Arbitration.***

(11) (a) The terms of four (4) arbitrators appointed pursuant to this section shall end at midnight, December 31, 1997. On January 1, 1998, the Governor shall make four (4) year appointments to fill as many of these positions as are necessary to fulfill the duties assigned to arbitrators pursuant to this chapter.

(b) The terms of four (4) arbitrators appointed pursuant to this section shall end at midnight, December 31, 1999. On January 1, 2000, the Governor shall make four (4) year appointments to fill as many of these positions as are necessary to fulfill the duties assigned to arbitrators pursuant to this chapter.

Section 3. To the extent that it is not otherwise confirmed by this Act, the General Assembly confirms Executive Order 97-69, dated January 15, 1997, creating the Division of Arbitration within the Department of Workers' Claims and abolishing the Office of Fraud Prevention created by Executive Order 96-885, and transferring the personnel, funds, equipment, facilities, and records of that office to the Office of General Counsel within the Department of Workers' Claims.

Posting of Bills and Resolutions for Consideration (Continued)

The Clerk announced that the following Bills and Resolution have been posted for Committee consideration:

Agriculture and Small Business: **HB 531, HB 540, HJR 72**

Calendar

HB 325, HB 455, HB 229, HB 474, HB 477, HB 237, HB 257, HB 307, HB 308, HB 330, HB 452, HB 459, SB 70, HB 75, and **HB 168** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Consent Calendar

HB 517, HB 370, and **HB 458** taken from the Consent Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Recess

Representative Stumbo moved to suspend the rules to allow the House to recess for a Committee on Rules meeting in the Speaker's Office and an Economic Development Committee meeting in Room 304. Agreed. At the appointed hour, the Speaker resumed the Chair and called the House to order.

Report of Committees (Continued)

The Committee on Rules reported that **HB 370, HB 458, HB 517, HB 420, HB 421, HB 36, HB 121, HB 271, HB 272, HB 273, HB 274, HB 275, HB 300, HB 347, HB 348, HB 351, HB 360, HB 412, HB 428, HB 430, HB 433, HB 476, HB 492, HCR 59, HB 257, HB 325, HB 330, HB 452, HB 455** and **HB 459** have been posted for passage in the Orders of the Day for February 17, 1998.

Posting of Bills and Resolutions for Consideration (Continued)

The Clerk announced that the following Bill has been posted for Committee consideration:

Tourism Development and Energy: **HB 560**

Orders of the Day

SB 1, with Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative L. Clark moved that **SB 1** be passed.

On the roll call the vote was: Yeas 86, Nays 1 (See February 12, 1998 roll call on **SB 1** - Appendix.) **SB 1** was passed and the title agreed to. Representative L. Clark moved that the vote by which **SB 1** was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments

Floor Amendment No. 1 to the Committee Substitute to **HB 477**, by Representative Nunn:

On page 1, line 17, after "that" the first time it appears, by inserting "***my residence address is ----- (street, route, highway, city if applicable, county, state, and zip code), that my mailing address, if different, is ----- (post office address)***" and by placing brackets around and striking through "I reside at No. ----- street in the City of -----, State of Kentucky"; and

On page 1, line 18, after "precinct" by placing brackets around and striking through ", City of -----"; and

On page 2, line 11, after "that" the first time it appears by inserting "***my residence address is ----- (street, route, highway, city if applicable, county, state, and zip code), that my mailing address, if different, is ----- (post office address)***" and by placing brackets around and striking through "I reside at ----- in the City of -----, State of Kentucky"; and

On page 2, line 12, after "precinct" by placing brackets around and striking through ", City of -----"; and

On page 2, line 14, after "that" by inserting "***my residence address is ----- (street, route, highway, city if applicable, county, state, and zip code), that my mailing address, if different, is ----- (post office address)***" and placing an opening bracket before "I" and by striking through "I reside at ----- in the City"; and

On page 2, line 15, by striking through and placing a closing bracket after "of -----, State of Kentucky"; and

On page 2, line 16, after "precinct" by placing brackets around and striking through ", City of -----".

Orders of the Day (Continued)

HB 422, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved the adoption of the Committee Substitute to **HB 422**. Agreed.

Representative Long moved that **HB 422**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 90, Nays 0 (See February 12, 1998 roll call on **HB 422** - Appendix.) **HB 422**, by way of Committee Substitute, was passed and the title agreed to. Representative Long moved that the vote by which **HB 422**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 374 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Heleringer moved that **HB 374** be passed.

On the roll call the vote was: Yeas 89, Nays 0 (See February 12 , 1998 roll call on **HB 374** - Appendix.) **HB 374** was passed and the title agreed to. Representative Heleringer moved that the vote by which **HB 374** was passed be reconsidered and said motion be placed on the table. Agreed.

SB 37 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Palumbo moved that **SB 37** be passed.

On the roll call the vote was: Yeas 90, Nays 0 (See February 12 , 1998 roll call on **SB 37** - Appendix.) **SB 37** was passed and the title agreed to. Representative Palumbo moved that the vote by which **SB 37** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 258 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative D. Graham moved that **HB 258** be passed.

On the roll call the vote was: Yeas 65, Nays 25 (See February 12 , 1998 roll call on **HB 258** - Appendix.) **HB 258** was passed and the title agreed to. Representative D. Graham moved that the vote by which **HB 258** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 402 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Crimm moved that **HB 402** be passed.

On the roll call the vote was: Yeas 86, Nays 3 (See February 12 , 1998 roll call on **HB 402** - Appendix.) **HB 402** was passed and the title agreed to. Representative Crimm moved that the vote by which **HB 402** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 407 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Bowling moved that **HB 407** be passed.

On the roll call the vote was: Yeas 90, Nays 0 (See February 12 , 1998 roll call on **HB 407** - Appendix.) **HB 407** was passed and the title agreed to. Representative Bowling moved that the vote by which **HB 407** was passed be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications (Continued)

Representative Stumbo moved that **HB 550** be reassigned to the Committee on Labor and Industry. Agreed.

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions, Report of Committees and Posting of Bills and Resolutions for Consideration. Agreed.

Introduction of Bills (Continued)

HB 601, by Representative Jenkins: AN ACT relating to health care.

HB 602, by Representatives Nesler, Geveden, and Gooch: AN ACT relating to barbers.

HB 603, by Representative Palumbo: AN ACT relating to nursing facilities.

HB 604, by Representative Palumbo: AN ACT relating to speed limits.

HB 605, by Representative Walton: AN ACT relating to hazardous duty retirement.

HB 606, by Representative Hatcher: AN ACT relating to licensing of colleges.

HB 607, by Representative Simpson: AN ACT relating to detection of deception examiners.

HB 608, by Representatives Palumbo, Marzian, and Jenkins: AN ACT relating to the certification of fee-based pastoral counselors.

HB 609, by Representative D. Butler: AN ACT relating to alcoholic beverages.

HB 610, by Representatives Kerr and Murgatroyd: AN ACT relating to cities of the third, fourth, fifth, and sixth classes.

HB 611, by Representative Palumbo: AN ACT relating to prohibited cosmetology products.

HB 612, by Representatives Gray, Haydon, Nunn, Maricle, Polston, Kerr, A. Arnold, Rasche, Thomas, Gooch, Vincent, Curd, Sims, Weaver, and McKee: AN ACT relating to highway signage.

HB 613, by Representatives Gray, Nunn, Murgatroyd, Thomas, Gooch, Curd, Haydon, Sims, Weaver and McKee: AN ACT relating to outdoor advertising.

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Appropriations and Revenue: **HB 161, HB 419**

Elections and Constitutional Amendments: **HB 291, HB 587, HB 594, HB 164, HB 77, SB 67**

Licensing and Occupations: **HB 466, HB 558, HB 564**

Report of Committees (Continued)

The Committee on Agriculture and Small Business reported **HB 480**, with Committee Substitute attached thereto, **HB 483, HB 505, HJR 63,** and **SB 187** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 480, AN ACT relating to structural commercial and noncommercial pest control and fumigation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. KRS CHAPTER 217D IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ

AS FOLLOWS:

(1) This chapter shall be known as the "Kentucky Pesticide Use, Distribution, and Service Act of 1998".

(2) This chapter shall be regulated and administered by the Department of Agriculture, hereinafter referred to as the department.

(3) The purpose of this chapter is to regulate in the public's interest the use and distribution of structural pesticides.

(4) The provisions of this chapter shall apply to all persons who use or distribute pesticides or provide a structural pest control service.

SECTION 2. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

For the purposes of this chapter, unless the context requires otherwise:

(1) "Animal" means a sentient living organism typically capable of voluntary motion and sensation, including all vertebrate and invertebrate species;

(2) "Applicant" means any person applying for a license to apply pesticides or perform related services;

(3) "Applicator" means an individual who applies pesticides;

(4) "Beneficial animals" means animals that, during some part of their life cycle, are effective pollinators of plants, are parasites or predators of pests, are declared an endangered species, or are otherwise useful to human beings, unless declared a pest by the department;

(5) "Branch office" means any location of a firm other than its designated principal place of business location, excluding on and off premises bulk storage or receiving warehouses used solely for the purpose of customer order filling;

(6) "Commercial" means having financial gain as the object, or being engaged in trade or commerce;

(7) "Certified applicator" means a competent individual who has fulfilled the federal and state certification requirements for the use and supervision of use of restricted use pesticides;

(8) "Commercial applicator" means an individual who has met the requirements of this chapter whose permitted use and supervision of pesticide use is restricted to an employer-licensed firm and its designated license holder;

(9) "Commercial operator" means an individual who has met the requirements of this chapter who is qualified to be the designated license holder for a licensed firm;

(10) "Commissioner" means the commissioner of the Department of Agriculture;

(11) "Competent individual" means an individual with the ability to read, comprehend, and follow oral and written instructions, including the text of pesticide labels, and who is at least eighteen (18) years of age;

(12) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission;

(13) "Department" means the Department of Agriculture;

(14) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant or animal tissues;

(15) "Designated license holder" means the commercial or noncommercial operator within the licensed firm whose responsibility is for the management and control of pesticide use or distribution, pesticide operations, and affairs of the licensed firm, including all related activities such as sales, advertising, consulting, soliciting, training, compliance, or the performance of any of the services regulated under this chapter;

(16) "Distribution" means to advertise as a firm, or solicit sales, to offer for sale, hold for sale, barter for, or sell any pesticide product or related items or materials, or ship, deliver for shipment, or receive and having received, deliver or offer to deliver any pesticide, pesticide container, or related materials and items, or the storage, disposal, mixing, loading of pesticide containers except for internal distribution of pesticides, or related materials or items within a firm;

(17) "Environment" means water, air, land, plants, man, various other animals living on or in water, air, land, plants, and man, and the interrelationships that exist between them;

(18) "EPA" means the United States Environmental Protection Agency;

(19) "Equipment" means any type of ground, water, or aerial equipment, device, or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on or in the land, but shall not include any pressurized hand-sized household device used to apply any pesticide unless used commercially;

(20) "Firm" means a sole proprietorship, partnership, corporation, organization, association, or any combination of them;

(21) "Fumigation" means the use of poisonous gases for the control of pests;

(22) "Fungus" means all nonflowering plants that have no chlorophyll, that usually reproduce asexually, and that grow on dead organic matter or live parasitically, including but not limited to rusts, smuts, mildews, molds, and yeasts, except those on or in living man or other living animals, and except those in or on processed food, beverages, or pharmaceuticals;

(23) "General pests" means all invertebrates, including but not limited to arthropods, mollusks, annelid worms, rodents, or other pestiferous vertebrate animals or vermin, excluding wood-destroying organism pests and beneficial animals;

(24) "Individual" means a living human being;

(25) "Insect" means any invertebrate animal generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, including but not limited to beetles, bugs, bees, wasps, and flies, and means to include other allied classes of arthropods whose members are wingless and usually have more than six (6) legs, including but not limited to spiders, mites, ticks, centipedes, wood lice, nematodes and other worms, and all other invertebrates;

(26) "KPCA" means the Kentucky Pest Control Association, Inc.;

(27) "Label" means the written, printed, or graphic matter on or attached to the pesticide or device or to any of its containers or wrapper;

(28) "Land" means all land and water area, including airspace, and all plants, animals, structures, building devices, and contrivances and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation;

(29) "License" means an instrument issued by the department authorizing a person in the use or distribution of pesticides to the extent permitted by that license;

(30) "Licensed firm" means a person authorized by the department within its categories and classifications to operate as a commercial or noncommercial firm within the state;

(31) "Manager" means an employee of a licensed firm who is a reserve commercial operator or a certified applicator who is authorized and qualified by the department to manage an office of a licensed firm;

(32) "Nematode" means an invertebrate animal of the phylum Nemathelminthes and class Nematoda and that is an unsegmented round worm with elongated, fusiform, or sac-like body covered with cuticle, that inhabits soil, water, plants, or plant parts, and may also be called nema or eelworm;

(33) "Noncommercial" means a person or business that does not publicly hold himself out as being in the business of applying pesticides and that does not accept compensation;

(34) "Noncommercial applicator" means an individual including, but not limited to, a janitor, maintenance person, or groundskeeper, who is a certified applicator and who has met the requirements of this chapter, whose permitted use of pesticides is restricted to his own land, or if an employee of a firm, to that land owned or managed by the employer, and which shall include health care facilities, public and private schools, and public housing authorities;

(35) "Noncommercial operator" means an individual who has met the requirements of this chapter to be a noncommercial-certified applicator and who is qualified to be the designated license holder for a noncommercial-licensed firm;

(36) "Nuisance animal" means any animal, including feral animals and other wildlife, not normally considered a pest, but that infests, attacks, or invades land, causes damage to land, or poses an unacceptable risk to the land or to the health and well-being of individuals on land;

(37) "Person" means any individual, partnership, association, or any organized group of persons whether incorporated or not;

(38) "Pest" means:

- *(a) Any insect, which includes all classes of Arthropoda, snails, slugs, rodents, nematodes, fungus, weed, or plant disease; and*
- *(b) Any other form of terrestrial or aquatic plant or animal life, virus, bacteria, or other microorganism, except viruses, bacteria, or other microorganisms on or in living man or other living animals, and that is normally considered to be a pest, or that the department declares to be a pest;*

(39) "Pesticide" means:

- *(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, mitigate, or regulate the growth of any pest or disease of plants; and*
- *(b) Any plant regulator, defoliant, or desiccant;*

(40) "Plant" means a living organism belonging to the vegetable kingdom, having typically rigid cell walls and

characterized by growth chiefly from synthesis of simple, usually inorganic, food materials from the soil, water, and air, including grass, shrubs, and trees;

(41) "Plant regulator" means any substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of plants, but does not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments;

(42) "Principal place of business" means the point of headquarters or principal location of a firm within the state;

(43) "Registered trained employee" means any competent individual employed by a licensed firm or public entity who has been registered with the department and who works under direct supervision of a certified applicator to operate equipment for the application of pesticide or to apply pesticide manually or to perform related services;

(44) "Reserve commercial operator" means a commercial operator who is qualified to become a designated license holder or a branch office manager of a licensed firm;

(45) "Reserve commercial operator license" means a commercial operator's license issued by the department that, when authorized by the department, would permit a new designated license holder to work in the same capacity as the primary designated license holder who is no longer licensed or no longer associated with the licensed firm;

(46) "Restricted use pesticides" means any pesticide classified for restricted use by the administrator of the EPA or by administrative regulation of the department;

(47) "Rodent" means rats or mice and any other animal of the class Rodentia except nuisance animals;

(48) "Snails or slugs" includes all harmful mollusks;

(49) "Structure" means, but is not limited to, residential, industrial, and commercial buildings and their land and water areas, building devices, and contrivances and machinery appurtenant hereto or situated thereon, fixed or mobile, including any used for transportation such as railroad cars, trucks, automobiles, farm tractors or machinery, ships, airplanes, or any one or any combination thereof, including all stages of their construction and development;

(50) "Structural pests" means any invertebrate pest, wood-destroying organism pest, or vertebrate animal, including nuisance or feral animals, that infests, infects, attacks, or invades structures or their contents, by any method, that causes or could cause damage to the structure or pose an unacceptable risk to the structure or to the health and well-being of individuals within structures. "Structural pests" does not include those pests commonly known as weeds, agriculture invertebrate pests when living on plants, and turf and ornamental plant invertebrate pests when living on plants;

(51) "Structural pest control" means the use or distribution of pesticides for the control, elimination, or prevention of pests at their source and otherwise that invade or attack or are known to invade or attack structures and their contents, including the identification of infestations or infections, making inspections, inspection reports, recommendations, engaging in consulting services, offering advice regarding control methods or sanitation procedures relative to pests, making estimates or bids whether oral or written, advertising as a structural pesticide firm, operator, or applicator, performing services designed to control, eliminate, prevent, or repel pests or pest infestations by the use of pesticides, mechanical devices, or structural modifications under whatever name known, in all structures including railroad cars, trucks, ships, airplanes, or any combination of structures in all stages of construction, and the contents of structures, for a fee or otherwise. "Structural pest control" does not include textile manufacturers, cleaners, or furriers that treat fabrics or furs in their place of business exclusively;

(52) "Under direct supervision" means:

(a) The physical presence of a certified applicator at a work location that permits direct voice contact so as to instruct and control the actions of an individual during the use or distribution of pesticides; or

(b) A registered trained employee using general use pesticides under the following conditions:

1\. Having the ability to establish voice communication with a certified applicator while the application of pesticides is in progress at a worksite;

2\. Possessing at the work site the label and material safety data sheet of the pesticide to be used; and

3\. Having written or otherwise verifiable instruction covering:

a. General and worksite-specific precautions to prevent injury to persons or damage to property;

b. Worksite pesticide mixing, handling, storage, and application; and

c. Proper disposal of pesticides containers;

(53) "Use" means any act of handling, applying, or exposing the environment to a pesticide, including but not limited to:

(a) Storing or disposing any pesticide or pesticide container;

(b) Performing services to prevent, control, repel, or eliminate pests, making inspections, reports,

recommendations, or offering advice regarding pests or plants or plant diseases;

(c) Using mechanical devices or land modifications under whatever name known, for the purpose of preventing, controlling, and repelling pests or plant diseases; or

(d) Advertising as a firm, or soliciting sales or services, or making estimates or bids whether oral or written, issuing contracts, or offering for sale, selling, or bartering for any pesticide service relating to this chapter;

(54) "Weed" means any plant that grows where not wanted;

(55) "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests, including but not limited to, mammals, birds, and aquatic life;

(56) "Wood-destroying organisms" means any organism that damages plant products, plant by-products, or any material used in the construction of structures, including but not limited to the old-house borer, powder-post beetle, termite, carpenter bee, carpenter ant, and fungi; and

(57) "Worksite" means any location where there is the use or distribution of pesticides.

SECTION 3. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) The department shall administer and enforce the provisions of this chapter and shall promulgate administrative regulations under KRS Chapter 13A to carry out the provisions of this chapter. The department shall, by registered mail, notify, in advance, the president of the KPCA board and chairman of the Pest Control Advisory Board of any proposal for or changes in administrative regulations. If the department finds that the administrative regulations are necessary to carry out the purpose and intent of this chapter, the administrative regulations shall be promulgated and relate to the use or distribution of pesticides, and be relative to the hazards and benefits involved, and prescribe methods and equipment to be used; may restrict the storage of pesticides in designated areas and the type of structure and conditions for the storage of pesticides; may relate to the time, place, manner, and method of application of pesticides; may restrict or prohibit use of pesticides in designated areas; and shall encompass all reasonable factors that the department deems necessary to prevent damage or injury by the use or distribution of pesticides to the environment, including but not limited to:

(a) Plants, including forage plants, on adjacent or nearby lands;

(b) Wildlife;

(c) Fish and other aquatic life in waters; and

(d) Pollinating insects, beneficial animals, and persons.

(2) In promulgating administrative regulations, the department shall give consideration to pertinent research findings and recommendations of other agencies of this state and the federal government. The department shall consider the risks versus benefits to man and the environment, taking into account economic, social, and environmental factors of the use or distribution of any pesticide.

(3) The department shall by administrative regulation adopt a list of "restricted-use pesticides" for the state or for designated areas within the state if it finds that the characteristics of those pesticides require restricting their use to prevent injury on lands, or on lands other than the land to which they are applied, or to persons, animals, crops, pests, or vegetation other than the pests or vegetation that they are intended to destroy. For the purpose of uniformity of requirements between the states and the federal government, the department shall adopt the list of "restricted-use pesticides" as established by the EPA or other federal or state agencies.

(4) The department shall establish additional categories and classifications of licenses as required for conformance with the Federal Environmental Pesticide Control Act of 1972. The categories and classifications shall include applicator, operator, business, and other categories and classifications not specifically mentioned in this chapter. The administrative regulations shall specify the category and classification licensing conditions, procedures, and fees, not to exceed those fees specified for other similar licenses under this chapter.

SECTION 4. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) The department may categorize and classify licenses to be issued under this chapter. License categories and classifications may include but are not limited to agricultural plant pests, animal pests, agricultural fumigation nonresidential, forest pests, wood preservatives, ornamental and turf pests, aquatic pests, right-of-way pests, industrial-institutional-structural pests, public health pests, seed treatment, regulatory, demonstration and research, aerial application, pesticide dealer, consultant, and other categories and classifications as determined by the department. Separate subcategories and classifications may be specified with each having specific categories and classifications and may be specified as to ground, aerial, or manual methods used by any licensee to apply pesticides.

(2) A license issued by the department under this chapter shall not be transferred, assigned, rented, leased, sold, or used for the purpose of circumventing the intent of this chapter.

(3) Each license holder shall notify the department of any change of address or employment status within ten (10) days

after a change has been made.

(4) The licensing provisions of this chapter shall not apply to a homeowner applying pesticides on his own home, household, lawn, or yard on the condition that the homeowner not publicly hold himself out as being in the business of applying pesticides.

SECTION 5. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) It shall be unlawful for any person or firm to use or distribute pesticides or to provide a pest control related service without first obtaining a structural-commercial or noncommercial-firm license. The department shall require an annual fee of twenty-five dollars ($25) for each commercial-firm license issued. There shall not be a fee assessed for a noncommercial-firm license.

(2) A firm license shall be obtained for all commercial branch office locations.

(3) The department shall not issue a commercial-firm license to a person or firm without a structural commercial operator in the employ of the person or firm.

(4) The department shall not issue a noncommercial firm license to a person or firm without a noncommercial applicator as its designated license holder in the employ of the person or firm. A noncommercial firm licensee shall not advertise as a firm, solicit sales or services, make estimates or bids whether oral or written, issue contracts, offer for sale, sell, or barter for any pesticide service relating to this chapter.

(5) No commercial firm shall be issued a firm license without continual proof of financial responsibility as required by this chapter.

(6) Each application for a commercial or noncommercial firm license shall contain information identifying that the applicant is qualified to operate within the state, the applicant's proposed operations, including the license categories and classifications within the categories in which the applicant intends to operate, and the following:

(a) The designated license holder of the applicant;

(b) The full name of the individual who is making application on behalf of the applicant who will be the contact individual for the applicant until the license is issued;

(c) If the applicant is a receiver, trustee, firm, partnership, association, corporation, or other organized group of persons whether or not incorporated, the full name of each member of the firm or partnership, or the names of the officers of the association, corporation, or group, or the name of the individual if a proprietorship;

(d) The location address of the principal place of business of the applicant in the state and elsewhere, and all branch office locations, or pesticide application locations if noncommercial, within the state;

(e) The name and address of a person whose domicile is in the state, or an entity within the state, who is authorized to receive and accept service of summons and legal notice of all kinds for the applicant; and

(f) Any other necessary information prescribed by the department.

(3) Retail department stores are exempt from this section.

SECTION 6. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) Application for a structural commercial or noncommercial individual's license shall be submitted in writing on a form furnished by the department. The application shall state the applicant's qualifications, license category, and classification within the category for which the applicant is applying and other information required by the department to carry out the purpose and intent of this chapter. Each applicant shall be required to present to the department satisfactory evidence of training or experience. Application for an operator's license shall be submitted at least thirty (30) days in advance of the testing date. Application for an applicator's license shall be submitted in advance as designated by the department.

(2) The department shall require the applicant to take and pass a timed written examination in the category and classification within the category for which the applicant seeks the license to demonstrate that the applicant possesses adequate knowledge concerning the law and its regulations, the proper use and distribution of the chemicals used, and the various equipment that may be used in the category and classifications within the category for which the applicant has applied.

(3) Each category and classification within the category shall be subject to separate testing procedures and requirements. The department shall give consideration to each category and classification within the category of license issued and the inherent risks or danger associated with the pesticide use or distribution in that category or classification within the category.

(4) No oral examinations shall be given. Written and timed examinations shall be given to all qualified applicants and administered by the department at times as the department shall set out or as designated by this chapter. The department shall charge a nonrefundable examination fee. The examination shall require, but not be limited to, a working knowledge of:

(a) The proper use of pesticides and pesticide equipment;

(b) The hazards or risks to the environment that may be involved in the use of pesticides and that could include drift, meteorological conditions, limits of residues, effect on wildlife including aquatic life, runoff, soil pollution, or contamination of water, identifications of pesticides used and their application in a particular circumstance, and the effects on livestock, vegetation, and beneficial animals;

(c) Calculating the concentration of pesticides to be used in particular circumstances;

(d) Identification of pests, by their common name, and the damages caused by pests;

(e) Protective clothing and respiratory equipment required during the use of pesticides;

(f) General precautions to be followed in the disposal of containers as well as the cleaning and decontamination of the equipment which the applicant proposes to use; and

(g) Applicable state and federal pesticide laws and regulations.

(5) The department shall notify the applicant of the results of the examination within ten (10) days of the close of the examination.

(6) When a license is issued to an applicant, the applicant shall be deemed to have fulfilled those requirements necessary to become a certified applicator in those categories and classifications within the category in which the license was issued.

(7) The department shall issue a license to the applicant in the categories and classifications within the category for which the applicant has qualified if the department finds that the applicant has met the following requirements:

(a) Is a legal resident of the United States of America;

(b) Has achieved a grade of at least seventy percent (70%) on the written section of the examination and at least seventy percent (70%) on the identification section of the examination. A minimum grade of seventy percent (70%) must be obtained on both sections of the examination on the same testing date;

(c) Has paid all licensing and certification fees;

(d) Is certified to use restricted use pesticides in accordance with this chapter or is obtaining certification concurrent with receiving the license for which the applicant is applying;

(e) Has no felony convictions; and

(f) Has met the requirements of this chapter and its administrative regulations.

SECTION 7. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) The department shall by administrative regulations establish and administer a program to certify individuals as structural commercial or noncommercial applicators to use restricted-use pesticides. The department shall classify, by categories and classifications within the categories, the certifications to be issued under this section. The department shall require the applicant to take and pass a timed written examination in the categories and classifications within the categories for which the applicant seeks to become a certified restricted use pesticide applicator. Standards for certification shall be set forth in the administrative regulations promulgated under this chapter.

(2) Except as provided in this chapter, it shall be unlawful for a person to use restricted-use pesticides unless the person is qualified under this chapter as a certified structural commercial or non-commercial applicator.

(3) Individuals who, upon the effective date of this Act, are licensed to use pesticides but who are not certified to apply restricted use pesticides shall obtain certification at the time of the next renewal of their license in order to renew their license. No examination shall be required of that person so long as certification is obtained in the same classification.

(4) Individuals who, upon the effective date of this Act, are certified to use restricted use pesticides but who are not licensed to use pesticides may obtain a license in the same classification in which they are certified and without examination.

SECTION 8. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) It shall be unlawful for any individual to act as a structural commercial operator or as the designated license holder of a licensed firm without having obtained a structural commercial operator license from the department. The department shall require an annual fee of one hundred dollars ($100) for a structural commercial operator's license. There shall be only one (1) commercial operator's license holder per licensed firm with one (1) or more reserve commercial operator license holders allowed for a licensed firm. The department shall require an annual fee of twenty-five dollars ($25) for a reserve commercial operator's license.

(2) Each application for a structural commercial operator's license shall contain information regarding the applicant's qualifications and proposed operations, commercial operator's license category and classification or classifications

within the category for which the applicant is applying, and include the following:

(a) The full name of the individual applying for the license;

(b) If the applicant is to be a designated license holder for a licensed firm, the name of the licensed firm for whom the applicant is to be the designated license holder;

(c) The place of business location and home address of the applicant in the state or elsewhere;

(d) The name and address of an individual whose domicile is in the state, or an entity located within the state, who is authorized to receive and accept service of summons and legal notice of all kinds for the applicant; and

(e) Any other necessary information prescribed by the department.

(3) The department shall require an applicant for a structural commercial operator's license to take and pass a timed written examination in the category and classification for which the applicant seeks the commercial operator's license to demonstrate that the applicant possesses adequate knowledge concerning the proper use and distribution of pesticides and the various equipment that may be used in the category and classifications for which the applicant has applied. The examination shall require a working knowledge of:

(a) The proper use of pesticides, pesticide equipment, and label and material safety data sheet comprehension;

(b) The hazards or risks to the environment that may be involved in the use of pesticides;

(c) Calculating the concentration of pesticides to be used in particular circumstances;

(d) Identification of pests, by their common name, and the damages caused by pests;

(e) Protective clothing and respiratory equipment required during the use of pesticides;

(f) General precautions to be followed in the disposal of containers and the cleaning and decontamination of the equipment which the applicant proposes to use; and

(g) Applicable state and federal pesticide laws and regulations.

(4) Each applicant for a structural commercial operator's license shall have:

(a) At least two (2) years of verified structural pest control experience as an employee with a licensed firm authorized to do business in structural pest control. Experience shall be verified by the designated license holder of the licensed firm from which the applicant has obtained experience;

(b) At least three (3) years verifiable field experience with the Structural Pesticide Branch of the Department of Agriculture. Experience shall be verified by the director of the branch; or

(c) A bachelor's degree, master's degree, or a doctoral degree in entomology or an associated field from an accredited college or university, and one (1) year experience in structural pest control. Educational background shall be verified with official transcripts from the institution or institutions granting the degree.

(5) The department shall issue a structural commercial operator's license to the applicant in the categories and classifications for which the applicant has qualified if the department finds that the applicant has met the requirements of this chapter.

SECTION 9. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) It shall be unlawful for any individual to act as an employee of a structural licensed firm and use or supervise the use of pesticides or pesticide equipment without having obtained a structural commercial applicator's license from the department. The department shall require an annual fee of ten dollars ($10) for each structural commercial applicator's license issued.

(2) The department shall issue a structural commercial applicator's license to the applicant in those categories and classifications for which the applicant has qualified if the department finds the applicant has met the requirements of this chapter.

SECTION 10. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) The department shall by administrative regulations establish and administer a program to register and verify training of structural registered trained employees. The annual registration fee of a structural registered trained employee shall be five dollars ($5). Registration shall be made on a form provided by the department. The department shall classify, by categories and classifications within the categories, the registrations to be issued under this section. The program shall include but not be limited to:

(a) Employees of a licensed firm who sell pesticides, pesticides equipment or services, or who use or distribute pesticides and pesticides application equipment or give advice regarding the use of pesticides; and

(b) Individuals who are required to work under the direct supervision of a commercial or noncommercial applicator who at a work site use pesticides or pesticide application equipment.

(2) This section shall not apply to certified applicators or employees of a licensed firm who, as an incidental part of their job, provide information or accept sales regarding the pesticides sold or the services provided by their firm.

SECTION 11. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) It shall be unlawful for an individual to manage a structural branch office of a structural licensed firm within this state without being qualified by the department as a structural branch office manager. There shall be at least one (1) structural branch office manager employed at each structural branch office of the licensed firm by December 31, 1998. The department shall require an annual fee of twenty-five dollars ($25) for each structural branch office manager's license issued.

(2) Applicants for a structural branch officer manager's license shall have:

(a) At least one (1) year experience in structural pest control;

(b) A bachelor's degree, master's degree, or a doctoral degree in entomology or an associated field from an accredited college or university; or

(c) Two (2) years experience with the Department of Agriculture, Pesticide Division.

(3) If the applicant is a structural reserve commercial operator qualified in those categories and classifications needed to manage a branch office of a licensed firm for which application is being made, the department shall issue a branch office manager's license to that applicant without examination or fee.

SECTION 12. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) It shall be unlawful for an individual to act or hold himself out as a structural noncommercial applicator or as the designated license holder of a licensed noncommercial firm without having obtained a structural noncommercial applicator's license from the department. The annual fee for a noncommercial operator designated license holder license shall be fifty dollars ($50). The annual fee for a noncommercial applicator license shall be ten dollars ($10).

(2) The department shall issue a noncommercial applicator's license that is restricted to the applicant's firm location and in the singular category and classification of general pest for which the applicant has qualified if the department finds that the applicant has met the requirements of this chapter.

(3) Applicants for structural noncommercial applicator's licenses that authorize noncommercial pest control shall be required to successfully complete a training program authorized by the department and present, to the department's satisfaction, proof of experience and education within the category and classification applied.

SECTION 13. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) In the event of death or incapacitation of a designated license holder for a licensed firm, all provisions and regulations of this chapter shall apply. The heirs, representatives, other persons, or legal entities that may have an interest in the licensed firm may continue the licensed firm operations up to a maximum of one (1) year without a designated licensed holder within its employ if application for a special operating conditions license is made to the department within thirty (30) days of the death or incapacitation of the designated license holder, and the department grants and issues a special operating conditions license.

(2) Upon a valid sale of a licensed firm, all provisions and regulations of this chapter shall apply. The purchaser of the licensed firm may continue the operations up to a maximum of one hundred twenty (120) days from the date of the close of the sale without a designated license holder within its employ if application for a special operating conditions license is made to the department within ten (10) days of the closing of the sale, and the department recognizes the sale as a valid sale and issues a special operating conditions license.

(3) If the designated license holder for a licensed firm ceases to be employed by a licensed firm for reasons other than death or incapacitation or the sale of the licensed firm, all provisions and regulations of this chapter shall apply. The licensed firm may continue its operations up to a maximum of ninety (90) days from the date of cessation of employment by the designated license holder if application for a special operating conditions license is made to the department within ten (10) days of the cessation of employment of the designated license holder, and the department grants and issues a special operating conditions license.

(4) During the time period provided for the exception of employment of a designated license holder, a full-time commercial applicator shall be in the employ of the licensed firm to supervise the use or distribution of pesticides; otherwise all firm operations shall immediately cease.

(5) A licensed firm may, by written request, solicit the department to temporarily waive the designated license holder or commercial applicator requirement and to grant a temporary emergency operating license or an extension of time beyond that provided for within this section for a period of time not to exceed sixty (60) days. Upon receipt of written request, the department may issue a written waiver of requirement or extension of time or issue a temporary emergency operating license for the period of time requested. Granting a request does not relieve the licensed firm from the other provisions and regulations of this chapter that apply.

(6) Upon denial, revocation, or expiration of any waiver or license granted under this section, all provisions and regulations of this chapter will apply, and a designated license holder shall be employed by the licensed firm or all firm operations must immediately cease.

SECTION 14. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) All licenses issued under this chapter shall expire on January 1 of the year following issue unless revoked or suspended earlier by the department. Upon expiration, revocation, or suspension of a license, the licensee shall be prohibited from engaging in any of the activities permitted by the license until the license is renewed or reinstated by the department.

(2) Licenses issued by the department shall be renewed annually by application on a form provided by the department. Each application shall be accompanied by the annual license fee and proof of financial responsibility on a continuing basis. The department shall renew valid licenses annually without examination if all requirements of this chapter have been met by the applicant.

(3) Applications for a renewal of license that are not received by the department prior to February 1 of the year following issue shall be accompanied by the annual fee plus a late fee equal to twenty-five percent (25%) of the annual license fee before a renewal of license will be issued.

(4) Applications for a renewal of license that are not received by the department prior to March 1 of the year following issue shall not be renewed and all operations shall immediately cease.

SECTION 15. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) The department shall develop minimum training requirements for categories and classifications of structural operators, applicators, and registered trained employees. Exempt from minimum training requirements of this section are retail department store employees that do not use or distribute restricted use pesticides.

(2) The department shall conduct training courses and shall publish information on the safe use of pesticides.

(3) The department shall, at least every two (2) years, review and update the license examinations given by the department and training courses approved or conducted by the department.

(4) The department shall revise its:

(a) License application forms;
(b) Training courses; and
(c) Educational materials;

to include information on and require knowledge of the prevention and contamination of groundwater.

(5) Reexamination requirements of individuals licensed, registered, or who have obtained a permit under this chapter will be required every two (2) years, unless the individual has participated in eight (8) hours of department-approved continuing education training every two (2) years.

SECTION 16. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) The department shall by administrative regulations establish and administer a program to escrow, to an inactive status, licenses issued by the department. A license that is placed in escrow prohibits the licensee of the use permitted by that license.

(2) Escrow of license shall be made on a form provided by the department and be accompanied by:

(a) The license issued by the department;
(b) Payment of a one-time recording fee of twenty-five dollars ($25); and
(c) A signed request by the licensee, addressed to the director of pesticides, that the license submitted is to be made inactive and placed in escrow.

(3) An inactive license in escrow shall not be required to be renewed annually if the annual escrow fee has been paid, or have evidence of financial responsibility, or maintain required continuing education training requirements.

(4) The department shall set the annual fee for escrow of license.

(5) Escrow of license expires annually on January 1 of the year following escrow.

(6) Escrow of license shall be renewed annually by application on a form provided by the department and be accompanied by the annual escrow of license fee. Applications and fees for renewal of escrow of license not received by the department prior to March 1 of the year following expiration of escrow shall not be renewed and the use permitted by the license shall be revoked.

(7) A license may be activated and removed from escrow as follows:

(a) Submission of a signed request by the licensee, addressed to the director of pesticides, that the license is to be removed from escrow and is to be placed into an active status; and

(b) Submission of proof that the licensee has participated in twelve (12) hours of department-approved continuing education training within twelve (12) months prior to the date of removal of license from escrow, submission of proof of financial responsibility as required by this chapter, and advance payment of license fees due for renewal of license for the current license year.

SECTION 17. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) It shall be unlawful to use or distribute structural pesticides or act as a commercial firm in this state without evidence of financial responsibility that is acceptable to the department. The department shall not issue or renew a firm license to an applicant unless evidence of financial responsibility is on file with the department in the form of a surety bond, an irrevocable letter of credit from a qualified financial institution, or a liability insurance policy, each of which shall be clearly conditioned to cover liability arising from use or distribution of structural pesticides and pest control services by the applicant or the applicant's employees.

(2) The amount of the irrevocable letter of credit from a qualified financial institution, a surety bond for each client, or a liability insurance policy required by this section shall be not less than three hundred thousand dollars ($300,000) combined single limit bodily injury and property damage. The evidence of financial responsibility shall be maintained at not less than the listed amount at all times. The department shall be notified by the surety, financial institution, or insurer of any reduction in the minimum financial amount required or of any cancellation of evidence of financial responsibility as soon as the surety, financial institution, or insurer becomes aware of the reduction or cancellation.

(3) Should the evidence of financial responsibility furnished expire without renewal, not meet the requirements of this chapter, or become unacceptable, for cause, to the department, the applicant or licensee shall within ten (10) days upon notice from the department execute and submit other evidence of financial responsibility acceptable to the department. Until the evidence of financial responsibility is acceptable to the department, the firm license issued shall be suspended and all pesticide operations shall cease.

(4) The financial responsibility requirement shall not apply to:

(a) Commercial operators, applicators, or registered trained employees employed by and acting on behalf of a firm if the firm has issued and the department has accepted evidence of financial responsibility; or

(b) Noncommercial operators or applicators.

(5) Nothing in this chapter shall be construed to relieve any person from liability for any damage to the person or lands of another caused by the use or distribution of pesticides even though the use or distribution conforms to the rules and administrative regulations of the department.

SECTION 18. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

The department shall require licensed firms to maintain reasonable records, specified by administrative regulations, with respect to the use or distribution of pesticides for the effective enforcement of this chapter. Records shall be kept for a period of five (5) years from the date of the use or distribution of the pesticide to which the records refer.

SECTION 19. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) The department shall provide for inspection and identification of equipment, vehicles, or machinery used by firms. A list of requirements that equipment, vehicles, or machinery must meet shall be determined by administrative regulation.

(2) All vehicles used by a firm for use or distribution of structural pesticides shall be required to display, and have securely affixed, the licensed firm license number in numbers at least two (2) inches high and the licensed firm name in letters at least two (2) inches high in a manner and location on vehicles as may be prescribed by the department.

(3) A noncommercial firm shall display the designated noncommercial operator's license number in numbers at least two (2) inches high in a manner and location on vehicles as may be prescribed by the department.

(4) A commercial licensed firm shall display and have securely affixed the capital letters L.P.C.O., meaning Licensed Pest Control Operator, followed by the designated license holder's license number in numbers at least two (2) inches high.

(5) Vehicles used as a temporary and incidental part of a licensed firm may display the required letters, numbers, and firm name on a removable sign in letters and numbers of at least two (2) inches in height and must be displayed and clearly visible to passersby.

SECTION 20. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

The department may cooperate or enter into formal agreements with any other agency or educational institution of this state or its subdivisions or with any agency of any other state or of the federal government for the purpose of carrying out the provisions of this chapter and of securing uniformity of regulations.

SECTION 21. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) The Commonwealth hereby determines that the citizens of the state benefit from a system of safe, effective, and scientifically sound structural pesticides regulation. The Commonwealth further finds that a system of structural pesticide regulation that is consistent, coordinated, and comports with federal and state technical expertise is essential to the public health, safety, and welfare, and that local structural regulation of pesticides does not materially assist in achieving those benefits.

(2) Notwithstanding any other provision of law to the contrary, no city, county, taxing district, or other political subdivision of the state shall adopt or continue in effect any ordinance, rule, regulation, resolution, or statute regarding structural pesticide, including, without limitation to: use, distribution, registration, notification of use, posting, advertising and marketing, distribution, application, methods, applicator training and certification, storage, transportation, or disposal.

(3) Nothing in this section shall be construed to abrogate any authority afforded by the Kentucky Revised Statutes to any program cabinet established under KRS Chapter 12 or any state or federal mandated hazardous materials regulations or fire safety codes and comprehensive hazardous material management program.

(4) Any ordinances of any unit of local government now in effect or hereafter adopted that are in conflict with this section shall be void.

SECTION 22. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) It shall be unlawful for any person or firm to engage in commercial structural pest control or to act as or hold himself out as a commercial structural pest control firm without a firm license authorizing commercial structural pest control and a commercial operator in its employ, authorized as its designated license holder, and licensed in structural pest control in at least the classifications of General Pest and Wood Destroying Organisms.

(2) The category of Commercial Structural Pest Control is divided into the singular classifications of, but not limited to, General Pest, Wood Destroying Organism, and Fumigation, with an examination and license required for each classification.

(3) Upon recommendation of the board, the department shall designate any additional categories and classifications with an examination and license required for each.

(4) No specific singular commercial structural license classifications shall be issued without first obtaining the classifications of General Pest and Wood Destroying Organism.

(5) Individuals who were issued a commercial license in the specific singular classification of Termite Control, General Pest Control, or Fumigation, on or before June 17, 1978, are exempt from the minimum requirements of subsection (1) of this section and may continue to perform structural pest control, but only in those specific singular classifications, providing all other requirements of this chapter are met and the license has remained valid. If a specific singular classification license lapses or is revoked for any reason, the specific singular classification shall not be reinstated and all current requirements of this chapter shall be met.

SECTION 23. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) There shall be established a seven (7) member Pest Control Advisory Board that shall consist of the following members:

(a) The president of KPCA or a representative designated from the KPCA board of directors;

(b) One (1) KPCA member who is a resident of the Commonwealth and active in the pest control industry, appointed by the Governor from a list submitted by the KPCA board of directors, who shall serve a two (2) year term;

(c) The chairperson of the University of Kentucky's Department of Entomology or a designated representative of the chairperson;

(d) One (1) member of the University of Kentucky's Department of Entomology appointed by the chairman of that department;

(e) Two (2) members of the department appointed by the commissioner of agriculture; and

(f) One (1) consumer member appointed by the commissioner of agriculture, who shall serve a two (2) year term.

(2) If a vacancy occurs on the board, it shall be filled in the manner designated in this section.

(3) At its first meeting each year, the Pest Control Advisory Board, from among its members, shall select the following officers, who shall serve for a term of one (1) year: a chairperson, who shall preside at all meetings and perform other duties incident to the office; a vice chairman, who in the absence of the chairperson shall preside at all meetings and perform other duties incident to the office; and a secretary, who shall be responsible for providing to the board the official record of the minutes of the meetings and perform other duties incident to the office. These

elected officers shall serve at the pleasure of the board.

(4) Four (4) members of the board shall constitute a quorum. Any action or order of the board shall require a quorum and the approval of a simple majority of the members present.

(5) Unless otherwise stipulated by the chairperson, meetings are to be held every two (2) months in Frankfort, Kentucky, on the first Thursday of the month, beginning with January. If the first Thursday of a meeting month falls on a holiday, the scheduled meeting shall take place on the immediate following Thursday. The secretary shall provide a notice of meeting to each board member at least ten (10) days in advance of the scheduled meeting day. The chairperson or any four (4) members of the board may call a special meeting by providing written notice to all board members at least ten (10) days in advance of the date of the special meeting, stating the date, time, place, and purpose of the special meeting. Only business as stated in the notice shall be acted upon at the special meeting.

(6) Members of the board shall serve without compensation. Board members who are not employees of the Commonwealth shall be entitled to reimbursement by the department for actual expenses incurred in carrying out the duties of the board.

SECTION 24. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

The Pest Control Advisory Board may:

(1) Review structural pest control and fumigation enforcement proceedings and make written recommendations for further action, if any, to the department;

(2) Hold hearings on the denial of an application for a license as authorized by this chapter;

(3) Review commercial operator license applications in the structural pest control classifications to ensure that the applicant meets state licensing requirements and to make recommendations regarding those applications to the department;

(4) Periodically review the state structural pest control licensing examinations;

(5) Assist the department in administering the licensing examinations for commercial operators and commercial and noncommercial applicators and to make recommendations to the department regarding the applicant's examination results;

(6) Assist the department in its review and update of the license application forms, examinations, training courses, and educational materials issued by the department;

(7) Serve as a resource group to keep the department informed of current technical advancements in the pest control industry;

(8) Recommend reasonable rules and regulations concerning the following matters:

  (a) Standards of application and workmanship;

  (b) Proper health and safety precautions;

  (c) Prevention of pollution and contamination of land and groundwater by structural pest control firms, operators, applicators, and fumigators;

  (d) Requirements for standardized structural pest control contracts; and

  (e) Furnishing of reports and information necessary for the Pest Control Advisory Board to carry out the provisions of this chapter;

(9) Assist the department in establishing and formulating regulations, rules, or guidelines for the application of license, denial or revocation of license, and for assessing fines for violations of this chapter; and

(10) Assist the department in establishing and formulating guidelines for training of the department's field personnel and in any other matters relative to this chapter when requested by the department.

SECTION 25. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) The department shall, after denying an application for a license, if petitioned by the applicant, within ten (10) days of notification, schedule a hearing before the Pest Control Advisory Board. The department shall, at least fifteen (15) days prior to the date set for the hearing, notify the applicant and the Pest Control Advisory Board in writing of the exact reasons for denial and the date and place of the hearing. The written notice shall be served by delivery personally to the applicant, or by certified mail, return receipt requested, to the applicant's last known address.

(2) Within ten (10) days of the hearing, the board shall make a written recommendation to the department regarding the licensing of the applicant.

SECTION 26. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) Commercial operator licensing examinations authorizing structural pest control in the classifications of General Pest, Wood Destroying Organism, and Fumigation shall be given the second Tuesday in May and the second

Tuesday in November unless the date is a holiday. In that case, the examination shall be given on the third Tuesday of the respective month.

(2) An applicant shall initially be allowed to take two (2) consecutive commercial operator licensing examinations in the classifications of General Pest, Wood Destroying Organism, or Fumigation. If the applicant has not passed the commercial operator licensing examination in the classifications of General Pest, Wood Destroying Organism, or Fumigation after the initial two (2) attempts, the applicant shall wait one (1) year and successfully complete a training course approved by the department before reapplying to take this examination a third time. If the applicant does not pass this examination on the third attempt or does not pass this examination on any subsequent attempt, the applicant must wait two (2) years and successfully complete a training course approved by the department between each attempt until successfully passing this commercial operator licensing examination.

(3) The commercial operator General Pest and Wood Destroying Organism examination shall consist of two hundred sixty (260) written questions and forty (40) identification specimens.

(4) The commercial operator Fumigation examination shall consist of one hundred (100) written questions and twenty (20) identification specimens.

(5) The branch office manager's license examination authorizing an individual to manage an office of a structural pest control commercial firm or a noncommercial operator's license examination authorizing an individual to be the designated license holder for a noncommercial firm shall consist of ninety (90) written questions and twenty (20) identification specimens. Applicants for these licenses who are unsuccessful in their first attempt to become licensed must complete a training course approved by the department before the next attempt and between each subsequent attempt until successfully passing the licensing examination.

(6) The commercial applicator and noncommercial applicator licensing examination authorizing an individual to use pesticides in structures shall consist of fifty (50) written questions and ten (10) identification specimens. Applicants for a commercial applicator or noncommercial applicator license who are unsuccessful in their first attempt to become licensed in structural pest control shall complete a training course approved by the department before the next attempt and between each subsequent attempt until successfully passing the licensing examination.

(7) A maximum of seven (7) hours in time shall be allowed for a commercial operator examination with five (5) hours of the time allowed for the General Pest and Wood Destroying Organism classifications and two (2) hours of the time allowed for the Fumigation classification.

(8) Time allowed for a structural branch office manager's, noncommercial operator's, commercial applicator's, or noncommercial applicator's licensing examination shall be set by administrative regulation.

SECTION 27. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) No person who has applied, used, or arranged for the application or use of any plant growth regulator or pesticide as defined in the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, shall be responsible or liable without proof of negligence or lack of due care for any damages or response costs relating to any direct or indirect discharge or release into, or actual or threatened pollution of, the land, waters, air, or other resources of the state if that discharge or release is or may be associated with or resulting from the application or use, if:

(a) The application or use was in a manner consistent with the labeling of the pesticide and in accordance with acceptable practices and applicable state and federal laws and regulations at the time of the application or use;

(b) The state or federal government, or any of its agencies, had approved, recommended, or permitted the application or use and there is no finding that any conditions of the approval, recommendation, or permit were violated, or that warnings or limitations regarding the application or use were ignored; and

(c) The pesticide was licensed by or registered with the state or federal government at the time of the application or use and the person, firm, or corporation knew of no special geological, hydrological, or soil typed condition existing on the land which rendered the application or use likely to cause pollution. No person, firm, or corporation shall be liable based solely on ownership of the land where the application or use took place.

(2) Nothing in this section shall be construed to prohibit any cause of action based on strict tort liability against any manufacturer of the pesticide.

(3) All ordinances of any unit of local government now in effect or hereafter adopted that are in conflict with this section shall be void.

SECTION 28. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

The department shall bring, or upon the request of the commissioner of agriculture to the Attorney General, for the Attorney General to bring, criminal or civil legal action, or bring an action for the recovery of the penalties provided for in this chapter, or bring an action for an injunction against any person who violates any provision of this chapter and who *violates any order, determination, or administrative regulation of the department relating to this chapter.*

SECTION 29. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) All hearings required by this chapter shall be held before the Attorney General or his designee and in accordance with KRS Chapter 13B. At the conclusion of the hearing, the hearing officer shall within thirty (30) days issue a final order and make a report to the commissioner and a recommended order which shall contain a finding of fact and conclusion of law. If the commissioner finds upon written request by the hearing officer that additional time is needed, the commissioner may grant an extension. The hearing officer shall serve a copy of his report and recommended order upon all parties of record to the proceeding, and they shall be granted the right to file exceptions within ten (10) days of receipt. The commissioner shall consider the report and recommended order and pass upon the case. The decision shall be served by mail upon all parties and shall be the final order of the commissioner. The commissioner may promulgate administrative regulations to implement this section.

(2) Appeals may be taken from all final orders of the commissioner. Within thirty (30) days from the rendition of the final order an appeal may be taken to the Franklin Circuit Court. Parties affected by the order shall file in court a petition that fully states the grounds upon which a review is sought and assign all errors relied upon. The commissioner shall be named respondent, and service shall be had on the commissioner. Summons shall be issued upon the filing of the petition directing the commissioner to send the entire record to the clerk of the court after certifying that the record is the entire original record. The record shall be filed by the clerk and considered by the court on review. The court shall hear the cause upon the record as certified by the commissioner.

(3) Any licensee whose license is revoked under the provisions of this chapter shall not be eligible to apply for a new license until the time has elapsed from the date of the order revoking the license as shall be established by the department.

SECTION 30. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

Any person aggrieved by any action of the department may obtain a review of the action by filing in the Franklin Circuit Court within thirty (30) days of notice of the action a written petition praying that the action of the department be set aside. A copy of the petition shall be delivered to the department, and within sixty (60) days of receipt the department shall certify and file in the court a transcript of evidence received. The court shall have jurisdiction to affirm, set aside, or modify the action of the department, except that the findings of the department as to the facts, if supported by substantial evidence, shall be conclusive.

SECTION 31. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

The department shall by administrative regulation establish and administer a program to have informal settlement conferences and proceedings that are consistent with KRS Chapter 13B.

SECTION 32. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

The department may issue subpoenas to compel the attendance of witnesses or production of books, documents, and records anywhere in the state in any hearing affecting the authority or privilege granted by a license or permit issued under the provisions of this chapter.

SECTION 33. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) For the purpose of carrying out the provisions of this chapter, the department or any of its authorized employees may enter upon any public or private premises at reasonable times, in order to:

(a) Inspect the records, books, and documents regarding the use, distribution, manufacturing, reformulation, formulation, repackaging, or packaging of pesticides;

(b) Have access for the purpose of inspecting any equipment subject to this chapter and the premises on which the equipment is kept or stored;

(c) Inspect lands actually or reported to be exposed to pesticides;

(d) Inspect storage or disposal areas;

(e) Inspect or investigate complaints of injury to humans or land;

(f) Sample pesticides being applied or to be applied; and

(g) Inspect and copy any records required to be maintained in accordance with this chapter.

(2) If the department is denied access to any land where access was sought for the purposes set forth in this chapter, the department may apply to any court of competent jurisdiction for a search warrant authorizing access to the land. The court may, upon an application, issue the search warrant for the purposes requested.

SECTION 34. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) The department may suspend for not longer than ten (10) days, pending inquiry, and, after opportunity for a hearing, the department may deny, suspend, revoke, or modify the provision of any license issued under this chapter

if it finds that the licensee or his employee has committed any of the following acts:

(a) Made any material representation for the purpose of defrauding the public, or used any method or material that is not reasonably suited for the purpose for which it was employed by any licensed applicator or his solicitor or agent;

(b) Made a knowingly false or fraudulent claim through any media, misrepresenting the effect of material or methods to be utilized;

(c) Made a pesticide recommendation or application not in accordance with the label registered by the department under KRS 217.542 to 217.630;

(d) Applied known ineffective or improper materials or pesticides;

(e) Knowingly operated faulty or unsafe pesticide equipment or knowingly acted in a faulty, careless, or negligent manner;

(f) Failed, neglected, or refused to attend training courses approved by the department as specified by the Kentucky state plan;

(g) Refused or, after notice, neglected to comply with the provisions of this chapter, the administrative regulations promulgated under this chapter, or any lawful order of the department;

(h) Refused or neglected to keep and maintain the records required by this chapter, or to make reports when and as required;

(i) Made false or fraudulent records, invoices, or reports;

(j) Engaged in the use or distribution of pesticides without a license for their use or distribution;

(k) Used fraud or misrepresentation in making an application for a license or renewal of a license;

(l) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit;

(m) Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, combined or conspired with a licensed or an unlicensed person to evade the provisions of this chapter, or allowed one's license to be used by an unlicensed person;

(n) Knowingly made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land;

(o) Impersonated any state, county, or city inspector or official;

(p) Used pesticides inconsistent with conditions in the environment at and surrounding the site of the application, which the licensee knew or should have known about upon a reasonable investigation of these conditions;

(q) Stored or disposed of pesticides or pesticides containers by means other than those prescribed on the label or imposed by administrative regulations;

(r) Sold restricted use pesticides without a valid license;

(s) Failed to maintain financial responsibility as required by this chapter;

(t) Refused or failed to pay any fine rendered against the licensed person, its employee, solicitor, or representative by reason of liabilities resulting from activities under this chapter;

(u) Violated any provision of this chapter or any administrative regulation promulgated by the department or any lawful order of the department;

(v) Sold a restricted use pesticide to an unlicensed person;

(w) Has been convicted of a felony; or

(x) Acted as a licensed firm without being qualified by the department.

(2) Any licensee whose license is revoked under the provisions of this section shall not be eligible to apply for a new license until the time has elapsed from the date of the order revoking the license as established by the department, not to exceed two (2) years, or if an appeal is taken from the order of revocation, not to exceed two (2) years from the date of the order or final judgment sustaining the revocation.

SECTION 35. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) If any of the requirements of this chapter or administrative regulations promulgated under this chapter have not been complied with, the commissioner shall cause a notice of violation to be issued upon the licensed firm and its designated license holder. The commissioner shall set forth in his notice a reasonable time period, but not less than ten (10) and not more than thirty (30) days, for the correction of the violation. If a violation has not been corrected within the period of time prescribed in the notice of violation, the commissioner shall issue an order for immediate compliance and may assess the civil penalty provided for in Section 37 of this Act unless an extension has been

requested in writing by the licensed firm or its designated license holder and the extension of time has been granted by the commissioner. No extension shall exceed thirty (30) days in duration. The notice of violation shall be mailed to the licensed structural firm and its designated license holder by certified mail, return receipt requested, addressed to the designated address of the licensed firm address and its designated license holder as shown on department records. The notice of violation shall specify in what respect the licensed firm and its designated license holder has failed to comply with this chapter or administrative regulations promulgated under this chapter, and shall specify the period of time established for correction. If the licensed firm and its designated license holder have not complied with the requirements set forth in the notice of violation within the time limit allowed, the license may be revoked as provided in this chapter or the commissioner may take any other action provided for under this chapter.

(2) The commissioner shall develop a method for calculating the civil penalty for failure to correct a violation within the prescribed time period as authorized by this section, and the commissioner shall promulgate a schedule of the civil penalties in an administrative regulation.

SECTION 36. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

All moneys collected as a result of licensing fees or civil penalties shall be deposited in the State Treasury to the credit of the revolving fund for the use by the Department of Agriculture, Division of Pesticides, in enforcing the provisions of this chapter, and for the expense of carrying out the duties and functions of the Pest Control Advisory Board.

SECTION 37. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) Any person who violates any of the provisions of this chapter, who fails to perform any duties imposed by this chapter, or who violates any determination, order, or administrative regulation of the department shall be liable for a civil penalty not to exceed one thousand dollars ($1,000) for each violation and a civil penalty not to exceed one thousand dollars ($1,000) for each day during which the violation continues, and in addition, may be enjoined from continuing the violation as provided in this section. The penalties shall be recoverable in an action brought in the name of the Commonwealth by the department, or upon the department's request, by the Attorney General.

(2) Any person who fails to correct a violation within the time period prescribed by administrative regulation for the correction shall be assessed a civil penalty of not less than one hundred dollars ($100). Each day of continued violation may be deemed a separate violation for the purpose of penalty assessment. The commissioner shall develop a method for calculating monetary penalties and shall promulgate a schedule for the penalties in an administrative regulation. The penalty shall be recoverable in an action brought in the name of the Commonwealth. A license holder shall have thirty (30) days from notification of the penalty assessment to request a hearing.

(3) It shall be the duty of the department or, upon the request of the Commissioner of Agriculture, the Attorney General, to bring an action for the recovery of the penalties provided in this section, and to bring an action for an injunction against any person violating any provision of this chapter or violating any order, determination, or administrative regulation of the department. In any action, any finding of the department shall be prima facie evidence of the fact or facts found in the action.

(4) Any person who willfully violates any of the provisions of this chapter or any determination, order, or administrative regulation of the department shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or by imprisonment for a term of not more than one (1) year, or by both fine and imprisonment for each separate violation. Each day upon which a violation occurs shall constitute a separate violation.

Section 38. KRS 217B.990 is amended to read as follows:

(1) Any person who violates any of the provisions of this chapter***,***~~[or]~~ who fails to perform any duties imposed by ***this chapter***~~[those sections]~~, or who violates any determination***,***~~[or]~~ order***, or administrative regulation*** of the department~~[promulgated pursuant thereto]~~ shall be liable to a civil penalty of not to exceed the sum of one thousand dollars ($1,000) for ***each***~~[said]~~ violation, and an additional civil penalty of not to exceed one thousand dollars ($1,000) for each day during which ***the***~~[such]~~ violation continues, and in addition, may be enjoined from continuing ***the***~~[such]~~ violations as~~[hereinafter]~~ provided in this section. ***The***~~[Such]~~ penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky by the department, or***,*** upon the department's request***,*** by the Attorney General.

(2) Any person who fails to ***correct***~~[abate]~~ a violation within the time period prescribed by administrative regulation for the ***correction***~~[abatement]~~ shall be assessed a civil penalty of not less than one hundred dollars ($100). Each day of ***continued***~~[continuing]~~ violation may be deemed a separate violation for the purpose of penalty assessment. The commissioner shall develop a method for calculating monetary penalties and shall promulgate a schedule of the penalties in an administrative regulation. The penalty shall be recoverable in an action brought in the name of the Commonwealth. All sums of recovery shall be placed in the State Treasury. A license holder shall have thirty (30) days from notification of the penalty assessment to request a hearing.

(3) It shall be the duty of the department~~[,]~~ or***,*** upon the request of the Commissioner of Agriculture,~~[of]~~ the Attorney General***,*** to bring an action for the recovery of the penalties~~[hereinabove]~~ provided ***in this section***~~[for]~~,and to bring an

action for an injunction against any person violating[~~ or threatening to violate~~] any provision of this chapter or violating[~~ or threatening to violate~~] any order,[~~ or~~] determination, ***or administrative regulation*** of the department[~~ promulgated pursuant thereto~~]. In any[~~ such~~] action, any finding of the department shall be prima facie evidence of the fact or facts found ***in the action***[~~therein~~].

(4) Any person who[~~ shall~~] willfully ***violates***[~~violate~~] any of the provisions of this chapter, or any determination,[~~ or~~] order, ***or administrative regulation*** of the department[~~ promulgated pursuant to those sections which have become final~~] shall be guilty of a misdemeanor and upon conviction[~~ thereof~~] shall be punished by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) or by imprisonment for a term of not more than one (1) year, or by both fine and imprisonment for each separate violation. Each day upon which ***a***[~~such~~] violation occurs shall constitute a separate violation.

[~~(5) Any person who violates any of the provisions of KRS 217B.515 to 217B.585 or who fails to perform any duties imposed by those sections, or who violates any determination or order of the department promulgated pursuant thereto shall be liable to a civil penalty of not to exceed the sum of one thousand dollars ($1,000) for said violation, and an additional civil penalty of not to exceed one thousand dollars ($1,000) for each day during which such violation continues, and in addition, may be enjoined from continuing such violations as hereinafter provided for in KRS 217B.585. Such penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky by the department, or upon the department's request by the Attorney General.~~

~~(6) Any person who shall willfully violate any of the provisions of KRS 217B.515 to 217B.585 or any determination or order of the department promulgated pursuant to those sections which have become final shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) or by imprisonment for a term of not more than one (1) year or by both fine and imprisonment for each separate violation. Each day upon which the violation occurs shall constitute a separate violation.~~]

Section 39. The following KRS sections are repealed:

217B.500 Definitions.
217B.505 Pest Control Advisory Board.
217B.510 Powers and duties of board.
217B.515 Structural pest control licenses.
217B.520 Applicator's or manager's license.
217B.525 Application for license.
217B.530 Examinations for licenses.
217B.535 Applicator license holder restrictions -- Licenses not transferable or assignable -- Effect of sale of pest control firm -- Annual registration.
217B.540 Hearing on denial of application.
217B.545 Suspension, revocation, or modification of applicator's or manager's license -- Procedure -- Waiting period for eligibility for reapplication.
217B.550 Violations.
217B.555 Pesticide storage restrictions -- Restricted use pesticides.
217B.560 Training of personnel.
217B.565 Identification of vehicles -- Employee identification cards.
217B.570 Burden of responsibility.
217B.575 Notification of change of address.
217B.580 Disposition of fees.
217B.585 Actions for enforcement.

The Committee Substitute to **HB 480** is as follows:

AN ACT relating to structural commercial and noncommercial pest control and fumigation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. KRS CHAPTER 217D IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

(1) This chapter shall be known as the "Kentucky Structural Pesticide Use, Distribution, and Service Act of 1998".

(2) This chapter shall be regulated and administered by the Department of Agriculture, hereinafter referred to as the

department.

(3) The purpose of this chapter is to regulate in the public's interest the use and distribution of structural pesticides.

(4) The provisions of this chapter shall apply to all persons who use or distribute structural pesticides or provide a structural pest control service except:

(a) An individual applying structural pesticides on his or her own home, household, lawn, or yard on the condition that the homeowner not publicly hold himself or herself out as being in the business of applying pesticides;

(b) A person or the employees of a person engaged in the sale or distribution of structural pesticides unless structural pesticides sales equal or exceed five percent (5%) of the person's gross annual sales; or

(c) An individual applying structural pesticides on his or her own land or, if an employee, to that land owned or managed by his employer except if the individual is a noncommercial applicator.

SECTION 2. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

As used in this chapter, unless the context requires otherwise:

(1) "Animal" means a sentient living organism typically capable of voluntary motion and sensation, including all vertebrate and invertebrate species;

(2) "Applicant" means any person applying for a license to apply structural pesticides or perform related services under this chapter;

(3) "Applicator" means an individual who applies structural pesticides;

(4) "Beneficial animals" means animals that, during some part of their life cycle, are effective pollinators of plants, are parasites or predators of pests, are declared an endangered species, or are otherwise useful to human beings, unless declared a pest by the department;

(5) "Branch office" means any location of a firm other than its designated principal place of business location, excluding on and off premises bulk storage or receiving warehouses used solely for the purpose of customer order filling;

(6) "Commercial" means having financial gain as the object, or being engaged in trade or commerce;

(7) "Certified applicator" means a competent individual who has fulfilled the federal and state certification requirements for the use and supervision of use of restricted use structural pesticides;

(8) "Commercial applicator" means an individual who has met the requirements of this chapter whose permitted use and supervision of structural pesticide use is restricted to an employer-licensed firm and its designated license holder;

(9) "Commercial operator" means an individual who has met the requirements of this chapter who is qualified to be the designated license holder for a licensed firm;

(10) "Commissioner" means the Commissioner of Agriculture;

(11) "Competent individual" means an individual with the ability to read, comprehend, and follow oral and written instructions, including the text of structural pesticide labels, and who is at least eighteen (18) years of age;

(12) "Department" means the Department of Agriculture;

(13) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant or animal tissues;

(14) "Designated license holder" means the commercial or noncommercial operator within the licensed firm whose responsibility is for the management and control of structural pesticide use or distribution, structural pesticide operations, and affairs of the licensed firm, including all related activities such as sales, advertising, consulting, soliciting, training, compliance, or the performance of any of the services regulated under this chapter;

(15) "Distribution" means to advertise as a firm, or solicit sales, to offer for sale, hold for sale, barter for, or sell any structural pesticide product or related items or materials, or ship, deliver for shipment, or receive and having received, deliver or offer to deliver any structural pesticide, structural pesticide container, or related materials and items, or the storage, disposal, mixing, loading of structural pesticide containers except for internal distribution of structural pesticides, or related materials or items within a firm;

(16) "Environment" means water, air, land, plants, man, various other animals living on or in water, air, land, plants, and man, and the interrelationships that exist between them;

(17) "EPA" means the United States Environmental Protection Agency;

(18) "Equipment" means any type of ground, water, or aerial equipment, device, or contrivance using motorized, mechanical, or pressurized power and used to apply any structural pesticide on or in the land, but shall not include

any pressurized hand-sized household device used to apply any structural pesticide unless used commercially;

(19) "Firm" means a sole proprietorship, partnership, corporation, organization, association, or any combination of them;

(20) "Fumigation" means the use of poisonous gases for the control of pests;

(21) "Fungus" means all nonflowering plants that have no chlorophyll, that usually reproduce asexually, and that grow on dead organic matter or live parasitically, including but not limited to rusts, smuts, mildews, molds, and yeasts, except those on or in living man or other living animals, and except those in or on processed food, beverages, or pharmaceuticals;

(22) "General pests" means all invertebrates, including but not limited to arthropods, mollusks, annelid worms, rodents, or other pestiferous vertebrate animals or vermin, excluding wood-destroying organism pests and beneficial animals;

(23) "Individual" means a living human being;

(24) "Insect" means any invertebrate animal generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, including but not limited to beetles, bugs, bees, wasps, and flies, and means to include other allied classes of arthropods whose members are wingless and usually have more than six (6) legs, including but not limited to spiders, mites, ticks, centipedes, wood lice, nematodes and other worms, and all other invertebrates;

(25) "KPCA" means the Kentucky Pest Control Association, Inc.;

(26) "Label" means the written, printed, or graphic matter on or attached to the structural pesticide or device or to any of its containers or wrapper;

(27) "Land" means all land and water area, including airspace, and all plants, animals, structures, building devices, and contrivances and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation;

(28) "License" means an instrument issued by the department authorizing a person in the use or distribution of structural pesticides to the extent permitted by that license;

(29) "Licensed firm" means a person authorized by the department within its categories and classifications to operate as a commercial or noncommercial firm within the state;

(30) "Manager" means an employee of a licensed firm who is a reserve commercial operator or a certified applicator who is authorized and qualified by the department to manage an office of a licensed firm;

(31) "Nematode" means an invertebrate animal of the phylum Nemathelminthes and class Nematoda and that is an unsegmented round worm with elongated, fusiform, or sac-like body covered with cuticle, that inhabits soil, water, plants, or plant parts, and may also be called nema or eelworm;

(32) "Noncommercial" means a person or business that does not publicly hold himself out as being in the business of applying structural pesticides and that does not accept compensation;

(33) "Noncommercial applicator" means an individual including, but not limited to, a janitor, maintenance person, or groundskeeper, who is a certified applicator and who has met the requirements of this chapter, whose permitted use of structural pesticides is restricted to his own land, or if an employee of a firm, to that land owned or managed by the employer, and application is made on or in health care facilities, public and private schools, and public housing authorities;

(34) "Noncommercial operator" means an individual who has met the requirements of this chapter to be a noncommercial-certified applicator and who is qualified to be the designated license holder for a noncommercial-licensed firm;

(35) "Nuisance animal" means any animal, including feral animals and other wildlife, not normally considered a pest, but that infests, attacks, or invades land, causes damage to land, or poses an unacceptable risk to the land or to the health and well-being of individuals on land;

(36) "Person" means any individual, partnership, association, or any organized group of persons whether incorporated or not;

(37) "Pest" means:

(a) Any insect, which includes all classes of Arthropoda, snails, slugs, rodents, nematodes, or fungus; and

(b) Any other form of terrestrial or animal life, virus, bacteria, or other microorganism, except viruses, bacteria, or other microorganisms on or in living man or other living animals, and that is normally considered to be a pest, or that the department declares to be a pest;

(38) "Pesticide" means any substance or mixture of substances intended to prevent, destroy, control, repel, mitigate, or

regulate the growth of any pest;

(39) "Principal place of business" means the point of headquarters or principal location of a firm within the state;

(40) "Registered trained employee" means any competent individual employed by a licensed firm or public entity who has been registered with the department and who works under direct supervision of a certified applicator to operate equipment for the application of structural pesticide or to apply structural pesticide manually or to perform related services;

(41) "Reserve commercial operator" means a commercial operator who is qualified to become a designated license holder or a branch office manager of a licensed firm;

(42) "Reserve commercial operator license" means a commercial operator's license issued by the department that, when authorized by the department, would permit a new designated license holder to work in the same capacity as the primary designated license holder who is no longer licensed or no longer associated with the licensed firm;

(43) "Restricted use pesticides" means any structural pesticide classified for restricted use by the administrator of the EPA or by administrative regulation of the department;

(44) "Rodent" means rats or mice and any other animal of the class Rodentia except nuisance animals;

(45) "Snails or slugs" includes all harmful mollusks;

(46) "Structure" means, but is not limited to, residential, industrial, and commercial buildings and their land and water areas, building devices, and contrivances and machinery appurtenant hereto or situated thereon, fixed or mobile, including any used for transportation such as railroad cars, trucks, automobiles, farm tractors or machinery, ships, airplanes, or any one or any combination thereof, including all stages of their construction and development;

(47) "Structural pesticides" means pesticides used for the control, elimination, or prevention of structural pests.

(48) "Structural pests" means any invertebrate pest, wood-destroying organism pest, or vertebrate animal, including nuisance or feral animals, that infests, infects, attacks, or invades structures or their contents, by any method, that causes or could cause damage to the structure or pose an unacceptable risk to the structure or to the health and well-being of individuals within structures. "Structural pests" does not include those pests commonly known as weeds, agriculture invertebrate pests when living on plants, and turf and ornamental plant invertebrate pests when living on plants;

(49) "Structural pest control" means the use or distribution of structural pesticides for the control, elimination, or prevention of pests at their source and otherwise that invade or attack or are known to invade or attack structures and their contents, including the identification of infestations or infections, making inspections, inspection reports, recommendations, engaging in consulting services, offering advice regarding control methods or sanitation procedures relative to pests, making estimates or bids whether oral or written, advertising as a structural pesticide firm, operator, or applicator, performing services designed to control, eliminate, prevent, or repel pests or pest infestations by the use of structural pesticides, mechanical devices, or structural modifications under whatever name known, in all structures including railroad cars, trucks, ships, airplanes, or any combination of structures in all stages of construction, and the contents of structures, for a fee or otherwise. "Structural pest control" does not include textile manufacturers, cleaners, or furriers that treat fabrics or furs in their place of business exclusively;

(50) "Under direct supervision" means:

(a) The physical presence of a certified applicator at a work location that permits direct voice contact so as to instruct and control the actions of an individual during the use or distribution of structural pesticides; or

(b) A registered trained employee using general use structural pesticides under the following conditions:

1. Having the ability to establish voice communication with a certified applicator while the application of structural pesticides is in progress at a worksite;

2. Possessing at the work site the label and material safety data sheet of the structural pesticide to be used; and

3. Having written or otherwise verifiable instruction covering:

a. General and worksite-specific precautions to prevent injury to persons or damage to property;

b. Worksite structural pesticide mixing, handling, storage, and application; and

c. Proper disposal of structural pesticides containers;

(51) "Use" means any act of handling, applying, or exposing the environment to a structural pesticide, including but not limited to:

(a) Storing or disposing any structural pesticide or structural pesticide container;

(b) Performing structural pest control services to prevent, control, repel, or eliminate pests, making inspections, reports, recommendations, or offering advice regarding pests;

(c) Using mechanical devices or land modifications under whatever name known, for the purpose of preventing, controlling, and repelling pests; or

(d) Advertising as a firm, or soliciting sales or services, or making estimates or bids whether oral or written, issuing contracts, or offering for sale, selling, or bartering for any structural pesticide service relating to this chapter;

(52) "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests, including but not limited to, mammals, birds, and aquatic life;

(53) "Wood-destroying organisms" means any organism that damages plant products, plant by-products, or any material used in the construction of structures, including but not limited to the old-house borer, powder-post beetle, termite, carpenter bee, carpenter ant, and fungi; and

(54) "Worksite" means any location where there is the use or distribution of structural pesticides.

SECTION 3. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) The department shall administer and enforce the provisions of this chapter and shall promulgate administrative regulations under KRS Chapter 13A to carry out the provisions of this chapter. The department shall, by registered mail, notify, in advance, the president of the KPCA board and chair of the Pest Control Advisory Board of any proposal for or changes in administrative regulations. If the department finds that the administrative regulations are necessary to carry out the purpose and intent of this chapter, the administrative regulations shall be promulgated and relate to the use or distribution of structural pesticides, and be relative to the hazards and benefits involved, and prescribe methods and equipment to be used; may restrict the storage of structural pesticides in designated areas and the type of structure and conditions for the storage of structural pesticides; may relate to the time, place, manner, and method of application of structural pesticides; may restrict or prohibit use of structural pesticides in designated areas; and shall encompass all reasonable factors that the department deems necessary to prevent damage or injury by the use or distribution of structural pesticides to the environment, including but not limited to:

(a) Plants, including forage plants, on adjacent or nearby lands;

(b) Wildlife;

(c) Fish and other aquatic life in waters; and

(d) Pollinating insects, beneficial animals, and persons.

(2) In promulgating administrative regulations, the department shall give consideration to pertinent research findings and recommendations of other agencies of this state and the federal government. The department shall consider the risks versus benefits to man and the environment, taking into account economic, social, and environmental factors of the use or distribution of any structural pesticide.

(3) The department shall by administrative regulation adopt a list of "restricted-use pesticides" for the state or for designated areas within the state if it finds that the characteristics of those structural pesticides require restricting their use to prevent injury on lands, or on lands other than the land to which they are applied, or to persons, animals, crops, pests, or vegetation other than the pests or vegetation that they are intended to destroy. For the purpose of uniformity of requirements between the states and the federal government, the department shall adopt the list of "restricted-use pesticides" as established by the EPA or other federal or state agencies.

(4) The department shall establish additional categories and classifications of licenses as required for conformance with the Federal Environmental Pesticide Control Act of 1972. The categories and classifications shall include applicator, operator, business, and other categories and classifications not specifically mentioned in this chapter. The administrative regulations shall specify the category and classification licensing conditions, procedures, and fees, not to exceed those fees specified for other similar licenses under this chapter.

SECTION 4. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) The department may categorize and classify licenses to be issued under this chapter. Separate subcategories and classifications may be specified with each having specific categories and classifications and may be specified as to methods used by any licensee to apply structural pesticides.

(2) A license issued by the department under this chapter shall not be transferred, assigned, rented, leased, sold, or used for the purpose of circumventing the intent of this chapter.

(3) Each license holder shall notify the department of any change of address or employment status within ten (10) days after a change has been made.

(4) No individual shall be required to pay over one hundred dollars ($100) in total license fees per year if that individual desires to be licensed in one (1) or all of the classifications within a license category or in one (1) or all of the license categories provided for by the department.

SECTION 5. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) It shall be unlawful for any person or firm to use or distribute structural pesticides or to provide a pest control related service without first obtaining a structural-commercial or noncommercial-firm license. The department shall require an annual fee of twenty-five dollars ($25) for each commercial-firm license issued. There shall not be a fee assessed for a noncommercial-firm license.

(2) A firm license shall be obtained for all commercial branch office locations.

(3) The department shall not issue a commercial-firm license to a person or firm without a structural commercial operator in the employ of the person or firm.

(4) The department shall not issue a noncommercial firm license to a person or firm without a noncommercial applicator as its designated license holder in the employ of the person or firm. A noncommercial firm licensee shall not advertise as a firm, solicit sales or services, make estimates or bids whether oral or written, issue contracts, offer for sale, sell, or barter for any structural pesticide service relating to this chapter.

(5) No commercial firm shall be issued a firm license without continual proof of financial responsibility as required by this chapter.

(6) Each application for a commercial or noncommercial firm license shall contain information identifying that the applicant is qualified to operate within the state, the applicant's proposed operations, including the license categories and classifications within the categories in which the applicant intends to operate, and the following:

- *(a) The designated license holder of the applicant;*
- *(b) The full name of the individual who is making application on behalf of the applicant who will be the contact individual for the applicant until the license is issued;*
- *(c) If the applicant is a receiver, trustee, firm, partnership, association, corporation, or other organized group of persons whether or not incorporated, the full name of each member of the firm or partnership, or the names of the officers of the association, corporation, or group, or the name of the individual if a proprietorship;*
- *(d) The location address of the principal place of business of the applicant in the state and elsewhere, and all branch office locations, or structural pesticide application locations if noncommercial, within the state;*
- *(e) The name and address of a person whose domicile is in the state, or an entity within the state, who is authorized to receive and accept service of summons and legal notice of all kinds for the applicant; and*
- *(f) Any other necessary information prescribed by the department.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) Application for a structural commercial or noncommercial individual's license shall be submitted in writing on a form furnished by the department. The application shall state the applicant's qualifications, license category, and classification within the category for which the applicant is applying and other information required by the department to carry out the purpose and intent of this chapter. Each applicant shall be required to present to the department satisfactory evidence of training or experience. Application for an operator's license shall be submitted at least thirty (30) days in advance of the testing date. Application for an applicator's license shall be submitted in advance as designated by the department.

(2) The department shall require the applicant to take and pass a timed written examination in the category and classification within the category for which the applicant seeks the license to demonstrate that the applicant possesses adequate knowledge concerning the law and its regulations, the proper use and distribution of the chemicals used, and the various equipment that may be used in the category and classifications within the category for which the applicant has applied.

(3) Each category and classification within the category shall be subject to separate testing procedures and requirements. The department shall give consideration to each category and classification within the category of license issued and the inherent risks or danger associated with the structural pesticide use or distribution in that category or classification within the category.

(4) No oral examinations shall be given. Written and timed examinations shall be given to all qualified applicants and administered by the department at times as the department shall set out or as designated by this chapter. The department shall charge a nonrefundable examination fee. The examination shall require, but not be limited to, a working knowledge of:

- *(a) The proper use of structural pesticides and structural pesticide equipment;*
- *(b) The hazards or risks to the environment that may be involved in the use of structural pesticides and that could include drift, meteorological conditions, limits of residues, effect on wildlife including aquatic life, runoff, soil pollution, or contamination of water, identifications of structural pesticides used and their application in a particular circumstance, and the effects on livestock, vegetation, and beneficial animals;*
- *(c) Calculating the concentration of structural pesticides to be used in particular circumstances;*

(d) Identification of pests, by their common name, and the damages caused by pests;

(e) Protective clothing and respiratory equipment required during the use of structural pesticides;

(f) General precautions to be followed in the disposal of containers as well as the cleaning and decontamination of the equipment which the applicant proposes to use; and

(g) Applicable state and federal structural pesticide laws and regulations.

(5) The department shall notify the applicant of the results of the examination within ten (10) days of the close of the examination.

(6) When a license is issued to an applicant, the applicant shall be deemed to have fulfilled those requirements necessary to become a certified applicator in those categories and classifications within the category in which the license was issued.

(7) The department shall issue a license to the applicant in the categories and classifications within the category for which the applicant has qualified if the department finds that the applicant has met the following requirements:

(a) Is a legal resident of the United States of America;

(b) Has achieved a grade of at least seventy percent (70%) on the written section of the examination and at least seventy percent (70%) on the identification section of the examination. A minimum grade of seventy percent (70%) must be obtained on both sections of the examination on the same testing date;

(c) Has paid all licensing and certification fees;

(d) Is certified to use restricted-use pesticides in accordance with this chapter or is obtaining certification concurrent with receiving the license for which the applicant is applying;

(e) Has no felony convictions; and

(f) Has met the requirements of this chapter and its administrative regulations.

SECTION 7. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) The department shall by administrative regulations establish and administer a program to certify individuals as structural commercial or noncommercial applicators to use restricted-use pesticides. The department shall classify, by categories and classifications within the categories, the certifications to be issued under this section. The department shall require the applicant to take and pass a timed written examination in the categories and classifications within the categories for which the applicant seeks to become a certified restricted-use pesticide applicator. Standards for certification shall be set forth in the administrative regulations promulgated under this chapter.

(2) It shall be unlawful for a person to use restricted-use pesticides unless the person is qualified under this chapter as a certified structural commercial or non-commercial applicator. The exceptions contained in subsection (4) of Section 1 of this Act do not apply to this subsection.

(3) Individuals who, upon the effective date of this Act, are licensed to use structural pesticides but who are not certified to apply restricted-use pesticides shall obtain certification at the time of the next renewal of their license in order to renew their license. No examination shall be required of that person so long as certification is obtained in the same classification.

(4) Individuals who, upon the effective date of this Act, are certified to use restricted-use pesticides but who are not licensed to use structural pesticides may obtain a license in the same classification in which they are certified and without examination.

SECTION 8. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) It shall be unlawful for any individual to act as a structural commercial operator or as the designated license holder of a licensed firm without having obtained a structural commercial operator license from the department. The department shall require an annual fee of one hundred dollars ($100) for a structural commercial operator's license. There shall be only one (1) commercial operator's license holder per licensed firm with one (1) or more reserve commercial operator license holders allowed for a licensed firm. The department shall require an annual fee of twenty-five dollars ($25) for a reserve commercial operator's license.

(2) Each application for a structural commercial operator's license shall contain information regarding the applicant's qualifications and proposed operations, commercial operator's license category and classification or classifications within the category for which the applicant is applying, and include the following:

(a) The full name of the individual applying for the license;

(b) If the applicant is to be a designated license holder for a licensed firm, the name of the licensed firm for whom the applicant is to be the designated license holder;

(c) The place of business location and home address of the applicant in the state or elsewhere;

(d) The name and address of an individual whose domicile is in the state, or an entity located within the state, who is authorized to receive and accept service of summons and legal notice of all kinds for the applicant; and

(e) Any other necessary information prescribed by the department.

(3) The department shall require an applicant for a structural commercial operator's license to take and pass a timed written examination in the category and classification for which the applicant seeks the commercial operator's license to demonstrate that the applicant possesses adequate knowledge concerning the proper use and distribution of structural pesticides and the various equipment that may be used in the category and classifications for which the applicant has applied. The examination shall require a working knowledge of:

(a) The proper use of structural pesticides, structural pesticide equipment, and label and material safety data sheet comprehension;

(b) The hazards or risks to the environment that may be involved in the use of structural pesticides;

(c) Calculating the concentration of structural pesticides to be used in particular circumstances;

(d) Identification of pests, by their common name, and the damages caused by pests;

(e) Protective clothing and respiratory equipment required during the use of structural pesticides;

(f) General precautions to be followed in the disposal of containers and the cleaning and decontamination of the equipment which the applicant proposes to use; and

(g) Applicable state and federal structural pesticide laws and regulations.

(4) Each applicant for a structural commercial operator's license shall have:

(a) At least two (2) years of verified structural pest control experience as an employee with a licensed firm authorized to do business in structural pest control. Experience shall be verified by the designated license holder of the licensed firm from which the applicant has obtained experience;

(b) At least three (3) years verifiable field experience with the Structural Pesticide Branch of the Department of Agriculture. Experience shall be verified by the director of the branch; or

(c) A bachelor's degree, master's degree, or a doctoral degree in entomology or an associated field from an accredited college or university, and one (1) year experience in structural pest control. Educational background shall be verified with official transcripts from the institution or institutions granting the degree.

(5) The department shall issue a structural commercial operator's license to the applicant in the categories and classifications for which the applicant has qualified if the department finds that the applicant has met the requirements of this chapter.

SECTION 9. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) It shall be unlawful for any individual to act as an employee of a structural licensed firm and use or supervise the use of structural pesticides or structural pesticide equipment without having obtained a structural commercial applicator's license from the department. The department shall require an annual fee of ten dollars ($10) for each structural commercial applicator's license issued.

(2) The department shall issue a structural commercial applicator's license to the applicant in those categories and classifications for which the applicant has qualified if the department finds the applicant has met the requirements of this chapter.

SECTION 10. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) The department shall by administrative regulations establish and administer a program to register and verify training of structural registered trained employees. The annual registration fee of a structural registered trained employee shall be five dollars ($5). Registration shall be made on a form provided by the department. The department shall classify, by categories and classifications within the categories, the registrations to be issued under this section. The program shall include but not be limited to:

(a) Employees of a licensed firm who sell structural pesticides, structural pesticides equipment or services, or who use or distribute structural pesticides and structural pesticides application equipment or give advice regarding the use of structural pesticides; and

(b) Individuals who are required to work under the direct supervision of a commercial or noncommercial applicator who at a work site use structural pesticides or structural pesticide application equipment.

(2) This section shall not apply to certified applicators or employees of a licensed firm who, as an incidental part of their job, provide information or accept sales regarding the structural pesticides sold or the services provided by their firm.

SECTION 11. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) It shall be unlawful for an individual to manage a structural branch office of a structural licensed firm within this state without being qualified by the department as a structural branch office manager. There shall be at least one (1) structural branch office manager employed at each structural branch office of the licensed firm by December 31, 1998. The department shall require an annual fee of twenty-five dollars ($25) for each structural branch office manager's license issued.

(2) Applicants for a structural branch officer manager's license shall have:

(a) At least one (1) year experience in structural pest control;

(b) A bachelor's degree, master's degree, or a doctoral degree in entomology or an associated field from an accredited college or university; or

(c) Two (2) years experience with the Department of Agriculture, Pesticide Division.

(3) If the applicant is a structural reserve commercial operator qualified in those categories and classifications needed to manage a branch office of a licensed firm for which application is being made, the department shall issue a branch office manager's license to that applicant without examination or fee.

SECTION 12. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) It shall be unlawful for an individual to act or hold himself out as a structural noncommercial applicator or as the designated license holder of a licensed noncommercial firm without having obtained a structural noncommercial applicator's license from the department. The annual fee for a noncommercial operator designated license holder license shall be fifty dollars ($50). The annual fee for a noncommercial applicator license shall be ten dollars ($10).

(2) The department shall issue a noncommercial applicator's license that is restricted to the applicant's firm location and in the singular category and classification of general pest for which the applicant has qualified if the department finds that the applicant has met the requirements of this chapter.

(3) Applicants for structural noncommercial applicator's licenses that authorize noncommercial pest control shall be required to successfully complete a training program authorized by the department and present, to the department's satisfaction, proof of experience and education within the category and classification applied.

SECTION 13. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) In the event of death or incapacitation of a designated license holder for a licensed firm, all provisions and regulations of this chapter shall apply. The heirs, representatives, other persons, or legal entities that may have an interest in the licensed firm may continue the licensed firm operations up to a maximum of one (1) year without a designated licensed holder within its employ if application for a special operating conditions license is made to the department within thirty (30) days of the death or incapacitation of the designated license holder, and the department grants and issues a special operating conditions license.

(2) Upon a valid sale of a licensed firm, all provisions and regulations of this chapter shall apply. The purchaser of the licensed firm may continue the operations up to a maximum of one hundred twenty (120) days from the date of the close of the sale without a designated license holder within its employ if application for a special operating conditions license is made to the department within ten (10) days of the closing of the sale, and the department recognizes the sale as a valid sale and issues a special operating conditions license.

(3) If the designated license holder for a licensed firm ceases to be employed by a licensed firm for reasons other than death or incapacitation or the sale of the licensed firm, all provisions and regulations of this chapter shall apply. The licensed firm may continue its operations up to a maximum of ninety (90) days from the date of cessation of employment by the designated license holder if application for a special operating conditions license is made to the department within ten (10) days of the cessation of employment of the designated license holder, and the department grants and issues a special operating conditions license.

(4) During the time period provided for the exception of employment of a designated license holder, a full-time commercial applicator shall be in the employ of the licensed firm to supervise the use or distribution of structural pesticides; otherwise all firm operations shall immediately cease.

(5) A licensed firm may, by written request, solicit the department to temporarily waive the designated license holder or commercial applicator requirement and to grant a temporary emergency operating license or an extension of time beyond that provided for within this section for a period of time not to exceed sixty (60) days. Upon receipt of written request, the department may issue a written waiver of requirement or extension of time or issue a temporary emergency operating license for the period of time requested. Granting a request does not relieve the licensed firm from the other provisions and regulations of this chapter that apply.

(6) Upon denial, revocation, or expiration of any waiver or license granted under this section, all provisions and regulations of this chapter will apply, and a designated license holder shall be employed by the licensed firm or all firm operations must immediately cease.

SECTION 14. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) All licenses issued under this chapter shall expire on January 1 of the year following issue unless revoked or suspended earlier by the department. Upon expiration, revocation, or suspension of a license, the licensee shall be prohibited from engaging in any of the activities permitted by the license until the license is renewed or reinstated by the department.

(2) Licenses issued by the department shall be renewed annually by application on a form provided by the department. Each application shall be accompanied by the annual license fee and proof of financial responsibility on a continuing basis. The department shall renew valid licenses annually without examination if all requirements of this chapter have been met by the applicant.

(3) Applications for a renewal of license that are not received by the department prior to February 1 of the year following issue shall be accompanied by the annual fee plus a late fee equal to twenty-five percent (25%) of the annual license fee before a renewal of license will be issued.

(4) Applications for a renewal of license that are not received by the department prior to March 1 of the year following issue shall not be renewed and all operations shall immediately cease.

SECTION 15. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) The department shall develop minimum training requirements for categories and classifications of structural operators, applicators, and registered trained employees.

(2) The department shall conduct training courses and shall publish information on the safe use of structural pesticides.

(3) The department shall, at least every two (2) years, review and update the license examinations given by the department and training courses approved or conducted by the department.

(4) The department shall revise its:

(a) License application forms;

(b) Training courses; and

(c) Educational materials;

to include information on and require knowledge of the prevention and contamination of groundwater.

(5) Reexamination requirements of individuals licensed, registered, or who have obtained a permit under this chapter will be required every two (2) years, unless the individual has participated in eight (8) hours of department-approved continuing education training every two (2) years.

SECTION 16. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) The department shall by administrative regulations establish and administer a program to escrow, to an inactive status, licenses issued by the department. A license that is placed in escrow prohibits the licensee of the use permitted by that license.

(2) Escrow of license shall be made on a form provided by the department and be accompanied by:

(a) The license issued by the department;

(b) Payment of a one-time recording fee of twenty-five dollars ($25); and

(c) A signed request by the licensee, addressed to the director of pesticides, that the license submitted is to be made inactive and placed in escrow.

(3) An inactive license in escrow shall not be required to be renewed annually if the annual escrow fee has been paid, or have evidence of financial responsibility, or maintain required continuing education training requirements.

(4) The department shall set the annual fee for escrow of license.

(5) Escrow of license expires annually on January 1 of the year following escrow.

(6) Escrow of license shall be renewed annually by application on a form provided by the department and be accompanied by the annual escrow of license fee. Applications and fees for renewal of escrow of license not received by the department prior to March 1 of the year following expiration of escrow shall not be renewed and the use permitted by the license shall be revoked.

(7) A license may be activated and removed from escrow as follows:

(a) Submission of a signed request by the licensee, addressed to the director of pesticides, that the license is to be removed from escrow and is to be placed into an active status; and

(b) Submission of proof that the licensee has participated in twelve (12) hours of department-approved continuing education training within twelve (12) months prior to the date of removal of license from escrow, submission of proof of financial responsibility as required by this chapter, and advance payment of license fees due for renewal of license for the current license year.

SECTION 17. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) It shall be unlawful to use or distribute structural pesticides or act as a commercial firm in this state without evidence of financial responsibility that is acceptable to the department. The department shall not issue or renew a firm license to an applicant unless evidence of financial responsibility is on file with the department in the form of a surety bond, an irrevocable letter of credit from a qualified financial institution, or a liability insurance policy, each of which shall be clearly conditioned to cover liability arising from use or distribution of structural pesticides and pest control services by the applicant or the applicant's employees.

(2) The amount of the irrevocable letter of credit from a qualified financial institution, a surety bond for each client, or a liability insurance policy required by this section shall be not less than two hundred thousand dollars ($200,000) combined single limit bodily injury and property damage. The evidence of financial responsibility shall be maintained at not less than the listed amount at all times. The department shall be notified by the surety, financial institution, or insurer of any reduction in the minimum financial amount required or of any cancellation of evidence of financial responsibility as soon as the surety, financial institution, or insurer becomes aware of the reduction or cancellation.

(3) Should the evidence of financial responsibility furnished expire without renewal, not meet the requirements of this chapter, or become unacceptable, for cause, to the department, the applicant or licensee shall within ten (10) days upon notice from the department execute and submit other evidence of financial responsibility acceptable to the department. Until the evidence of financial responsibility is acceptable to the department, the firm license issued shall be suspended and all structural pesticide operations shall cease.

(4) The financial responsibility requirement shall not apply to:

(a) Commercial operators, applicators, or registered trained employees employed by and acting on behalf of a firm if the firm has issued and the department has accepted evidence of financial responsibility; or

(b) Noncommercial operators or applicators.

(5) Nothing in this chapter shall be construed to relieve any person from liability for any damage to the person or lands of another caused by the use or distribution of structural pesticides even though the use or distribution conforms to the rules and administrative regulations of the department.

SECTION 18. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

The department shall require licensed firms to maintain reasonable records, specified by administrative regulations, with respect to the use or distribution of structural pesticides for the effective enforcement of this chapter. Records shall be kept for a period of five (5) years from the date of the use or distribution of the structural pesticide to which the records refer.

SECTION 19. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) The department shall provide for inspection and identification of equipment, vehicles, or machinery used by firms. A list of requirements that equipment, vehicles, or machinery must meet shall be determined by administrative regulation.

(2) All vehicles used by a firm for use or distribution of structural pesticides shall be required to display, and have securely affixed, the licensed firm license number in numbers at least two (2) inches high and the licensed firm name in letters at least two (2) inches high in a manner and location on vehicles as may be prescribed by the department.

(3) A noncommercial firm shall display the designated noncommercial operator's license number in numbers at least two (2) inches high in a manner and location on vehicles as may be prescribed by the department.

(4) A commercial licensed firm shall display and have securely affixed the capital letters L.P.C.O., meaning Licensed Pest Control Operator, followed by the designated license holder's license number in numbers at least two (2) inches high.

(5) Vehicles used as a temporary and incidental part of a licensed firm may display the required letters, numbers, and firm name on a removable sign in letters and numbers of at least two (2) inches in height and must be displayed and clearly visible to passersby.

SECTION 20. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

The department may cooperate or enter into formal agreements with any other agency or educational institution of this state or its subdivisions or with any agency of any other state or of the federal government for the purpose of carrying out the provisions of this chapter and of securing uniformity of regulations.

SECTION 21. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) The Commonwealth hereby determines that the citizens of the state benefit from a system of safe, effective, and scientifically sound structural pesticides regulation. The Commonwealth further finds that a system of structural pesticide regulation that is consistent, coordinated, and comports with federal and state technical expertise is essential to the public health, safety, and welfare, and that local regulation of structural pesticides does not

materially assist in achieving those benefits.

(2) Notwithstanding any other provision of law to the contrary, no city, county, taxing district, or other political subdivision of the state shall adopt or continue in effect any ordinance, rule, regulation, resolution, or statute regarding structural pesticide, including, without limitation to: use, distribution, registration, notification of use, posting, advertising and marketing, distribution, application, methods, applicator training and certification, storage, transportation, or disposal.

(3) Nothing in this section shall be construed to abrogate any authority afforded by the Kentucky Revised Statutes to any program cabinet established under KRS Chapter 12 or any state or federal mandated hazardous materials regulations or fire safety codes and comprehensive hazardous material management program.

(4) Any ordinances of any unit of local government now in effect or hereafter adopted that are in conflict with this section shall be void.

SECTION 22. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) It shall be unlawful for any person or firm to engage in commercial structural pest control or to act as or hold himself out as a commercial structural pest control firm without a firm license authorizing commercial structural pest control and a commercial operator in its employ, authorized as its designated license holder, and licensed in structural pest control in at least the classifications of General Pest and Wood Destroying Organisms.

(2) The category of Commercial Structural Pest Control is divided into the singular classifications of, but not limited to, General Pest, Wood Destroying Organism, and Fumigation, with an examination and license required for each classification.

(3) Upon recommendation of the board, the department shall designate any additional categories and classifications with an examination and license required for each.

(4) No specific singular commercial structural license classifications shall be issued without first obtaining the classifications of General Pest and Wood Destroying Organism.

(5) Individuals who were issued a commercial license in the specific singular classification of Termite Control, General Pest Control, or Fumigation, on or before June 17, 1978, are exempt from the minimum requirements of subsection (1) of this section and may continue to perform structural pest control, but only in those specific singular classifications, providing all other requirements of this chapter are met and the license has remained valid. If a specific singular classification license lapses or is revoked for any reason, the specific singular classification shall not be reinstated and all current requirements of this chapter shall be met.

SECTION 23. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) There shall be established a nine (9) member Pest Control Advisory Board that shall consist of the following members:

- *(a) The president and the immediate past president of KPCA;*
- *(b) One (1) KPCA member who is a resident of the Commonwealth and active in the pest control industry, appointed by the Governor from a list submitted by the KPCA board of directors, who shall serve a two (2) year term;*
- *(c) The chair of the University of Kentucky's Department of Entomology or a designated representative of the chair;*
- *(d) One (1) member of the University of Kentucky's Department of Entomology appointed by the chair of that department;*
- *(e) Two (2) members of the department appointed by the Commissioner of Agriculture; and*
- *(f) Two (2) consumer members appointed by the Commissioner of Agriculture, who shall serve a two (2) year term.*

(2) If a vacancy occurs on the board, it shall be filled in the manner designated in this section.

(3) At its first meeting each year, the Pest Control Advisory Board, from among its members, shall select the following officers, who shall serve for a term of one (1) year: a chair, who shall preside at all meetings and perform other duties incident to the office; a vice chair, who in the absence of the chair shall preside at all meetings and perform other duties incident to the office; and a secretary, who shall be responsible for providing to the board the official record of the minutes of the meetings and perform other duties incident to the office. These elected officers shall serve at the pleasure of the board.

(4) Five (5) members of the board shall constitute a quorum. Any action or order of the board shall require a quorum and the approval of a simple majority of the members present.

(5) Unless otherwise stipulated by the chair, meetings are to be held every two (2) months in Frankfort, Kentucky, on the

first Thursday of the month, beginning with January. If the first Thursday of a meeting month falls on a holiday, the scheduled meeting shall take place on the immediate following Thursday. The secretary shall provide a notice of meeting to each board member at least ten (10) days in advance of the scheduled meeting day. The chair or any five (5) members of the board may call a special meeting by providing written notice to all board members at least ten (10) days in advance of the date of the special meeting, stating the date, time, place, and purpose of the special meeting. Only business as stated in the notice shall be acted upon at the special meeting.

(6) Members of the board shall serve without compensation. Board members who are not employees of the Commonwealth shall be entitled to reimbursement by the department for actual expenses incurred in carrying out the duties of the board.

SECTION 24. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

The Pest Control Advisory Board shall have the following duties:

(1) Review structural pest control and fumigation enforcement proceedings and make written recommendations for further action, if any, to the department;

(2) Hold hearings on the denial of an application for a license as authorized by this chapter;

(3) Review commercial operator license applications in the structural pest control classifications to ensure that the applicant meets state licensing requirements and to make recommendations regarding those applications to the department;

(4) Periodically review the state structural pest control licensing examinations;

(5) Assist the department in administering the licensing examinations for commercial operators and commercial and noncommercial applicators and to make recommendations to the department regarding the applicant's examination results;

(6) Assist the department in its review and update of the license application forms, examinations, training courses, and educational materials issued by the department;

(7) Serve as a resource group to keep the department informed of current technical advancements in the pest control industry;

(8) Recommend reasonable rules and regulations concerning the following matters:

  (a) Standards of application and workmanship;

  (b) Proper health and safety precautions;

  (c) Prevention of pollution and contamination of land and groundwater by structural pest control firms, operators, applicators, and fumigators;

  (d) Requirements for standardized structural pest control contracts; and

  (e) Furnishing of reports and information necessary for the Pest Control Advisory Board to carry out the provisions of this chapter;

(9) Assist the department in establishing and formulating regulations, rules, or guidelines for the application of license, denial or revocation of license, and for assessing fines for violations of this chapter; and

(10) Assist the department in establishing and formulating guidelines for training of the department's field personnel and in any other matters relative to this chapter when requested by the department.

SECTION 25. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) The department shall, after denying an application for a license, if petitioned by the applicant, within ten (10) days of notification, schedule a hearing before the Pest Control Advisory Board. The department shall, at least fifteen (15) days prior to the date set for the hearing, notify the applicant and the Pest Control Advisory Board in writing of the exact reasons for denial and the date and place of the hearing. The written notice shall be served by delivery personally to the applicant, or by certified mail, return receipt requested, to the applicant's last known address.

(2) Within ten (10) days of the hearing, the board shall make a written recommendation to the department regarding the licensing of the applicant.

SECTION 26. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) Commercial operator licensing examinations authorizing structural pest control in the classifications of General Pest, Wood Destroying Organism, and Fumigation shall be given the second Tuesday in May and the second Tuesday in November unless the date is a holiday. In that case, the examination shall be given on the third Tuesday of the respective month.

(2) An applicant shall initially be allowed to take two (2) consecutive commercial operator licensing examinations in the classifications of General Pest, Wood Destroying Organism, or Fumigation. If the applicant has not passed the commercial operator licensing examination in the classifications of General Pest, Wood Destroying Organism, or

Fumigation after the initial two (2) attempts, the applicant shall wait one (1) year and successfully complete a training course approved by the department before reapplying to take this examination a third time. If the applicant does not pass this examination on the third attempt or does not pass this examination on any subsequent attempt, the applicant must wait two (2) years and successfully complete a training course approved by the department between each attempt until successfully passing this commercial operator licensing examination.

(3) The commercial operator General Pest and Wood Destroying Organism examination shall consist of two hundred sixty (260) written questions and forty (40) identification specimens.

(4) The commercial operator Fumigation examination shall consist of one hundred (100) written questions and twenty (20) identification specimens.

(5) The branch office manager's license examination authorizing an individual to manage an office of a structural pest control commercial firm or a noncommercial operator's license examination authorizing an individual to be the designated license holder for a noncommercial firm shall consist of ninety (90) written questions and twenty (20) identification specimens. Applicants for these licenses who are unsuccessful in their first attempt to become licensed must complete a training course approved by the department before the next attempt and between each subsequent attempt until successfully passing the licensing examination.

(6) The commercial applicator and noncommercial applicator licensing examination authorizing an individual to use structural pesticides in structures shall consist of fifty (50) written questions and ten (10) identification specimens. Applicants for a commercial applicator or noncommercial applicator license who are unsuccessful in their first attempt to become licensed in structural pest control shall complete a training course approved by the department before the next attempt and between each subsequent attempt until successfully passing the licensing examination.

(7) A maximum of seven (7) hours in time shall be allowed for a commercial operator examination with five (5) hours of the time allowed for the General Pest and Wood Destroying Organism classifications and two (2) hours of the time allowed for the Fumigation classification.

(8) Time allowed for a structural branch office manager's, noncommercial operator's, commercial applicator's, or noncommercial applicator's licensing examination shall be set by administrative regulation.

SECTION 27. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) No person who has applied, used, or arranged for the application or use of any plant growth regulator or structural pesticide as defined in the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, shall be responsible or liable without proof of negligence or lack of due care for any damages or response costs relating to any direct or indirect discharge or release into, or actual or threatened pollution of, the land, waters, air, or other resources of the state if that discharge or release is or may be associated with or resulting from the application or use, if:

(a) The application or use was in a manner consistent with the labeling of the structural pesticide and in accordance with acceptable practices and applicable state and federal laws and regulations at the time of the application or use;

(b) The state or federal government, or any of its agencies, had approved, recommended, or permitted the application or use and there is no finding that any conditions of the approval, recommendation, or permit were violated, or that warnings or limitations regarding the application or use were ignored; and

(c) The structural pesticide was licensed by or registered with the state or federal government at the time of the application or use and the person, firm, or corporation knew of no special geological, hydrological, or soil typed condition existing on the land which rendered the application or use likely to cause pollution. No person, firm, or corporation shall be liable based solely on ownership of the land where the application or use took place.

(2) Nothing in this section shall be construed to prohibit any cause of action based on strict tort liability against any manufacturer of the structural pesticide.

(3) All ordinances of any unit of local government now in effect or hereafter adopted that are in conflict with this section shall be void.

(4) The exceptions contained in subsection (4) of Section 1 of this Act do not apply to this section.

SECTION 28. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

The department shall bring, or upon the request of the Commissioner of Agriculture to the Attorney General, for the Attorney General to bring, criminal or civil legal action, or bring an action for the recovery of the penalties provided for in this chapter, or bring an action for an injunction against any person who violates any provision of this chapter and who violates any order, determination, or administrative regulation of the department relating to this chapter.

SECTION 29. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) All hearings required by this chapter shall be held before the Attorney General or his designee and in accordance

with KRS Chapter 13B. At the conclusion of the hearing, the hearing officer shall within thirty (30) days issue a final order and make a report to the Commissioner and a recommended order which shall contain a finding of fact and conclusion of law. If the Commissioner finds upon written request by the hearing officer that additional time is needed, the Commissioner may grant an extension. The hearing officer shall serve a copy of his report and recommended order upon all parties of record to the proceeding, and they shall be granted the right to file exceptions within ten (10) days of receipt. The Commissioner shall consider the report and recommended order and pass upon the case. The decision shall be served by mail upon all parties and shall be the final order of the Commissioner. The Commissioner may promulgate administrative regulations to implement this section.

(2) Appeals may be taken from all final orders of the Commissioner. Within thirty (30) days from the rendition of the final order an appeal may be taken to the Franklin Circuit Court. Parties affected by the order shall file in court a petition that fully states the grounds upon which a review is sought and assign all errors relied upon. The Commissioner shall be named respondent, and service shall be had on the Commissioner. Summons shall be issued upon the filing of the petition directing the Commissioner to send the entire record to the clerk of the court after certifying that the record is the entire original record. The record shall be filed by the clerk and considered by the court on review. The court shall hear the cause upon the record as certified by the Commissioner.

(3) Any licensee whose license is revoked under the provisions of this chapter shall not be eligible to apply for a new license until the time has elapsed from the date of the order revoking the license as shall be established by the department.

SECTION 30. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

Any person aggrieved by any action of the department may obtain a review of the action by filing in the Franklin Circuit Court within thirty (30) days of notice of the action a written petition praying that the action of the department be set aside. A copy of the petition shall be delivered to the department, and within sixty (60) days of receipt the department shall certify and file in the court a transcript of evidence received. The court shall have jurisdiction to affirm, set aside, or modify the action of the department, except that the findings of the department as to the facts, if supported by substantial evidence, shall be conclusive.

SECTION 31. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

The department shall by administrative regulation establish and administer a program to have informal settlement conferences and proceedings that are consistent with KRS Chapter 13B.

SECTION 32. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

The department may issue subpoenas to compel the attendance of witnesses or production of books, documents, and records anywhere in the state in any hearing affecting the authority or privilege granted by a license or permit issued under the provisions of this chapter.

SECTION 33. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) For the purpose of carrying out the provisions of this chapter, the department or any of its authorized employees may enter upon any public or private premises at reasonable times, in order to:

(a) Inspect the records, books, and documents regarding the use, distribution, manufacturing, reformulation, formulation, repackaging, or packaging of structural pesticides;

(b) Have access for the purpose of inspecting any equipment subject to this chapter and the premises on which the equipment is kept or stored;

(c) Inspect lands actually or reported to be exposed to structural pesticides;

(d) Inspect storage or disposal areas;

(e) Inspect or investigate complaints of injury to humans or land;

(f) Sample structural pesticides being applied or to be applied; and

(g) Inspect and copy any records required to be maintained in accordance with this chapter.

(2) If the department is denied access to any land where access was sought for the purposes set forth in this chapter, the department may apply to any court of competent jurisdiction for a search warrant authorizing access to the land. The court may, upon an application, issue the search warrant for the purposes requested.

SECTION 34. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) The department may suspend for not longer than ten (10) days, pending inquiry, and, after opportunity for a hearing, the department may deny, suspend, revoke, or modify the provision of any license issued under this chapter if it finds that the licensee or his employee has committed any of the following acts:

(a) Made any material representation for the purpose of defrauding the public, or used any method or material that is not reasonably suited for the purpose for which it was employed by any licensed applicator or his

solicitor or agent;

(b) Made a knowingly false or fraudulent claim through any media, misrepresenting the effect of material or methods to be utilized;

(c) Made a structural pesticide recommendation or application not in accordance with the label registered by the department under KRS 217.542 to 217.630;

(d) Applied known ineffective or improper materials or structural pesticides;

(e) Knowingly operated faulty or unsafe structural pesticide equipment or knowingly acted in a faulty, careless, or negligent manner;

(f) Failed, neglected, or refused to attend training courses approved by the department as specified by the Kentucky state plan;

(g) Refused or, after notice, neglected to comply with the provisions of this chapter, the administrative regulations promulgated under this chapter, or any lawful order of the department;

(h) Refused or neglected to keep and maintain the records required by this chapter, or to make reports when and as required;

(i) Made false or fraudulent records, invoices, or reports;

(j) Engaged in the use or distribution of structural pesticides without a license for their use or distribution;

(k) Used fraud or misrepresentation in making an application for a license or renewal of a license;

(l) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit;

(m) Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, combined or conspired with a licensed or an unlicensed person to evade the provisions of this chapter, or allowed one's license to be used by an unlicensed person;

(n) Knowingly made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land;

(o) Impersonated any state, county, or city inspector or official;

(p) Used structural pesticides inconsistent with conditions in the environment at and surrounding the site of the application, which the licensee knew or should have known about upon a reasonable investigation of these conditions;

(q) Stored or disposed of structural pesticides or structural pesticides containers by means other than those prescribed on the label or imposed by administrative regulations;

(r) Sold restricted-use pesticides without a valid license;

(s) Failed to maintain financial responsibility as required by this chapter;

(t) Refused or failed to pay any fine rendered against the licensed person, its employee, solicitor, or representative by reason of liabilities resulting from activities under this chapter;

(u) Violated any provision of this chapter or any administrative regulation promulgated by the department or any lawful order of the department;

(v) Sold a restricted-use pesticide to an unlicensed person;

(w) Has been convicted of a felony; or

(x) Acted as a licensed firm without being qualified by the department.

(2) Any licensee whose license is revoked under the provisions of this section shall not be eligible to apply for a new license until the time has elapsed from the date of the order revoking the license as established by the department, not to exceed two (2) years, or if an appeal is taken from the order of revocation, not to exceed two (2) years from the date of the order or final judgment sustaining the revocation.

SECTION 35. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) If any of the requirements of this chapter or administrative regulations promulgated under this chapter have not been complied with, the Commissioner shall cause a notice of violation to be issued upon the licensed firm and its designated license holder. The Commissioner shall set forth in his notice a reasonable time period, but not less than ten (10) and not more than thirty (30) days, for the correction of the violation. If a violation has not been corrected within the period of time prescribed in the notice of violation, the Commissioner shall issue an order for immediate compliance and may assess the civil penalty provided for in Section 37 of this Act unless an extension has been requested in writing by the licensed firm or its designated license holder and the extension of time has been granted by the Commissioner. No extension shall exceed thirty (30) days in duration. The notice of violation shall be mailed to the licensed structural firm and its designated license holder by certified mail, return receipt requested, addressed

to the designated address of the licensed firm address and its designated license holder as shown on department records. The notice of violation shall specify in what respect the licensed firm and its designated license holder has failed to comply with this chapter or administrative regulations promulgated under this chapter, and shall specify the period of time established for correction. If the licensed firm and its designated license holder have not complied with the requirements set forth in the notice of violation within the time limit allowed, the license may be revoked as provided in this chapter or the Commissioner may take any other action provided for under this chapter.

(2) The Commissioner shall develop a method for calculating the civil penalty for failure to correct a violation within the prescribed time period as authorized by this section, and the Commissioner shall promulgate a schedule of the civil penalties in an administrative regulation.

SECTION 36. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

All moneys collected as a result of licensing fees or civil penalties shall be deposited in the State Treasury to the credit of the revolving fund for the use by the Department of Agriculture, Division of Pesticides, in enforcing the provisions of this chapter, and for the expense of carrying out the duties and functions of the Pest Control Advisory Board.

SECTION 37. A NEW SECTION OF KRS CHAPTER 217D IS CREATED TO READ AS FOLLOWS:

(1) Any person who violates any of the provisions of this chapter, who fails to perform any duties imposed by this chapter, or who violates any determination, order, or administrative regulation of the department shall be liable for a civil penalty not to exceed one thousand dollars ($1,000) for each violation and a civil penalty not to exceed one thousand dollars ($1,000) for each day during which the violation continues, and in addition, may be enjoined from continuing the violation as provided in this section. The penalties shall be recoverable in an action brought in the name of the Commonwealth by the department, or upon the department's request, by the Attorney General.

(2) Any person who fails to correct a violation within the time period prescribed by administrative regulation for the correction shall be assessed a civil penalty of not less than one hundred dollars ($100). Each day of continued violation may be deemed a separate violation for the purpose of penalty assessment. The Commissioner shall develop a method for calculating monetary penalties and shall promulgate a schedule for the penalties in an administrative regulation. The penalty shall be recoverable in an action brought in the name of the Commonwealth. A license holder shall have thirty (30) days from notification of the penalty assessment to request a hearing.

(3) It shall be the duty of the department or, upon the request of the Commissioner, the Attorney General, to bring an action for the recovery of the penalties provided in this section, and to bring an action for an injunction against any person violating any provision of this chapter or violating any order, determination, or administrative regulation of the department. In any action, any finding of the department shall be prima facie evidence of the fact or facts found in the action.

(4) Any person who willfully violates any of the provisions of this chapter or any determination, order, or administrative regulation of the department shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or by imprisonment for a term of not more than one (1) year, or by both fine and imprisonment for each separate violation. Each day upon which a violation occurs shall constitute a separate violation.

Section 38. KRS 217B.990 is amended to read as follows:

(1) Any person who violates any of the provisions of this chapter,[~~ or~~] who fails to perform any duties imposed by ***this chapter***[~~those sections~~], or who violates any determination,[~~ or~~] order***, or administrative regulation*** of the department[~~ promulgated pursuant thereto~~] shall be liable to a civil penalty of not to exceed the sum of one thousand dollars ($1,000) for ***each***[~~said~~] violation, and an additional civil penalty of not to exceed one thousand dollars ($1,000) for each day during which ***the***[~~such~~] violation continues, and in addition, may be enjoined from continuing ***the***[~~such~~] violations as[~~ hereinafter~~] provided in this section. ***The***[~~Such~~] penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky by the department, or, upon the department's request, by the Attorney General.

(2) Any person who fails to ***correct***[~~abate~~] a violation within the time period prescribed by administrative regulation for the ***correction***[~~abatement~~] shall be assessed a civil penalty of not less than one hundred dollars ($100). Each day of ***continued***[~~continuing~~] violation may be deemed a separate violation for the purpose of penalty assessment. The Commissioner shall develop a method for calculating monetary penalties and shall promulgate a schedule of the penalties in an administrative regulation. The penalty shall be recoverable in an action brought in the name of the Commonwealth. All sums of recovery shall be placed in the State Treasury. A license holder shall have thirty (30) days from notification of the penalty assessment to request a hearing.

(3) It shall be the duty of the department[~~,~~] or, upon the request of the Commissioner,[~~ of Agriculture, of~~] the Attorney General, to bring an action for the recovery of the penalties[~~ hereinabove~~] provided ***in this section***[~~for~~],and to bring an action for an injunction against any person violating[~~ or threatening to violate~~] any provision of this chapter or violating[~~ or threatening to violate~~] any order,[~~ or~~] determination***, or administrative regulation*** of the department[~~ promulgated pursuant thereto~~]. In any[~~ such~~] action, any finding of the department shall be prima facie evidence of the fact or facts

found ***in the action***[~~therein~~].

(4) Any person who[~~ shall~~] willfully ***violates***[~~violate~~] any of the provisions of this chapter***,*** or any determination***,***[~~ or~~] order***,*** ***or administrative regulation*** of the department[~~ promulgated pursuant to those sections which have become final~~] shall be guilty of a misdemeanor and upon conviction[~~ thereof~~] shall be punished by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) or by imprisonment for a term of not more than one (1) year, or by both fine and imprisonment for each separate violation. Each day upon which ***a***[~~such~~] violation occurs shall constitute a separate violation.

[~~(5) Any person who violates any of the provisions of KRS 217B.515 to 217B.585 or who fails to perform any duties imposed by those sections, or who violates any determination or order of the department promulgated pursuant thereto shall be liable to a civil penalty of not to exceed the sum of one thousand dollars ($1,000) for said violation, and an additional civil penalty of not to exceed one thousand dollars ($1,000) for each day during which such violation continues, and in addition, may be enjoined from continuing such violations as hereinafter provided for in KRS 217B.585. Such penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky by the department, or upon the department's request by the Attorney General.~~

~~(6) Any person who shall willfully violate any of the provisions of KRS 217B.515 to 217B.585 or any determination or order of the department promulgated pursuant to those sections which have become final shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) or by imprisonment for a term of not more than one (1) year or by both fine and imprisonment for each separate violation. Each day upon which the violation occurs shall constitute a separate violation.~~]

Section 39. The following KRS sections are repealed:

217B.500 Definitions.
217B.505 Pest Control Advisory Board.
217B.510 Powers and duties of board.
217B.515 Structural pest control licenses.
217B.520 Applicator's or manager's license.
217B.525 Application for license.
217B.530 Examinations for licenses.
217B.535 Applicator license holder restrictions -- Licenses not transferable or assignable -- Effect of sale of pest control firm -- Annual registration.
217B.540 Hearing on denial of application.
217B.545 Suspension, revocation, or modification of applicator's or manager's license -- Procedure -- Waiting period for eligibility for reapplication.
217B.550 Violations.
217B.555 Pesticide storage restrictions -- Restricted use pesticides.
217B.560 Training of personnel.
217B.565 Identification of vehicles -- Employee identification cards.
217B.570 Burden of responsibility.
217B.575 Notification of change of address.
217B.580 Disposition of fees.
217B.585 Actions for enforcement.

HB 483, AN ACT relating to the "Kentucky Fertilizer and Pesticide Storage, and Pesticide Use and Application Act."

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 217B.040 is amended to read as follows:

For the purposes of this chapter, unless the context requires otherwise:

(1) "Pest" means:

(a) Any insect, snail, slug, rodent, nematode, fungus, weed; and

(b) Any other form of plant or animal life, or virus, bacteria, or other microorganism, except viruses, bacteria, or other microorganisms on or in living man or other living animals, which is normally considered to be a pest, or which the department declares to be a pest;

(2) "Pesticide" means:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, attract, or mitigate any pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and

(c) Any substance or mixture of substances intended to be used as a spray adjuvant;

(3) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission;

(4) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues;

(5) "Plant regulator" means any substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of plants, but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments;

(6) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six (6) legged, usually winged forms, as for example beetles, bugs, bees, wasps, and flies, and includes other allied classes of arthropods whose members are wingless and usually have more than six (6) legs, as for example spiders, mites, ticks, centipedes, and wood lice, and also nematodes and other worms, and any other invertebrates which are destructive, constitute a liability, and may be classed as pests;

(7) "Fungi" means all nonchlorophyll-bearing thallophytes, that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts, as for example, rusts, smuts, mildews, molds, yeasts, bacteria, and viruses, except those on or in living man or other living animals, and except those in or on processed food, beverages, or pharmaceuticals;

(8) "Fertilizer" means any substance containing one (1) or more recognized plant nutrients, which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other products exempted by administrative regulation;

(9) "Weed" means any plant which grows where not wanted;

(10) "Nematode" means invertebrate animals of the phylum Nemathelminthes and class Nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, and may also be called nemas or eelworms;

(11) "Snails or slugs" include all harmful mollusks;

(12) "Person" means any individual, partnership, association, or any organized group of persons whether incorporated or not;

(13) "Equipment" means any type of ground, water, or aerial equipment, device, or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in the land, but shall not include any pressurized hand-sized household device used to apply any pesticide;

(14) "Restricted use pesticide" means any pesticide classified for restricted use by the administrator ***of***~~[,]~~ EPA, or by administrative regulation of the department;

(15) "Engage in business" means any application of pesticide by any person upon lands of another;

(16) "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, devices, and contrivances and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation;

(17) "Pesticide applicator" means any ***individual employed by a pesticide operator to apply pesticides. The term does not include trainees***~~[person who owns or manages a pesticide application business which is engaged in the business of applying pesticides upon the lands of another]~~;

(18) "Pesticide operator" means any ***individual who owns or manages a pesticide application business which is engaged in the business of applying pesticide upon the lands of another***~~[person employed by a pesticide applicator who operates equipment for the application of pesticides or applies pesticides manually. This term does not include employees who work only under direct "on the job" supervision of a licensed pesticide applicator or licensed pesticide operator]~~;

(19) "Pest control consultant" means any person who, for a fee, offers or supplies technical advice, supervision, or aid, or recommends the use of specific pesticides for the purpose of controlling insect pests, plant diseases, weeds, and other pests;

(20) "Public operator" means any ***individual employed***~~[person in charge of any equipment used]~~ by municipal corporations, public utilities,~~[or]~~ other governmental agencies***, golf courses, or business or commercial operations who as a part of his job responsibility, is in charge of any equipment used to apply pesticides or is required to make any application of pesticides or fertilizer to lands owned, operated, controlled, or managed by his employer***~~[applying pesticides]~~;

(21) "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests; including, but not limited to mammals, birds, and aquatic life;

(22) "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment, or receive, and, having received, deliver or offer to deliver any pesticides in this state excepting internal distribution within a company or organization;

(23) "EPA" means the United States Environmental Protection Agency;

(24) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or to any of its containers or wrappers;

(25) "Restricted use pesticide dealer" means any person who distributes restricted use pesticides except manufacturers of restricted use pesticides who distribute their products solely to "restricted use pesticide dealers";

(26) "Spray adjuvant" means any wetting agent, spreading agent, sticker, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent intended to be used with any other pesticide as an aid to the application or to the effect thereof, and which is in a package or container separate from that of the other pesticide with which it is to be used;~~[and]~~

(27) "Commissioner" means the Commissioner of the Department of Agriculture***;***

(28) "Full service firm" means any person that engages in the storage of bulk fertilizer or restricted use pesticides for the purpose of redistribution or direct resale, or engages in the business of applying any pesticide to the lands of another;

(29) "Trainee" means a person who has been employed by a firm for less than ninety (90) days and is working under the direct supervision of a licensed operator or applicator;

(30) "Direct on-the-job supervision" means having a licensed operator or licensed applicator physically on-site and directly supervising or training an individual or individuals in the application of a pesticide;

(31) "Branch office" means any location of a full service firm other than its designated principal place of business location but does not include on- and off-premises bulk storage or receiving warehouses used solely for the purpose of customer order filling;

(32) "Applicant" means any person applying for a license or registration under this chapter;

(33) "Pesticide dealer" means any person who is in the business of selling restricted use pesticides directly to the final user or is substantially in the business of selling any pesticides directly to the final user;

(34) "Dealer agent" means an individual who sells pesticides and makes recommendations for the use and application of pesticides to the final user;

(35) "Substantially in the business" means that pesticide sales equal or exceed five percent (5%) of the person's gross annual sales; and

(36) "Pesticide state management plan" means a plan that would be required under the U.S. Environmental Protection Agency plan rule to protect the current and future beneficial uses of water through education and best management practices.

Section 2. KRS 217B.050 is amended to read as follows:

(1) The department shall administer and enforce the provisions of this chapter and issue administrative regulations to carry out the provisions of this chapter and in the administrative regulations may prescribe methods to be used in the storage of fertilizers and pesticides, and application of pesticides. Where the department finds that the administrative regulations are necessary to carry out the purpose and intent of this chapter, the administrative regulations may relate to the time, place, manner, and method of storage and application of the pesticides and storage of fertilizers and pesticides, may restrict or prohibit use of pesticides in designated areas during specified periods of time, and shall encompass all reasonable factors which the department deems necessary to prevent damage or injury by drift or misapplication to:

 (a) Plants, including forage plants, on adjacent or nearby lands;

 (b) Wildlife in the adjoining or nearby areas;

 (c) Fish and other aquatic life in waters in reasonable proximity to the area to be treated; and

 (d) Pollinating insects, animals, or persons.

(2) In issuing the administrative regulations, the department shall give consideration to pertinent research findings and recommendations of other agencies of this state and of the federal government.

(3) The department may by administrative regulation adopt a list of "restricted use pesticides" for the state or for designated areas within the state if it finds that the characteristics of the pesticides require restricting their use to prevent injury on lands other than the land to which they are applied or to persons, animals, crops, or pests or vegetation other than the pests or vegetation which they are intended to destroy. For the purpose of uniformity of requirements between the states and the federal government, the department may adopt the list of "restricted use pesticides" as established by the Environmental Protection Agency or other federal or state agencies.

(4) The department may establish additional classifications of applicator licenses as required for conformance with the Federal Environmental Pesticide Control Act of 1972. The classifications may include private farmer applicators, commercial establishment applicators, and government employee applicators not specifically mentioned in this chapter. The administrative regulations may specify licensing conditions, procedures and fees not to exceed those fees specified for other licensees under this chapter.

(5) The department may by administrative regulation develop and implement pesticide state management plans if required by the federal government.

Section 3. KRS 217B.060 is amended to read as follows:

The department may classify licenses to be issued under this chapter. ***The***[~~Such~~] classifications may include but not be limited to ornamental or agricultural pesticide applicators, or right-of-way pesticide applicators. Separate classifications may be specified as to ground, aerial, or manual methods used by any licensee to apply pesticides. Each classification shall be subject to separate testing procedures and requirements.[~~ No person shall be required to pay an additional license fee if such person desires to be licensed in one (1) or all of the license classifications provided for by the department under the authority of this section.~~]

Section 4. KRS 217B.070 is amended to read as follows:

(1) No person shall engage in the business of applying pesticides to the lands of another within this state at any time without a pesticide ***operator's***[~~applicator's~~] license issued by the department. The department shall require an annual fee of ***twenty-five dollars (***$25***)*** for each pesticide ***operator's***[~~applicator's~~] license issued and, in addition, an inspection fee of ***ten dollars (***$10***)*** for each aircraft to be licensed and ***ten dollars (***$10***)*** for each piece of ground equipment to be licensed. Should any equipment fail to pass inspection under KRS 217B.160, making it necessary for a second inspection to be made, the department shall require an added inspection fee of ***five dollars (***$5***)***. In addition to the required inspection, unannounced inspections may be made without charge to determine if equipment is properly calibrated and maintained in conformance with laws and regulations.

(2) Application for a license shall be made in writing to the department on a designated form obtained from the department. Each application for a license shall contain information regarding the applicant's qualifications and proposed operations ***and***[~~,~~] license classification or classifications the applicant is applying for, and shall include the following:

(a) The full name of the person applying for the license;

(b)[~~ If the applicant is an individual, receiver, trustee, firm, partnership, association, corporation, or other organized group of persons whether or not incorporated, the full name of each member of the firm or partnership, or the names of the officers of the association, corporation, or group;~~

~~(c)~~] The principal business address of the applicant in the state and elsewhere; ***and***

[~~(d) The name and address of a person, who may be the Secretary of State, whose domicile is in the state, and who is authorized to receive and accept services of summons and legal notice of all kinds for the applicant;~~

~~(e) The model, make, horsepower, and size of any equipment used by the applicant to apply pesticides;~~]

(c)[~~(f)~~] Any other necessary information prescribed by the department.

(3) The department shall require an applicant for a license to show upon examination that he possesses adequate knowledge concerning the proper use and application of pesticides in the classifications he has applied for, manually or with the various equipment that he may have applied for a license to operate. The examination shall require a working knowledge of***, but not be limited to, the following***:

(a) The proper use of the equipment.

(b) The hazards that may be involved in applying pesticides, including:

1. The effect of drift of the pesticides on adjacent and nearby lands and other nontarget organisms;
2. The proper meteorological conditions for the application of pesticides and the precautions to be taken therewith;
3. The effect of the pesticides on plants or animals in the area, including the possibility of damage to plants or animals or the possibility of illegal pesticide residues resulting on them;
4. The effect of the application of pesticides to wildlife in the area, including aquatic life;
5. The identity and classification of pesticides used and the effects of their application in particular circumstances; ***and***
6. The likelihood of contamination of water or injury to persons, plants, livestock, pollinating insects, and vegetation.

(c) Calculating the concentration of pesticides to be used in particular circumstances.

(d) Identification of pests to be controlled***,*** by common name only***,*** and the damages caused by ***the***[~~such~~] pests.

(e) Protective clothing and respiratory equipment required during the handling and application of pesticides.

(f) General precautions to be followed in the disposal of containers as well as the cleaning and decontamination of the equipment which the applicant proposes to use.

(g) Applicable state and federal pesticide laws and regulations.

(4) If the department finds the applicant qualified to apply pesticides in the classifications he has applied for and, if the applicant files the bond or insurance required under KRS 217B.130, and if the applicant applying for a license to engage in aerial application of pesticides has met all of the requirements of the Federal Aviation Agency and the Transportation Cabinet to operate the equipment described in the application, the department shall issue a pesticide applicator license limited to the classifications for which he is qualified, which shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior thereto by the department for cause or the financial security required under KRS 217B.130 is not dated to expire at an earlier date, in which case ***the***~~[said]~~ license shall be dated to expire upon expiration date of ***the***~~[said]~~ financial security.

(5) No license shall be issued unless the applicant holds a valid certification number within this category.

(6) No license shall be issued unless the applicant is registered as a full service firm or is employed by a person who is registered as a full service firm.

Section 5. KRS 217B.080 is amended to read as follows:

(1) It shall be unlawful for any person to act as an employee of a pesticide ***operator***~~[applicator]~~ and apply pesticides manually or as the ***applicator***~~[operator]~~ directly in charge of any equipment which is licensed or should be licensed under the provisions of this chapter for the application of any pesticide, without having obtained an ***applicator's***~~[operator's]~~ license from the department. ***The applicator's***~~[Such an operator's]~~ license shall be in addition to any other license or permit required by law for the operation or use of ***the***~~[any such]~~ equipment. Any person applying for ***the applicator's***~~[such an operator's]~~ license shall file an application on a form prescribed by the department on or before January 1 of each year. Application for a license to apply pesticides shall be accompanied by a license fee of ***ten dollars ($10)***. The provisions of this section shall not apply to any individual who has passed the examination provided for in subsection (3) of KRS 217B.070, and is a licensed pesticide ***operator***~~[applicator]~~. If the department finds the applicant qualified to apply pesticides in the classifications he has applied for after examinations as provided for in subsection (3) of KRS 217B.070, and if the applicant applying for a license to engage in aerial applications of pesticides has met all of the requirements of the Federal Aviation Agency and the Transportation Cabinet to operate the equipment described in the application, the department shall issue a pesticide ***applicator***~~[operator]~~ license limited to the classifications for which he is qualified which shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior thereto by the department for cause as provided for in KRS 217B.120.

(2) No license shall be issued unless the applicant holds a valid certification number within this category.

(3) No license shall be issued to the applicant unless the applicant is employed by a person who holds a valid operator's license.

Section 6. KRS 217B.090 is amended to read as follows:

(1) Public operators~~[Municipal corporations, and public utilities, or any other governmental agency except state agencies]~~ shall be subject to the provisions of this chapter and ***administrative regulations***~~[rules]~~ adopted thereunder***.***~~[; the public operator in charge of any equipment used by any municipal corporations, public utilities, or any governmental agencies, shall be subject to the provisions of KRS 217B.070(3) and 217B.080, and]~~ The department shall issue a limited license without a fee to ***the***~~[such]~~ public operators~~[which shall be valid only when such public operators are acting as operators on equipment used by such entities]~~. ***A limited license shall be valid, only when the public operator is acting as operator on equipment provided by his employer used in the application of pesticides or fertilizer or in any application of pesticides or fertilizer used in the course of his employment by his employer. The employer of a public operator shall be subject to legal recourse by any person damaged by the application of any pesticide or fertilizer, and the action may be brought in the county where the damage or some part thereof occurred.*** Government research personnel shall be exempt from this licensing requirement when applying pesticides to experimental plots.~~[Such agencies, municipal corporations, and public utilities, shall be subject to legal recourse by any person damaged by such application of any pesticide, and such action may be brought in the county where the damage or some part thereof occurred.]~~

(2) No license shall be issued unless the applicant holds a valid certification number within this category.

(3) A limited license shall not be upgraded without retesting.

Section 7. KRS 217B.100 is amended to read as follows:

(1) No person shall perform services as a pest control consultant without first procuring from the department a license in the classifications he has applied for under KRS 217B.060. Application for a license shall be on a form prescribed by the department and shall include the applicable information stipulated in subsection (2) of KRS 217B.070. The application for a license shall be accompanied by an annual fee of ***fifty dollars ($50)***.

(2) Each applicant for a pest control consultant's license shall be required to present to the department satisfactory evidence of training and experience providing a basic background to understand pest control principles. ***The***[~~Such~~] applicant shall be required to pass satisfactorily a written examination to be prescribed by the department to demonstrate the applicant's specific knowledge under subsection (3) of KRS 217B.070.

(3) If an applicant provides a copy of a valid Certified Crop Advisor certification to the department, the test and fee for a consultant license may be waived.

Section 8. KRS 217B.103 is amended to read as follows:

(1) The department may suspend[~~ for not longer than ten (10) days~~], pending inquiry, and, after opportunity for a hearing, the department may deny, suspend, revoke, or modify the provision of any license issued under KRS 217B.100 if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this section:

(a) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized or sold;

(b) Made a pesticide recommendation not in accordance with the label registered pursuant to KRS 217.541 to 217.640;

(c) Violated any provision of this chapter or any ***administrative***[~~rule or~~] regulation adopted by the department or of any lawful order of the department;

(d) Failed to pay the original or renewal license fee when due, and ***continued***[~~continue~~] to sell restricted use pesticides without paying the license fee, or sold restricted use pesticides without a license;

(e) Was guilty of gross negligence, incompetency***,*** or misconduct in acting as a pesticide dealer;

(f) Refused or neglected to keep and maintain the records required by this chapter, or to make reports when and as required;

(g) Made false or fraudulent records, invoices, or reports;

(h) Used fraud or misrepresentation in making an application for a license or renewal of a license, or in selling or offering to sell restricted use pesticides;

(i) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license;

(j) Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, combined or conspired with[~~ such~~] a licensed or unlicensed person to evade the provisions of this chapter, or allowed one's license to be used by an unlicensed person;

(k) Impersonated any state, county, or city inspector or official;

(l) Stored or disposed of containers or pesticides by means other than those prescribed on the label or adopted regulations***; or***

(m) Failed to comply with the provisions of Section 19 of this Act.

(2) Any licensee whose license is revoked under the provisions of this section shall not be eligible to apply for a new license[~~ hereunder~~] until such time has elapsed from the date of the order revoking ***the***[~~said~~] license as established by the department, not to exceed two (2) years, or if an appeal is taken from ***the***[~~said~~] order or revocation, not to exceed two (2) years from the date of the order or final judgment sustaining ***the***[~~said~~] revocation.

SECTION 9. A NEW SECTION OF KRS CHAPTER 217B IS CREATED TO READ AS FOLLOWS:

(1) It shall be unlawful for any person to act in the capacity of, or offer to engage in the business of, advertise as, or assume to act as a full service firm within this state anytime without having registered as a full service firm with the department.

(2) No person shall be registered as a full service firm without proof of financial responsibility as required in Section 16 of this Act.

(3) Application for a full service firm registration shall be in the form and shall contain the information prescribed by the department. Each application shall be accompanied by a fee of fifty dollars ($50). All registrations under this section shall expire on December 31. The registration shall be renewed annually upon application to the department, accompanied by a fee of fifty dollars ($50), on or before the first of January of the calendar year for which the registration is issued.

(4) A full service firm shall register each branch office location. The fee for a branch office registration shall be twenty-five dollars ($25) per branch office location.

(5) Application for a branch office registration shall be in the form and shall contain the information prescribed by the department. Each application shall be accompanied by a fee of twenty-five dollars ($25). All registrations issued under this section shall expire on December 31. The registration for a branch office may be renewed annually upon

application to the department, when the application is accompanied by a fee of twenty-five dollars ($25) for each registration, on or before the first of January of the calendar year for which the registration is issued. No branch office registration may be issued unless the applicant is registered as a full service firm.

(6) The department shall issue to each applicant who satisfies the requirements of this section a registration which entitles the applicant to conduct business described in the application for the calendar year for which the registration is issued.

(7) The department may prescribe administrative regulations requiring certain operational and secondary containment actions that pertain to the storage of pesticides and fertilizer.

Section 10. KRS 217B.105 is amended to read as follows:

(1) No person shall act in the capacity of a pesticide dealer, or shall engage or offer to engage in the business of, advertise as, or assume to act as a[~~ restricted use~~] pesticide dealer unless he is ***registered with the department***[~~licensed annually as provided in this section~~]. A separate ***registration***[~~license~~] and fee shall be required for each location or outlet from which[~~ restricted use~~] pesticides are distributed ***except that application for registration of all locations under common ownership may be made on a single form***.

(2) Application for a pesticide dealer ***registration***[~~license~~] shall be in the form and shall contain the information prescribed by the department. Each application shall be accompanied by a fee of ***twenty-five***[~~five~~] dollars ***($25)***[~~($5)~~]. All ***registrations***[~~licenses~~] issued under this section shall expire on December 31[~~ of the year for which they are issued~~]. The ***registration***[~~license~~] for a pesticide dealer may be renewed annually upon application to the department, accompanied by a fee of ***twenty-five***[~~five~~] dollars ***($25)***[~~($5)~~] for each ***registration***[~~license~~], on or before the first day of January of the calendar year for which the license is issued.

(3) The department shall issue to each applicant who satisfies the requirements of this section a ***registration***[~~license~~] which entitles the applicant to conduct the business described in the application for the calendar year for which the ***registration***[~~license~~] is issued[~~, unless the license is sooner revoked or suspended~~].

(4) The department shall prescribe ***administrative*** regulations requiring[~~ restricted use~~] pesticide dealers to maintain[~~ such~~] records with respect to their operations as it determines are necessary for the effective enforcement of this chapter. ***The***[~~Such~~] records shall include, but not be limited to: brands and amounts of restricted use pesticides sold; ***and*** buyer's name, address, and applicator's license number; provided that, no records required under this section shall extend to financial data, sales data, other than amount and shipment data, pricing data, and personnel data. ***The***[~~Such~~] records are to be retained for a period of two (2) years from the time of sale. For the purposes of enforcing the provisions of this chapter, any pesticide dealer shall, upon request of the department, furnish, or permit the department at all reasonable times to have access to, and to copy, records as required by this section.

Section 11. KRS 217B.107 is amended to read as follows:

Each pesticide dealer shall be responsible for the actions of every person who acts as his employee or agent in the solicitation or sale of[~~ restricted use~~] pesticides, and in all claims and recommendations for use or application of[~~ restricted use~~] pesticides.

SECTION 12. A NEW SECTION OF KRS CHAPTER 217B IS CREATED TO READ AS FOLLOWS:

(1) The department shall establish a licensure program for dealer agents. The department shall require an applicant for licensure to show upon examination that the applicant possesses adequate knowledge concerning the proper use and application of pesticides.

(2) Application for a dealer agent license shall be in the form and shall contain information prescribed by the department. Each application shall be accompanied by a fee of five dollars ($5). All licenses issued under this section shall expire on December 31 of each year. The license for a dealer agent may be renewed annually upon application to the department, and the application shall be accompanied by a fee of five dollars ($5) for each license, on or before the first day of January of the calendar year for which the license is issued.

(3) The department shall issue to each applicant who satisfies the requirements of this section a license which entitles the applicant to hold himself or herself out as a licensed dealer agent.

(4) No person shall hold himself or herself out as a licensed dealer agent unless the person is licensed as provided for in this section.

(5) No person shall sell or make recommendations for the use or application of restricted use pesticides unless the person is licensed as provided for in this section.

(6) No license shall be issued unless the applicant holds a valid certification number within this category.

SECTION 13. A NEW SECTION OF KRS CHAPTER 217B IS CREATED TO READ AS FOLLOWS:

(1) The department shall establish and administer a program to register trainees.

(2) A trainee shall be registered with the department. It shall be unlawful for a trainee to act as an employee of a firm and apply pesticides manually, or as the applicator directly in charge of any equipment which is licensed or should

be licensed under the provisions of this chapter for the application of any pesticide, without being registered with the department and being under the direct on-the-job supervision of an operator or applicator licensed by the department. The trainee registration shall be in addition to any other license or permit required by law for the operation or use of any such equipment. Any person applying for a trainee registration shall file by phone or written application prescribed by the department before employment begins.

(3) There shall be a five dollar ($5) charge for this registration by the department.

(4) Trainee registration shall not be renewed.

Section 14. KRS 217B.110 is amended to read as follows:

(1) If the application for renewal of any license ***or registration*** provided for in this chapter is not filed prior to March 1 in any year, a penalty of twenty-five percent (25%) shall be assessed and added to the original fee and shall be paid by the applicant before the renewal[~~ license~~] shall be issued; ***the***[~~such~~] penalty shall not apply if the applicant furnishes an affidavit certifying that he has not engaged in the business subsequent to the expiration of his license ***or registration***.

(2) Any person holding a current valid license may renew ***the***[~~such~~] license for the next year without taking another examination unless the department determines that new knowledge related to classifications for which the applicant has applied makes a new examination necessary. However, if the license is not renewed by ***April***[~~June~~] 1 of each year then ***the***[~~such~~] licensee shall again be required to take another examination.

Section 15. KRS 217B.120 is amended to read as follows:

The department may ***assess civil penalties in accordance with Section 20 of this Act or may delay issuing,*** suspend, revoke, or modify the provision of any ***license or registration***[~~applicator's, operator's, or consultant's license~~] issued under this chapter, if it finds that the applicant or ***holder***[~~licensee~~] has committed any of the following acts, each of which is declared to be a violation of this chapter:

(1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized;

(2) Made a pesticide recommendation or application not in accordance with the label registered by the department under KRS 217.541 to 217.640;

(3) Applied known ineffective or improper materials;

(4) Operated faulty or unsafe equipment;

(5) Operated in a faulty, careless, or negligent manner;

(6) Refused or, after notice, neglected to comply with the provisions of this chapter, the ***administrative regulations***[~~rules~~] adopted hereunder, or of any lawful order of the department;

(7) Refused or neglected to keep and maintain the records required by this chapter, or to make reports when and as required;

(8) Made false or fraudulent records, invoices, or reports;

(9) Engaged in the business of the application of a pesticide without having a licensed applicator or operator in direct "on-the-job" supervision;

(10) Operated unlicensed equipment;

(11) Used fraud or misrepresentation in making an application for[~~ a license~~] or renewal of a license ***or registration***;

(12) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or ***registration***[~~permit~~];

(13) Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, combined or conspired with[~~ such~~] a licensed or an unlicensed person to evade the provisions of this chapter, or allowed one's license to be used by an unlicensed person;

(14) Made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land;[~~ or~~]

(15) Impersonated any state, county, or city inspector or official***;***[~~.~~]

(16) Made a sale of, or distributed a restricted use pesticide to an uncertified applicant;

(17) Failed to obtain any license or registration required by this chapter;

(18) Failed to obtain or maintain financial responsibility required by this chapter;

(19) Failed to comply with the provisions of Section 19 of this Act;

(20) Failed to provide "direct on-the-job supervision" of a trainee by a licensed operator or applicator in the application of a pesticide;

(21) Failed to follow notification and information requirements in accordance with Section 23 of this Act including:

(a) Failure to provide the customer with written information prior to application;

(b) Failure to place lawn marker;

(c) Failure to meet minimum requirements for lawn marker;

(d) Failure to furnish customer proper information application; or

(e) Failure to furnish proper notification of application when requested;

(22) Failed to follow notification and information requirements in accordance with Section 24 of this Act including:

(a) Failure to place lawn marker immediately after application;

(b) Failure to meet minimum requirements for lawn marker; or

(c) Failure to furnish prior notification of application when requested.

Section 16. KRS 217B.130 is amended to read as follows:

(1) The department shall not issue a ***"full service firm" registration***[~~pesticide applicator license in the category of right-of-way pest control or in any aerial pesticide application category~~] until the applicant has furnished evidence of financial responsibility with the department consisting either of a surety bond or a liability insurance policy, or certification thereof, protecting persons who may suffer legal damages as a result of the ***applicant's actions***[~~applicant. All other categories shall be exempt from the requirement to furnish financial responsibility~~].

(2) The amount of the surety bond or liability insurance as provided for in this section shall be not less than one ***million***[~~hundred thousand~~] dollars ***($1,000,000)***[~~($100,000) for public liability and not less than twenty-five thousand dollars ($25,000) for property damage, including loss or damage arising out of the actual use of any pesticide~~]. ***The***[~~Such~~] surety bond or liability insurance shall be maintained at not less than ***this amount***[~~those amounts~~] at all times during the licensed period. The department shall be notified ten (10) days prior to any reduction at the request of the applicant or cancellation of ***any***[~~such~~] surety bond or liability insurance by the surety or insurer. The total and aggregate of the surety and insurer for all claims shall be limited to the face of the bond or liability insurance policy. The department may accept a liability insurance policy or surety bond in the proper sum which has a deductible clause in an amount not exceeding one thousand dollars ($1,000) for all applicators for the total amount of liability insurance or surety bond required ***in this section***[~~herein~~]. If the applicant has not satisfied the requirements of the deductible amount in any prior legal claim, ***the***[~~such~~] deductible clause shall not be accepted by the department unless ***the***[~~such~~] applicant furnishes the department with a security bond or liability insurance which shall satisfy the amount of the deductible as to all claims that may arise in his application of pesticides.

(3) Should the surety furnished become unsatisfactory, ***the***[~~said~~] applicant shall upon notice execute a new bond or insurance and ***if***[~~shall~~] he ***fails***[~~fail~~] to do so, the department shall cancel ***the registration***[~~his license~~] and it shall be unlawful thereafter for ***that***[~~such~~] person to engage in ***the***[~~said~~] business of applying pesticides until the bond or insurance is brought into compliance with the requirements of subsection (2) of this section and ***the registration***[~~his license~~] is reinstated by the department.

(4) Nothing in this chapter shall be construed to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides even though ***the***[~~such~~] use conforms to the ***administrative***[~~rules and~~] regulations of the department.

Section 17. KRS 217B.140 is amended to read as follows:

(1) The person claiming damages from pesticide application shall have filed with the department a written statement claiming that he has been damaged, on a form prescribed by the department***,*** within sixty (60) days after the date that damages occurred, or prior to the time that twenty-five percent (25%) of a crop damaged ***has***[~~shall have~~] been harvested. ***The***[~~Such~~] statement shall contain, but shall not be limited ***to***[~~thereto~~], the name of the person responsible for the application of ***the***[~~said~~] pesticide, the name of the owner or lessee of the land on which the crop is grown and for which damages are claimed***,*** and the date on which it is alleged that the damage occurred. The department shall prepare a form to be furnished to persons to be used in such cases and ***the***[~~such~~] form shall contain[~~ such~~] other requirements as the department may deem proper. The department shall, upon receipt of ***the***[~~such~~] statement, notify the licensee and the owner or lessee of the land or other person who may be charged with the responsibility[~~,~~] for the damages claimed, and furnish copies of[~~ such~~] statements as may be requested.

(2) The filing of ***the***[~~such~~] report or the failure to file[~~ such~~] a report need not be alleged in any complaint which might be filed in a court of law, and the failure to file the report shall not be considered any bar to the maintenance of any criminal or civil action. The failure to file[~~ such~~] a report shall not be a violation of this chapter. However, if the person failing to file ***the***[~~such~~] report is the only one injured from ***the***[~~such~~] use or application of a pesticide by others, the department may, when in the public interest, refuse to hold a hearing for the denial, suspension, or revocation of a license or ***registration***[~~permit~~] issued under this chapter until ***a***[~~such~~] report is filed.

(3) When damage is alleged to have been done, the claimant shall permit the licensee***, registration holder,*** and ***their***[~~his~~] representatives, such as bondsman or insurer to observe within reasonable hours the lands or nontarget organism alleged to have been damaged in order that ***the***[~~such~~] damage may be examined. Failure of the claimant to permit ***the***[~~such~~] observation and examination of the damaged lands shall automatically bar the claim against the licensee ***or registration***

holder.

Section 18. KRS 217B.180 is amended to read as follows:

(1) The provisions of KRS 217B.020 to 217B.180 relating to licenses ***or registration*** and requirements for their issuance shall not apply to any farmer owner of ground equipment applying nonrestricted use pesticides for himself or his farmer neighbors; provided, that[~~:~~

~~(a)~~] he applies the pesticides for his farmer neighbors without compensation other than trading of personal services[~~;~~

~~(b) All equipment not engaged in the application of pesticides for hire shall be identified by a license plate or decal furnished by the department at no cost to the owner with an inscription informing persons that such equipment is not to be used in the application of pesticides for hire under KRS 217B.070. It is the responsibility of the owner to inform the department in writing if any changes in status are to be made~~].

(2) The licensing ***or registration*** provisions of KRS 217B.020 to 217B.180 shall not apply to any person using handpowered equipment, devices, or contrivances to apply nonrestricted use pesticides to lawns, or to ornamental shrubs and trees not in excess of twelve (12) feet high, as an incidental part of his activity of taking care of his household lawn and yard or those of his neighbors, on the condition that ***the***[~~such~~] person shall not publicly hold himself out as being in the business of applying pesticides, and shall not accept compensation other than the trading of personal services for ***the***[~~such~~] activity.

(3) KRS 217B.020 to 217B.180 shall not apply to operators presently licensed and regulated under the provisions of KRS 249.250 to 249.340 on June 17, 1978, except that if required by EPA regulations ***the***[~~such~~] persons may be issued, without additional fees or examination, an applicator's license to enable them to purchase and use restricted use pesticides pursuant to the requirements of the Federal Environmental Pesticide Control Act of 1972.

(4) The registration provisions of Section 9 of this Act shall not apply to any public operator.

(5) The provisions of KRS 217B.020 to KRS 217B.180 relating to licenses and requirements for their issuance shall not apply to any public utility or its employees applying non-restricted use pesticides on the utility's rights-of-way.

Section 19. KRS 217B.190 is amended to read as follows:

(1) No person shall discard or store any pesticide or pesticide containers in[~~ such~~] a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, ***or*** pollinating insects***,*** or to pollute any waterway in a way harmful to any wildlife therein.

(2) No person shall use any registered pesticide in a manner not in accordance with its label.

(3) No person shall purchase, use***,*** or supervise the use of[~~,~~] a restricted use pesticide unless ***the***[~~such~~] person ***is***[~~be~~] licensed in a classification which permits ***the***[~~such~~] purchase, use***,*** or supervision of use.

(4) No person shall distribute a restricted use pesticide to a person who ***does not have the appropriate certification, registration, or license***[~~is not licensed as a restricted use pesticide dealer or applicator~~] as prescribed in this chapter.

Section 20. KRS 217B.193 is amended to read as follows:

(1) When any of the requirements of this chapter or administrative regulations promulgated pursuant thereto have not been complied with, the Commissioner shall cause a notice of violation to be issued[~~ upon the permit holder~~]. The Commissioner shall ***issue an order for immediate compliance and assess the civil penalty provided for in this section and in KRS 217B.990, or*** set forth in his notice a reasonable time period, but not more than ninety (90) days, for the abatement of the violation. If any ***licensee or registration***[~~license~~] holder has not abated the violation within the period of time prescribed in the notice of violation, the Commissioner shall issue an order for immediate compliance and assess the civil penalty provided for in this section and in KRS 217B.990. The notice of noncompliance shall be mailed to the ***licensee or registration***[~~license~~] holder by certified mail, return receipt requested, addressed to the[~~ license holder's~~] permanent address as shown on department records. The notice of noncompliance shall specify in what respect the ***licensee or registration***[~~license~~] holder has failed to comply with this chapter or administrative regulations promulgated pursuant thereto[~~, and the period of time established for abatement~~]. If the ***licensee or registration***[~~license~~] holder has not complied with the requirements set forth in the notice of noncompliance within the time limit allowed, the license ***or registration*** may be revoked as provided in this chapter.

(2) The Commissioner shall develop a method for calculating the civil penalty for ***a violation, or*** failure to abate a violation within the prescribed time period as authorized by this section, and he shall promulgate a schedule of the civil penalties in an administrative regulation.

Section 21. KRS 217B.220 is amended to read as follows:

The department may issue subpoenas to compel the attendance of witnesses [~~and/~~]or production of books, documents, and records anywhere in the state in any hearing affecting the authority or privilege granted by a license or ***registration***[~~permit~~] issued under the provisions of this chapter.

Section 22. KRS 217B.270 is amended to read as follows:

(1) The Commonwealth of Kentucky hereby determines that the citizens of the state benefit from a system of safe, effective, and scientifically sound pesticide regulation on[~~ agricultural and silvicultural~~] land. The Commonwealth further finds that a system of pesticide regulation which is consistent, coordinated, and comports with both federal and state technical expertise is essential to the public health, safety, and welfare, and that local regulation of pesticides does not materially assist in achieving these benefits.

(2) No city, town, county, or other political subdivision of the Commonwealth shall adopt or continue in effect any ordinance, resolution, rule, or regulation regarding [~~agriculture and silviculture~~]pesticide sale or use, including without limitation: registration, notification of use, advertising and marketing distribution, applicator training and certification, storage, transportation, disposal, disclosure of confidential information, or product composition.

(3) Nothing in this section shall be construed to abrogate any authority afforded by the state statutes to any program cabinet established under KRS Chapter 12 or any state or federal mandated hazardous materials regulations or fire safety codes and comprehensive hazardous materials management program.

Section 23. KRS 217B.300 is amended to read as follows:

(1) The following definitions apply to this section ***and Section 24 of this Act***:

(a) "Application" means the spreading of lawn chemicals in liquid or dry form on a lawn;

(b) "Applicator for hire" means any person who makes an application of lawn chemicals to a lawn for compensation, including applications made by an employee to lawns owned, occupied, or managed by his employer;

(c) "Customer" means a person who makes a contract, either written or verbal, with an applicator for hire to apply a pesticide to a lawn;

(d) "***Golf course" means land on which turf and ornamental care, including application of pesticides or fertilizer and storage of pesticides or fertilizer, is performed for the purpose of preparing the land for use in the game of golf***[~~Fertilizer" means any substance containing nitrogen, phosphorus, potassium or other recognized plant nutrient or compound which is used for its plant nutrient content~~];

(e) "Lawn" means land area covered with turf kept closely mown, except land areas used for agricultural production,[~~ golf courses,~~] commercial production of turf, or land situated within three (3) feet of the foundation of a structure when a pesticide is applied to this area as a preventive or control measure for structural pests;

(f) "Lawn chemicals" means fertilizers, pesticides, or defoliants applied or intended for application to lawns;

(g) ***"Plant protective materials" means fertilizers, pesticides, or defoliants applied or intended for application to a golf course;***

(h) "Structural pest" means a pest which commonly invades or attacks dwellings or structures; and

(i)[~~(h)~~] "Turf" means the upper stratum of soils bound by grass and plant roots into a thick mat.

(2) The following notification requirements shall be met:

(a) An applicator for hire shall provide a customer at the time of entering into a contract, either written or verbal, or a reasonable time thereafter, with written information concerning lawn chemicals, application procedures, and other general guidelines about the safe use of lawn chemicals.

(b) Immediately following application of lawn chemicals to a lawn, the applicator shall place a lawn marker at a prominent location in the lawn.

(c) The lawn marker shall consist of, at a minimum, a four (4) inch by five (5) inch white sign attached to the upper portion of a dowel or other supporting device of not less than twelve (12) inches in length.

(d) Lettering on the lawn marker shall be in a contrasting color and shall read on one side "LAWN CARE APPLICATION - PLEASE STAY OFF GRASS UNTIL DRY" in letters easily readable and not less than three-eighths (3/8) inch. The lawn marker may also display a symbol depicting the required message and the name, logo, and service mark of the applicator.

(e) The lawn marker shall be removed and discarded by the property owner or resident, or other person authorized by the property owner or resident, the day following application.

(f) For applications to residential properties of three (3) families or less, the applicator shall place one (1) lawn marker per property.

(g) For applications to properties other than residential property of three (3) families or less, the applicator shall place lawn markers at primary points of entry to the property to provide notice that lawn chemicals have been applied to the lawn.

(3) At the time of application of lawn chemicals to a lawn, an applicator for hire shall provide the following information to the customer, either homeowner or landlord, for each lawn chemical used:

(a) The brand name or common name of the pesticide applied;

(b) The pesticide type;

(c) The fertilize rate or analysis;

(d) The reason for use;

(e) The concentration of end use product applied to the lawn and the rate of application;

(f) Any special instruction appearing on the label of the lawn chemical product applicable to the customer's use of the lawn following application, and any other precautionary or hazard information appearing on the label as applicable to the end use concentration; and

(g) The name and the state applicator license or certificate number of the individual actually making the application.

(4) Any customer of an applicator for hire, or a neighbor whose residence is adjoining to a customer of an applicator for hire, may receive prior notification twenty-four (24) to forty-eight (48) hours in advance of an application by contacting the applicator for hire and providing his name, address, and telephone number. In this event, the applicator for hire shall provide notification in writing, in person, or by telephone, of the date and approximate time of application. If an applicator for hire is unable to provide prior notification to a customer or neighbor because of the absence or inaccessibility of the individual, the applicator shall leave a written notice at the residence.

(5) Violations of this section shall be punishable by a civil fine of not more than one hundred dollars ($100) for each violation.

SECTION 24. A NEW SECTION OF KRS CHAPTER 217B IS CREATED TO READ AS FOLLOWS:

(1) The provisions of subsections (2), (3), and (4) of Section 23 of this Act relating to notification and information requirements shall not apply to any golf course or its employees.

(2) The following exceptions shall be required by a golf course relating to notification and information requirements:

(a) Immediately following application of lawn chemicals on a golf course, the applicator shall place a lawn marker on the number one (1) tee or the number one (1) and number ten (10) tee;

(b) The lawn marker shall consist of, at a minimum, a four (4) inch by five (5) inch white sign attached to the upper portion of a dowel or other supporting device of not less than twelve (12) inches in length;

(c) "Golf Courses Only" lettering on the lawn marker shall be in a contrasting color and shall read on one side "PLANT PROTECTIVE MATERIALS HAVE BEEN APPLIED. IF DESIRED, YOU MAY CONTACT THE GOLF COURSE SUPERINTENDENT FOR FURTHER INFORMATION" in letters easily readable and not less than three-eighths (3/8) inch. The lawn marker may also display a symbol depicting the required message and the name, logo, and service mark of the applicator;

(d) The lawn marker shall be removed by the applicator, or other personnel authorized by the golf course management, the day following application; and

(e) Any persons whose residence directly joins a golf course may receive prior notification of a plant protective material application by contacting the golf course superintendent's office and providing name, address, and telephone number. The golf course shall provide notification in writing, in person, or by telephone. If the golf course cannot provide advance notice because of unforeseen climatic conditions causing fungal outbreak or other serious circumstances, the person shall be contacted at the time of the application. If the golf course is unable to provide prior notification or direct notification as mentioned above to a resident because of the absence or unavailability of the resident, the golf course shall leave a written notice at the residence.

HB 505, AN ACT relating to equine drug testing.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 230.378 is amended to read as follows:

(1) A receiving track may accept wagers only at the track where it is licensed to conduct its race meeting or conduct intertrack wagering. A receiving track may accept wagers through a telephone account wagering system. Wagers at a receiving track, simulcast facility, or on telephone account wagering shall form a common pool with wagers at a host track. This common pool requirement shall not apply to wagers made in connection with interstate simulcasting pursuant to KRS 230.3771; however, common pools shall be encouraged.

(2) Except as provided in KRS 230.3771(2), the commission of a receiving track, simulcast facility, or on telephone account wagering shall be the same as the commission of the host track as determined in KRS 138.515 or 230.750.

(3) In the absence of a valid contract with a horsemen's organization, the commission of a receiving track, after deduction of applicable taxes and other applicable deductions, shall be split as follows: twenty-two percent (22%) to the host track, twenty-two percent (22%) to the purse program at the host track, twenty-two percent (22%) to the receiving track and twenty-two percent (22%) to the purse program at the receiving track. Twelve percent (12%) of the commission shall be

allocated evenly between the host track and the receiving track to cover the cost of simulcasting, unless otherwise agreed to by contract.

(4) The deduction for the backside improvement fund, as provided for in KRS 138.515(4)[~~ and the deduction for equine drug research provided for in KRS 230.265(3),~~] shall not apply to the commission or pari-mutuel tax of a receiving track or telephone account wagering.

(5) A receiving track shall be exempt from the admissions tax levied in KRS 138.480 and from any license fee imposed by statute or regulation by the commission.

Section 2. KRS 230.265 is amended to read as follows:

(1) There is hereby created a panel, to be known as the Kentucky Equine Drug Research Council, to advise the commission on the conduct of equine drug research and testing commissioned by the Kentucky Racing Commission. The council shall consist of nine (9) members appointed by the Governor. It is recommended that the Governor appoint one (1) veterinarian from a list of three (3) submitted by the Kentucky Association of Equine Veterinarians, one (1) horseman from a list of three (3) submitted by the Kentucky division of the Horsemen's Benevolent and Protective Association, one (1) pharmacologist from a list of three (3) submitted by the University of Kentucky, one (1) thoroughbred breeder from a list of three (3) submitted by the Kentucky Thoroughbred Owners and Breeders, Inc., one (1) legislator from a list of three (3) submitted by the Legislative Research Commission, one (1) representative of a licensed racing association chosen by the Governor, one (1) member of the harness racing industry from a list of three (3) submitted by the chairman of the Kentucky Racing Commission, one (1) member from a list of three (3) submitted by the Kentucky Harness Horsemen's Association, and one (1) member of the Kentucky Racing Commission, from a list of three (3) submitted by the chairman of the Kentucky Racing Commission, to serve as chairman. The council shall meet at the call of the chairman, a majority of the council, or at the request of the commission. Members shall serve at the pleasure of their respective sponsoring organizations and shall receive no compensation for serving.

(2) The Kentucky Equine Drug Research Council shall review equine drug research and testing research being conducted at the University of Kentucky or with state funds and shall review and report to the commission on drug research and testing research being conducted elsewhere. The council shall advise the commission and make recommendations for establishing an effective drug regulatory policy for Kentucky racing. In addition, the council shall report to the General Assembly any needed changes regarding the regulation of drugs in horse racing in the Commonwealth of Kentucky.

(3) The commission shall receive one-tenth of one percent (0.1%) of the total amount wagered ***and subject to the pari-mutuel tax levied in KRS 138.510. This money shall be***[~~on live racing in Kentucky~~] deducted from the pari-mutuel tax levied in KRS 138.510 ***and shall***[~~to~~] be used in financing drug research and testing research in Kentucky, ***and***[~~which~~] shall be in addition to any funds appropriated to the commission for ***these***[~~such~~] purposes in the executive budget.

HJR 63, A JOINT RESOLUTION authorizing and directing a comprehensive study of the feasibility of creating regional agricultural marketing centers in Kentucky, and making an appropriation therefor.

WHEREAS, all the states contiguous to Kentucky have greater sales of horticultural products than Kentucky; and

WHEREAS, many of the states contiguous to Kentucky have publicly funded agricultural marketing centers; and

WHEREAS, there are limited organized markets for Kentucky horticultural goods; and

WHEREAS, Kentucky has a suitable climate, soil, and farm resources to produce horticultural products; and

WHEREAS, there is an interest in additional agricultural enterprises for Kentucky farmers;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Department of Agriculture shall conduct a study of the feasibility of creating regional agricultural marketing centers in the Commonwealth. In determining this feasibility, the department shall investigate the history and functions of marketing centers created in other states, and shall formulate a proposed course of action regarding the creation of regional agricultural marketing centers within the Commonwealth.

Section 2. The agricultural marketing center concept refers to state-sponsored markets such as the Western North Carolina Farmers Market in Asheville, North Carolina. These markets have facilities for wholesale and retail sales of horticulture and agriculture products. The study shall also consider if facilities for grading, cooling, and packing produce on a regional basis are needed.

Section 3. There is hereby appropriated from the general fund the sum of $20,000 to accomplish the study. Any amount remaining following the completion of the study shall revert to the general fund. The study shall begin not later than August 1, 1998, and the report and recommendations shall be submitted to the Legislative Research Commission no later than September 1, 1999.

SB 187, AN ACT relating to elk restoration and protection and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 150.390 is amended to read as follows:

(1) No person shall possess, take, pursue, or attempt to take or pursue or otherwise molest any ***wild elk,*** deer, wild turkey or bear in any manner contrary to any provisions of this chapter or its regulations.

(2) No person shall use a dog to chase or molest ***wild elk or*** deer in any manner, at any time, or at any place. Any conservation officer, peace officer, sheriff or constable may take necessary steps to stop, prevent, or bring under control any dog, or dogs, found chasing or molesting ***wild elk or*** deer at any time.

(3) The department shall establish by administrative regulation the conditions under which depredation permits may be issued without cost to persons suffering damage from wild elk to allow the taking of wild elk.

(4) If Kentucky's wild elk population reaches a level that will sustain limited hunting, the department may establish by administrative regulations the conditions and permits that would allow the controlled taking of wild elk.

Section 2. KRS 150.990 is amended to read as follows:

(1) Each bird, fish, or animal taken, possessed, bought, sold, or transported and each device used or possessed contrary to the provisions of this chapter or any regulation adopted by the commission thereunder shall constitute a separate offense. The penalties prescribed in this section shall be for each offense.

(2) Any person who violates any of the provisions of this chapter or any regulations adopted by the commission thereunder may, in addition to the penalties provided in subsection (3), (4), (5), (6), (7), and (8) of this section, forfeit his license, or if that person is license exempt, may forfeit the privilege to perform the acts authorized by the license, and shall not be permitted to purchase another license or exercise the privileges granted by a license during the same license year. No fines, penalty, or judgment assessed or rendered under this chapter shall be suspended, reduced, or remitted otherwise than expressly provided by law. Any person who violates any regulation which has been or may be adopted by the commission under any provisions of this chapter or which is adopted to supplement, explain, carry out, or limit any provision of this chapter, shall be subject to the same penalty as is provided for the violation of any provisions of this chapter under which the regulation is adopted or which the regulation supplements, explains, carries out, or limits.

(3) Any person who violates any of the provisions of KRS 150.120, 150.170, 150.280, 150.320, 150.355, 150.362, 150.400, 150.410, 150.415, 150.416, 150.603, subsection (1) of KRS 150.235, subsection (2) of KRS 150.330 or 150.470, or any of the provisions of this chapter or any regulation adopted by the commission for which no definite fine or imprisonment is fixed shall be fined not less than twenty-five dollars ($25) nor more than two hundred dollars ($200).

(4) Any person who violates any of the provisions of KRS 150.290, 150.300, 150.340, 150.360, 150.445, 150.485, 150.600, 150.630, 150.660, subsection (1) of KRS 150.450, 150.470, the provisions of KRS 150.195(5) to (8), or subsection (3) of KRS 150.660 shall be fined not less than twenty-five dollars ($25) nor more than two hundred dollars ($200) or be imprisoned for not more than six (6) months, or both. Also, any person violating the provisions of KRS 150.300 shall be assessed treble damages as provided in KRS 150.690 or 150.700.

(5) Any person who violates any of the provisions of KRS 150.411, 150.412, or 150.417 shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

(6) Any person who violates any of the provisions of KRS 150.183, 150.305, 150.365, 150.370, subsection (1) of KRS 150.330, or subsections (2), (3), or (4) of KRS 150.235 shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or imprisoned for not more than six (6) months or both.

(7) Any person who violates any of the provisions of KRS 150.460 shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500), or imprisoned for not more than six (6) months, or both, and in addition to these penalties shall be liable to the department in an amount not to exceed the replacement value of the fish and wildlife which has been killed or destroyed.

(8) Any person who violates the provisions of KRS 150.180, 150.520, 150.525, or administrative regulations issued thereunder shall, for the first offense be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1000); and shall for a second offense be fined not less than five hundred dollars ($500) nor more than one thousand five hundred dollars ($1500); and for any subsequent offense, be fined two thousand dollars ($2000).

(9) Any person who violates the provisions of KRS 150.520 or administrative regulations issued thereunder shall, if the violation relates to methods of taking mussels, for a first offense be imprisoned in the county jail for no more than thirty (30) days; for a second offense be imprisoned in the county jail for no more than six (6) months; and for any subsequent offense be imprisoned in the county jail for no more than one (1) year. The penalties for violation of subsection (9) shall be in addition to the penalties for violation of subsection (8).

(10) Any person who violates any of the provisions of KRS 150.4111, 150.640, or subsections (2) or (3) of KRS 150.450 shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000).

(11) Any person who violates any of the provisions of KRS 150.390, or subsection (4) of KRS 150.092 shall be fined not less

than one hundred dollars ($100) nor more than one thousand dollars ($1,000) or imprisoned for not less than thirty (30) days nor more than one (1) year or both. In addition to the penalties prescribed above, he shall forfeit his license or, if license exempt, the privilege to perform the acts authorized by the license for a period of one (1) to three (3) years and shall be liable to the department in an amount reasonably necessary to replace any deer, wild turkey, or bear taken in violation of KRS 150.390 and for violations of subsection (4) of KRS 150.092 shall be liable to the landowner or occupant for reasonable compensation for damages. ***Any person who possesses, takes, or molests a wild elk in violation of Section 1 of this Act or administrative regulations adopted under authority of that section shall be fined not less than one thousand dollars ($1000) nor more than five thousand dollars ($5000), or imprisoned for up to six (6) months, or both. In addition to these penalties, the person shall pay to the department an amount not to exceed the greater of the replacement cost of the wild elk or double any monetary gain realized from the illegal activity, and shall forfeit his or her license, or if license exempt, the privilege to perform the acts authorized by the license for a period of one (1) to three (3) years.***

(12) Any person who violates any of the provisions of KRS 150.090 other than a criminal homicide or an assault against an officer enforcing the provisions of this chapter or the administrative regulations issued thereunder shall be guilty of a Class A misdemeanor.

(13) Any person who commits a criminal homicide or an assault against an officer enforcing the provisions of this chapter or the administrative regulations issued thereunder shall be subject to the penalties specified for such offense under KRS Chapter 507 or 508, as appropriate.

(14) A person shall be guilty of a Class B misdemeanor upon the first violation of KRS 150.710. A subsequent violation shall be a Class A misdemeanor.

(15) Any person who violates the provisions of KRS 150.092 or the administrative regulations promulgated thereunder for which no other penalty is specified elsewhere in this section shall for the first offense be fined not less than one hundred dollars ($100) nor more than three hundred dollars ($300); for the second offense, be fined not less than three hundred dollars ($300) nor more than one thousand dollars ($1,000); and for subsequent offenses, shall forfeit the license, or if license-exempt, the privilege to perform the acts authorized by the license, for one (1) year and shall be fined not less than one thousand dollars ($1,000) or be imprisoned in the county jail for up to one (1) year, or both. In addition to the penalties prescribed in this subsection, the violator shall be liable to the landowner or tenant for the replacement cost of any property which was damaged or destroyed by his actions.

Section 3. Whereas the program to restore elk to Kentucky has begun, and whereas laws and penalties are not sufficient to deter poaching and protect these elk, which represent an important historic biological and potentially economic resource to Kentucky and particularly to eastern Kentucky, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

The Committee on Judiciary reported **HB 81, HB 90,** and **HB 318** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 81, AN ACT relating to crimes and punishments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 525.010 is amended to read as follows:

The following definitions apply in this chapter unless the context otherwise requires:

(1) "Desecrate" means defacing, damaging, polluting or otherwise physically mistreating in a way that the actor knows will outrage the sensibilities of persons likely to observe or discover his action.

(2) "Public" means affecting or likely to affect a substantial group of persons.

(3) "Public place" means a place to which the public or a substantial group of persons has access and includes but is not limited to highways, transportation facilities, schools, places of amusements, parks, places of business, playgrounds and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence. An act is deemed to occur in a public place if it produces its offensive or proscribed consequences in a public place.

(4) "Transportation facility" means any conveyance, premises*,* or place used for or in connection with public passenger transportation by air, railroad, motor vehicle*,* or any other method. It includes aircraft, watercraft, railroad cars, buses, and air, boat, railroad*,* and bus terminals and stations and all appurtenances thereto.

(5) "Riot" means a public disturbance involving an assemblage of five (5) or more persons which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs law enforcement or other government function.

(6) "Service animal" includes a:

(a) "Bomb detection dog" means a dog that is trained to locate bombs or explosives by scent;

(b) "Narcotic detection dog" means a dog that is trained to locate narcotics by scent;

(c) "Patrol dog" means a dog that is trained to protect a peace officer and to apprehend a person;

(d) "Tracking dog" means a dog that is trained to track and find a missing person, escaped inmate, or fleeing felon;

(e) "Search and rescue dog" means a dog that is trained to locate lost or missing persons, victims of natural or man-made disasters, and human bodies;

(f) "Accelerant detection dog" means a dog that is trained for accelerant detection, commonly referred to as arson canines;

(g) "Cadaver dog" means a dog that is trained to find human remains;

(h) "Guide dog" means any dog that is trained to meet the requirements of KRS 258.500;

(i) Any dog that is trained in more than one (1) of the disciplines specified in paragraphs (a) to (h) of this subsection; or

(j) "Police horse" means any horse that is owned, or the service of which is employed, by a law enforcement agency for the principal purpose of aiding in detection of criminal activity, enforcement of laws, and apprehension of offenders.

SECTION 2. A NEW SECTION OF KRS CHAPTER 525 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of assault on a service animal in the first degree when he intentionally and without legal justification or lawful authority kills or causes physical injury to a service animal to the extent that a service animal becomes physically incapable of ever returning to service.

(2) Assault on a service animal in the first degree is a Class D felony.

SECTION 3. A NEW SECTION OF KRS CHAPTER 525 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of assault on a service animal in the second degree when he intentionally and without legal justification or lawful authority causes physical injury to a service animal.

(2) Assault on a service animal in the second degree is a Class B Misdemeanor.

SECTION 4. A NEW SECTION OF KRS CHAPTER 525 IS CREATED TO READ AS FOLLOWS:

Sections 2 and 3 of this Act shall apply whether or not the service animal is on duty or off duty.

SECTION 5. A NEW SECTION OF KRS CHAPTER 525 IS CREATED TO READ AS FOLLOWS:

In any case in which a defendant is convicted of a violation of the provisions of Section 2 or 3 of this Act, the defendant may be ordered to make restitution to the person or agency owning the animal for any veterinary bills, replacement costs of the animal if it is disabled or killed, and the salary of the animal handler for the period of time his services are lost to the agency or self-employment.

SECTION 6. A NEW SECTION OF KRS CHAPTER 525 IS CREATED TO READ AS FOLLOWS:

No person shall be convicted of assault on a service animal when:

(1) He has also been convicted of a violation of KRS 525.125, 525.130, 512.020, 512.030, or 512.040 arising out of the same incident; or

(2) He has destroyed or treated a service animal that is injured, diseased, or suffering or which constitutes a hazard to public safety if not destroyed; or

(3) He has used physical force against the service animal in protection of himself or a third person; or

(4) He has used physical force without knowledge that the animal was a service animal.

HB 90, AN ACT relating to assault of sport officials.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 508.025 is amended to read as follows:

(1) A person is guilty of assault in the third degree when the actor:

(a) Recklessly, with a deadly weapon or dangerous instrument, or intentionally causes or attempts to cause physical injury to:

1. A state, county, city, or federal peace officer;

2. An employee of a detention facility, or state residential treatment facility or state secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or

adjudicated delinquent because of a public offense or as a youthful offender;

3. An employee of the Department of Social Services employed as a social worker to provide direct client services, if the event occurs while the worker is performing job related duties; or

4. A probation and parole officer; or

(b) Being a person confined in a detention facility, or state residential treatment facility or state secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender, inflicts physical injury upon or throws or causes feces or urine to be thrown upon an employee of the facility***; or***

(c) intentionally causes or attempts to cause physical injury to a sports official:

1. Who was performing sports official duties at the time the physical injury or attempt to cause physical injury was perpetrated; or

2. After the sports official performs official duties at an athletic event, if the physical injury or attempt to cause physical injury occurs within the confines or immediate vicinity of the athletic facility at which the athletic event occurred.

(2) ***For the purposes of this section, "sports official" means an individual who serves as a referee, umpire, linesman, or in a similar capacity which may be known by another title, and who is duly registered as or is a member of a national, state, regional, or local organization engaged, in part, in providing education and training to sports officials.***

(3) Assault in the third degree is a Class D felony.

HB 318, AN ACT relating to carrying concealed deadly weapons.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 237.110 is amended to read as follows:

(1) The Department of State Police is authorized to issue licenses to carry concealed firearms or other deadly weapons to persons qualified as provided in this section. ***The Department of State Police or the Administrative Office of the Courts shall conduct a record check, covering all offenses and conditions which are required under 18 U.S.C. sec. 922(g) and this section, in the manner provided by 18 U.S.C. sec. 922(s).*** Licenses shall be valid throughout the state for a period of three (3) years from the date of issuance. Any person in compliance with the terms of the license may carry a concealed firearm or other deadly weapon or combination of firearms and other deadly weapons on or about his person. The licensee shall carry the license at all times the licensee is carrying a concealed firearm or other deadly weapon and shall display the license upon request of a law enforcement officer. Violation of the provisions of this subsection shall constitute a noncriminal violation with a penalty of twenty-five dollars ($25), payable to the clerk of the District Court.

(2) The Department of State Police***, following the record check required by subsection (1) of this section,*** shall issue a license if the applicant:

(a) Is a resident of the state and has been a resident for six (6) months or longer immediately preceding the filing of the application;

(b) Is twenty-one (21) years of age or older;

(c) Is not ineligible to possess a firearm pursuant to 18 U.S.C. sec. 922(g) or KRS 527.040;

(d) Has not been committed to a state or federal facility for the abuse of a controlled substance or been convicted of a misdemeanor violation of KRS Chapter 218A or similar laws of any other state relating to controlled substances within a three (3) year period immediately preceding the date on which the application is submitted;

(e) Does not chronically and habitually use alcoholic beverages as evidenced by the applicant having two (2) or more convictions for violating KRS 189A.010 within the three (3) years immediately preceding his application or if the applicant has been committed as an alcoholic pursuant to KRS Chapter 222, or similar laws of any other state, within the three (3) year period immediately preceding the date on which the application is submitted;

(f) Demonstrates competence with a firearm by any one (1) of the following:

1. Completion, prior to, on, or after October 1, 1996, of any hunter education and firearms safety course approved by the Department of Fish and Wildlife or a similar agency of another state. The Department of Fish and Wildlife may impose additional qualifications by promulgation of administrative regulations to meet the requirements of this section and may establish fees as may be required, so as to avoid a diversion of Fish and Game funds as specified in 50 C.F.R. Part 80. Any fee assessed shall be reasonable and shall not exceed the actual cost of administering the program;

2. Completion, prior to, on, or after October 1, 1996, of any law enforcement firearms safety or training course or class offered for special local peace officers or special law enforcement officers conducted or approved by the Department of Criminal Justice Training;

3. Completion, prior to, on, or after October 1, 1996, of any firearm safety or training course or class available to the general public offered by law enforcement, junior college, college, or private or public institution or organization or firearms training school, utilizing instructors certified by the Department of Criminal Justice Training; or

4. Completion, prior to, on, or after October 1, 1996, of any firearms training or safety course or class conducted by a state-certified firearms instructor or an instructor holding a certification as a firearms instructor issued by a state or federal agency.

Classes presented pursuant to this paragraph shall include instruction on handguns, the safe use of handguns, the care and cleaning of handguns, handgun marksmanship principles, and actual range firing of a handgun in a safe manner. Classes presented pursuant to this paragraph shall include information on laws relating to firearms as described in KRS Chapters 237 and 527 and the law of the use of force as described in KRS Chapter 503. The Department of Criminal Justice Training, Department of State Police, and any other state agency with the authority to certify firearms instructors, shall promulgate uniform administrative regulations concerning the certification and de-certification of all firearms instructors practicing in the Commonwealth of Kentucky. Notwithstanding any other provision of the Kentucky Revised Statutes, no person shall qualify as having demonstrated competence with a firearm pursuant to this subsection, unless certified by a governmental agency of the Commonwealth of Kentucky, or of the federal government. The Administrative Office of the Courts shall publish and make available, at no cost, information in a manner suitable for distribution to class participants. A legible photocopy of a certificate of completion of any of the courses or classes or a notarized affidavit from the instructor, school, club, organization, or group that conducts or teaches the course or class attesting to the completion of the course or class by the applicant shall constitute evidence of qualification under this paragraph. Peace officers who are retired and are members of the Kentucky Employees Retirement System, State Police Retirement System, or County Employees Retirement System shall be deemed to have met the training requirement;

(g) Has not been adjudicated an incompetent under KRS Chapter 202B or has waited three (3) years from the date his competency was restored by the court order under KRS Chapter 202B; and

(h) Has not been involuntarily committed to a mental institution pursuant to KRS Chapter 202A, unless he possesses a certificate from a psychiatrist licensed in this state that he has not suffered from disability for a period of three (3) years.

(3) The Department of State Police may deny a license if the applicant has been found guilty of a violation of KRS 508.030 or 508.080 within the three (3) year period prior to the date on which the application is submitted or may revoke a license if the licensee has been found guilty of a violation of KRS 508.030 or 508.080 within the preceding three (3) years.

(4) The application for a permit, or renewal of a permit, to carry a concealed deadly weapon shall be obtained from the office of the sheriff in the county in which the person resides. The completed application and all accompanying material plus an application fee or renewal fee, as appropriate, of sixty dollars ($60) shall be presented to the office of the sheriff of the county in which the applicant resides. A retired peace officer who is a member of the Kentucky Employees Retirement System, State Police Retirement System,[~~or~~] County Employees Retirement System***, or other retirement system operated by or for a city, county, or urban-county in Kentucky*** shall be exempt from paying the application or renewal fees following the date of his retirement. The sheriff shall transmit the application and accompanying material to the Department of State Police within five (5) working days. Twenty dollars ($20) of the application fee shall be retained by the office of the sheriff for official expenses of the office. Twenty dollars ($20) shall be sent to the Department of State Police with the application. Ten dollars ($10) shall be transmitted by the sheriff to the Administrative Office of the Courts to fund background checks for youth leaders, and ten dollars ($10) shall be transmitted to the Administrative Office of the Courts to fund background checks for applicants for concealed weapons. The application shall be completed, under oath, on a form promulgated by the Department of State Police by administrative regulation which shall only include:

(a) The name, address, place and date of birth, gender, and Social Security number of the applicant;

(b) A statement that, to the best of his knowledge, the applicant is in compliance with criteria contained within subsections (2) and (3) of this section;

(c) A statement that the applicant has been furnished a copy of this section and is knowledgeable about its provisions;

(d) A statement that the applicant has been furnished a copy of, has read, and understands KRS Chapter 503 as it pertains to the use of deadly force for self-defense in Kentucky; and

(e) A conspicuous warning that the application is executed under oath and that a materially false answer to any question, or the submission of any materially false document by the applicant, subjects the applicant to criminal prosecution under KRS 523.030.

(5) The applicant, if a resident of the Commonwealth, shall submit to the sheriff of the applicant's county of residence:

(a) A completed application as described in subsection (4) of this section;

(b) A recent color photograph of the applicant, as prescribed by administrative regulation; and

(c) A photocopy of a certificate or an affidavit or document as described in subsection (2)(f) of this section.

(6) The Department of State Police shall, within ninety (90) days after the date of receipt of the items listed in subsection (5) of this section, either:

(a) Issue the license; or

(b) Deny the application based solely on the grounds that the applicant fails to qualify under the criteria listed in subsection (2) or (3) of this section. If the Department of State Police denies the application, it shall notify the applicant in writing, stating the grounds for denial and informing the applicant of a right to submit, within thirty (30) days, any additional documentation relating to the grounds of denial. Upon receiving any additional documentation, the Department of State Police shall reconsider its decision and inform the applicant within twenty (20) days of the result of the reconsideration. The applicant shall further be informed of the right to seek de novo review of the denial in the District Court of his place of residence.

(7) The Department of State Police shall maintain an automated listing of licenseholders and pertinent information, and this information shall be available on-line, upon request, at all times to all Kentucky law enforcement agencies. Except as provided in this subsection, information on applications for licenses, names and addresses, or other identifying information relating to license holders shall be confidential and shall not be made available except to law enforcement agencies. Requests for information to be provided to any requester other than a bona fide law enforcement agency which has direct access to the Law Enforcement Information Network of Kentucky shall be made, in writing, directly to the commissioner of the Department of State Police, together with the fee required for the providing of the information. The Department of State Police shall, upon proper application and the payment of the required fee, provide to the requester in hard copy form only, a list of names of all holders in the Commonwealth of a license to carry a concealed deadly weapon. No identifying information other than the name shall be provided, and information for geographic areas or other subdivisions of any type from the list shall not be provided and shall be confidential. The fee to be charged shall be the same as for other public records provided by the Department of State Police. No request for lists of local or statewide permit holders shall be made to any state or local law enforcement agency, peace officer, or other agency of government other than the Department of State Police, and no state or local law enforcement agency, peace officer, or agency of government, other than the Department of State Police, shall provide any information not entitled to it by law. The names of all persons, other than law enforcement agencies and peace officers, requesting information under this section shall be a public record.

(8) Within thirty (30) days after the changing of a permanent address, or within thirty (30) days after the loss or destruction of a license, the licensee shall notify the Department of State Police of the loss or destruction. Failure to notify the Department of State Police shall constitute a noncriminal violation with a penalty of twenty-five dollars ($25) payable to the clerk of the district court. ***When a licensee makes application to change his or her residence address or other information on the license, neither the sheriff nor the Department of State Police shall require a surrender of the license until a new license is in the office of the applicable sheriff and available for issuance. Upon the issuance of a new license, the old license shall be destroyed by the sheriff.***

(9) If a license is lost or destroyed, the license shall be automatically invalid, and the person to whom the same was issued may, upon payment of fifteen dollars ($15) to the Department of State Police, obtain a duplicate, upon furnishing a notarized statement to the Department of State Police that the license has been lost or destroyed.

(10) A license issued under this section shall be suspended or revoked if the licensee becomes ineligible to be issued a license under the criteria set forth in subsection (2)(a), (c), (d), (e), (f), or (h) of this section. When a domestic violence order or emergency protective order is issued pursuant to the provisions of KRS Chapter 403 against a person holding a license issued under this section, the holder of the permit shall surrender the license to the court or to the officer serving the order. The officer to whom the license is surrendered shall forthwith transmit the license to the court issuing the order. The license shall be suspended until the order is terminated, or until the judge who issued the order terminates the suspension prior to the termination of the underlying domestic violence order or emergency protective order, in writing and by return of the license, upon proper motion by the license holder. Subject to the same conditions as above, a peace officer against whom an emergency protective order or domestic violence order has been issued shall not be permitted to carry a concealed deadly weapon when not on duty, the provisions of KRS 527.020 to the contrary notwithstanding.

(11) Not less than ninety (90) days prior to the expiration date of the license, the Department of State Police shall mail to each licensee a written notice of the expiration and a renewal form prescribed by the Department of State Police. The licensee may renew his license on or before the expiration date by filing with the sheriff of his county of residence the

renewal form, a notarized affidavit stating that the licensee remains qualified pursuant to the criteria specified in subsections (2) and (3) of this section, and the required renewal fee. The license shall be renewed to a qualified applicant upon receipt of the completed renewal application and appropriate payment of fees. ***When a licensee makes application for a renewal of his or her license, neither the sheriff nor the Department of State Police shall require a surrender of the license until the new license is in the office of the applicable sheriff and available for issuance. Upon the issuance of a new license, the old license shall be destroyed by the sheriff.*** A licensee who fails to file a renewal application on or before its expiration date may renew his license by paying, in addition to the license fees, a late fee of fifteen dollars ($15). No license shall be renewed six (6) months or more after its expiration date, and the license shall be deemed to be permanently expired six (6) months after its expiration date. A person whose license has permanently expired may reapply for licensure pursuant to subsections (4), (5), and (6) of this section.

(12) No license issued pursuant to this section shall authorize any person to carry a concealed firearm into:

(a) Any police station or sheriff's office;

(b) Any detention facility, prison, or jail;

(c) Any courthouse, solely occupied by the Court of Justice courtroom, or court proceeding, except that nothing in this section shall preclude a judge from carrying a concealed weapon;

(d) Any meeting of the governing body of a county, municipality, or special district; or any meeting of the General Assembly or a committee of the General Assembly, except that nothing in this section shall preclude a member of the body, holding a concealed deadly weapon license, from carrying a concealed deadly weapon at a meeting of the body of which he is a member;

(e) Any portion of an establishment licensed to dispense beer or alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to that purpose;

(f) Any elementary or secondary school facility without the consent of school authorities as provided in KRS 527.070, any child-caring facility as defined in KRS 199.011, any day-care center as defined in KRS 199.894, or any certified family child-care home as defined in KRS 199.8982, except however, any owner of a certified child-care home may carry a concealed firearm into the owner's residence used as a certified child-care home;

(g) An area of an airport to which access is controlled by the inspection of persons and property;

(h) Any church, synagogue, house of worship, or other property owned, leased, or otherwise used and operated by a religious organization in the furtherance of a religious purpose; or

(i) Any place where the carrying of firearms is prohibited by federal law.

(13) The owner, business or commercial lessee, or manager of a private business enterprise, day-care center as defined in KRS 199.894 or certified or licensed family child-care home as defined in KRS 199.8982, or a health-care facility licensed under KRS Chapter 216B, except facilities renting or leasing housing, may prohibit persons holding concealed deadly weapon licenses from carrying concealed deadly weapons on the premises and may prohibit employees, not authorized by the employer, holding concealed deadly weapons licenses from carrying concealed deadly weapons on the property of the employer. If the building or the premises are open to the public, the employer or business enterprise shall post signs on or about the premises if carrying concealed weapons is prohibited. Possession of weapons in a vehicle on the premises shall not be a criminal offense so long as the weapons are not removed from the vehicle or brandished while the vehicle is on the premises. An employer may prohibit employees or other persons holding a concealed deadly weapons license from carrying concealed deadly weapons in vehicles owned by the employer, but may not prohibit employees or other persons holding a concealed deadly weapons license from carrying concealed deadly weapons in vehicles owned by the employee. Carrying of a concealed weapon in a location specified in this subsection by a license holder shall not be a criminal act but may subject the person to denial from the premises or removal from the premises, and, if an employee of an employer, disciplinary measures by the employer.

(14) All moneys collected by the Department of State Police pursuant to this section shall be used to administer the provisions of this section. By March 1 of each year, the Department of State Police and the Administrative Office of the Courts shall submit reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives, indicating the amounts of money collected and the expenditures related to this section and KRS 237.115, 244.125, 527.020, and 527.070, and the administration of the provisions of this section and KRS 237.115, 244.125, 527.020, and 527.070.

(15) The General Assembly finds as a matter of public policy that it is necessary to provide statewide uniform standards for issuing licenses to carry concealed firearms and to occupy the field of regulation of the bearing of concealed firearms to ensure that no person who qualifies under the provisions of this section is denied his rights. The General Assembly does not delegate to the Department of State Police the authority to regulate or restrict the issuing of licenses provided for in this section beyond those provisions contained in this section. This section shall be liberally construed to carry out the constitutional right to bear arms for self-defense.

(16) (a) A person who has a valid license issued by another state of the United States to carry a concealed deadly weapon in that state[~~ and whose state grants to Kentucky residents the right to carry a concealed deadly weapon in the~~

~~state of the licensee without requiring a separate license to carry a concealed deadly weapon issued by that state,]~~ may, subject to provisions of Kentucky law, carry a concealed deadly weapon in Kentucky, and his license shall be considered as valid in Kentucky.

(b) A person who holds a valid license issued by another state of the United States ~~[whose home state permits Kentucky residents to obtain a license to carry a concealed deadly weapon in that state]~~ may apply directly to the Department of State Police for a license to carry concealed deadly weapons in Kentucky. The Department of State Police shall take whatever steps are necessary to verify that the person applying has a valid license to carry a concealed deadly weapon issued by his home state.

(c) The Department of State Police shall, not later than thirty (30) days after the effective date of this amendment and not less than once every six (6) months thereafter, make written inquiry of the concealed deadly weapon carrying licensing authorities in each other state as to whether a Kentucky resident may carry a concealed deadly weapon in their state based upon having a valid Kentucky concealed deadly weapon license, or whether a Kentucky resident may apply for a concealed deadly weapon carrying license in that state based upon having a valid Kentucky concealed deadly weapon license. The Department of State Police shall attempt to secure from each other state permission for Kentucky residents who hold a valid Kentucky concealed deadly weapon license to carry concealed deadly weapons in that state, either on the basis of the Kentucky license or on the basis that the Kentucky license is sufficient to permit the issuance of a similar license by the other state. The Department of State Police shall enter into a written reciprocity agreement with the appropriate agency in each state that agrees to permit Kentucky residents to carry concealed deadly weapons in the other state on the basis of a Kentucky-issued concealed deadly weapon license or that will issue a license to carry concealed deadly weapons in the other state based upon a Kentucky concealed deadly weapon license. If a reciprocity agreement is reached, the requirement to recontact the other state each six (6) months shall be eliminated as long as the reciprocity agreement is in force. The information shall be a public record and shall be available to individual requesters free of charge for the first copy and at the normal rate for open records requests for additional copies.

(17) By March 1 of each year, the Department of State Police shall submit a statistical report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, indicating the number of licenses issued, revoked, suspended, and denied since the previous report and in total and also the number of licenses currently valid. The report shall also include the number of arrests, convictions, and types of crimes committed since the previous report by individuals licensed to carry concealed weapons.

The Committee on Economic Development reported **HB 342** and **HB 344** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 342, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

(1) The Office of Coal County Development is created within the Office of the Secretary. The Office of Coal County Development shall promote the Local Government Economic Development Program which funds infrastructure to new and expanding business and industry, thereby diversifying eligible county economies and creating an environment more conducive to business activity.

(2) The Office of Coal County Development shall be headed by an executive director appointed by the secretary pursuant to KRS 154.10-050 (3).

Section 2. The General Assembly confirms Resolution Order 97-1, dated September 10, 1997, to the extent it is not otherwise confirmed or superseded by this Act.

HB 344, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 154.12-223 is amended to read as follows:

(1) There is created within the Cabinet for Economic Development the Department of Community Development, which shall be headed by a commissioner appointed by the Governor pursuant to KRS 12.040. The department shall work with each Kentucky county in:

(a) Determining a long-range plan for economic development which best meets the individual county's needs; and

(b) Developing cooperative interaction with existing industries and small and minority businesses and assisting export development.

(2) The Department of Community Development shall include the following divisions, each of which shall be headed by a director appointed by the secretary pursuant to KRS 12.050:

(a) The Division of Business and Entrepreneurship Development, which shall be responsible for procurement assistance, business information clearinghouse services, and business and technology functions of the cabinet, including, without being limited to:

1. Providing comprehensive information on all state business licenses and requirements;
2. Developing and administering a master application and licensure program for grocery stores;
3. Coordinating and monitoring the various activities being carried out by state agencies that relate to adapting advanced technologies to the workplace; and
4. Reviewing and analyzing the possibility of establishing research and technology centers in the Commonwealth;

(b) The Small and Minority Business Division, which shall be responsible for the cabinet's functions relating to small and minority business enterprise, as provided in KRS 154.12-215. The Small Business Advisory Council established by KRS 154.12-218 shall advise the division;

(c) The Western Kentucky Economic Development Division;

(d) The Eastern Kentucky Economic Development Division;~~[and]~~

(e) The Central Kentucky Economic Development Division***; and***

(f) The International Trade Division, which shall promote the development of international markets for Kentucky goods, products, and services for the purpose of identifying and analyzing national and international market developments and opportunities, and gathering and disseminating vital information to Kentucky manufacturers, service providers, and other industries regarding international trade opportunities.

(3) The following programs and commission shall be attached to the Department of Community Development:

(a) The Kentucky port and river development program created by KRS 65.510 to 65.530, KRS 139.483, and KRS 154.80-100 to 154.80-130;

(b) The Waterway Marina Development Program established by KRS 154.80-310; and

(c) The Kentucky Investment Capital Network established by KRS 154.12-2333.

Section 2. The General Assembly confirms Resolution 96-1 of the Kentucky Economic Development Partnership, dated July 11, 1996, to the extent it is not otherwise confirmed or superseded by this Act.

Motions, Petitions and Communications (Continued)

Representative Maricle moved that **HB 466** be withdrawn. Agreed.

Representative Brandstetter moved the adoption of the following **Legislative Citation No. 71**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby congratulates Emily Eads upon achieving national recognition for exemplary volunteer service by receiving a 1998 Prudential Spirit of Community Award, a prestigious honor presented by The Prudential Insurance Company of America in partnership with the National Association of Secondary School Principals. This honorable body recognizes that the strength of our communities and the overall vitality of American society depend, in great measure, upon the dedication of young people like Ms. Eads. Giving generously of her time and energy for the benefit of others, she is applauded for her service at the Bluegrass-Aspendale Teen Center where she tutors students in math, science, social studies, English and Spanish. Inasmuch as Emily Eads, an esteemed resident of Lexington, Kentucky, and a student at Sayre School, has demonstrated extraordinary commitment to serving her community, the entire membership of the House of Representatives is pleased to join with Representative Larry Brandstetter in congratulating her for outstanding volunteer service, peer leadership and community spirit, and in extending best wishes for her continued success and happiness. **Legislative Citation No. 71** was adopted without objection.

Representative G. Graham moved that the rules be suspended to act upon a Resolution and a Legislative Citation. Agreed.

Representative G. Graham moved the adoption of the following **HR 74**:

HR 74, A RESOLUTION adjourning the House of Representatives in loving memory and honor of Mildred Gardenhire.

With deepest respect and admiration, we pay homage and tribute to Mildred Gardenhire.

WHEREAS, Mildred Gardenhire was born on May 29, 1914, in Munfordville, Hart County, Kentucky; and

WHEREAS, Mildred Gardenhire was the adored daughter of the late William H. Atteberry and Beatrice Brashear Atteberry; she was the devoted mother of a son, Henry Clay Gardenhire III; she was the loving sister to two brothers, James S. Atteberry, who is the Doorkeeper of the House of Representatives, and William H. Atteberry, Jr., and two sisters, Jane Upchurch and Langley Storey; and she was the proud grandmother of six grandchildren and eight great-grandchildren; and

WHEREAS, Mildred Gardenhire graduated from Bowling Green Business College in 1934, after which time she became secretary to Chief Justice Will Fulton of the Kentucky Court of Appeals, then the highest court in Kentucky; and upon Chief Justice Fulton's retirement, she became secretary to Justice Gus Thomas; and

WHEREAS, until her retirement in 1993, she was the devoted secretary for 46 years to Joseph J. Leary of Smith, Reed & Leary, who later entered into his own private practice and who passed away in 1994; and

WHEREAS, tribute was paid to Mildred Gardenhire for her knowledge and devotion to the legal profession by the Franklin County Bar Association, who also served as her honorary pallbearers; and

WHEREAS, the passing of Mildred Gardenhire has left a void that will be difficult to fill, and she is mourned across the length and breadth of the Commonwealth;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. This honorable body does hereby express its profound sense of sorrow upon the passing of Mildred Gardenhire, and it does extend to her family its most heartfelt sympathy.

Section 2. When the House of Representatives adjourns this day, February 12, 1998, it does so in loving memory and honor of Mildred Gardenhire.

Section 3. The Clerk of the House of Representatives is hereby directed to transmit a copy of this Resolution to Representative Gippy Graham for presentation to the family of Mildred Gardenhire.

There being no objection **HR 74** was adopted.

Representative G. Graham moved the adoption of the following **Legislative Citation No. 72**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes and commends The Benevolent and Protective Order of Elks for their excellent Drug Awareness Program, providing strong leadership, awareness and encouragement from responsible adults in a worthy attempt to encourage the youth of this Commonwealth to live drug-free lives. The members of this prestigious body join Representative Gippy Graham in paying tribute to the Elks for implementing the Hoop Shoot Drug Awareness Program and in expressing gratitude to Governor Paul E. Patton for proclaiming February 14, 1998, Hoop Shoot Drug Awareness Day throughout the Commonwealth of Kentucky. **Legislative Citation No. 72** was adopted without objection.

Representative Dwight Butler moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Dwight Butler moved that he be recorded as voting "yea" on **HB 54, HB 60, HB 63, HB 151, HB 167, HB 195, HB 201, HB 202,** and **HB 248**. Agreed.

Representative Ballard moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Ballard moved that his vote be changed from "nay" to "yea" on **HB 305**. Agreed.

Representative Nesler moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Nesler moved that he be recorded as voting "yea" on **HB 263,** and **HB 299**. Agreed. Representative Nesler moved that he be recorded as voting "nay" on **HB 315** and **HB 106**. Agreed.

Representative Lindsay moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Lindsay moved that he be recorded as voting "yea" on **HB 422**. Agreed.

Representative Miller moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Miller moved that he be recorded as voting "yea" on **SB 1**. Agreed.

The following members filed requests to have their names added as co-sponsors of Bills under rules previously suspended: **HB 36**, Representative Gooch; **HB 168**, Representative Simpson; **HB 225**, Representative D. Butler; **HB 486**, Representative Riggs; **HB 546**, Representative Maricle; **HB 594**, Representatives Johns, Marzian, Horlander, L. Clark.

Announcements

The following meetings were announced: State Government, 1:00 p.m., February 17, 1998; Appropriations and Revenue, February 17, 1998, Room 129.

The following meeting was canceled: Health and Welfare, February 17, 1998.

Adjournment

Representative Stumbo moved that the House adjourn until 4:00 p.m., February 17, 1998.

On the roll call the vote was **Yeas 79**--J. Adams, R. Adams, Adkins, Alexander, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Bowling, Brandstetter, Bratcher, Bruce, D. Butler, D. D. Butler, Callahan, L. Clark, Coleman, Collins, Colter, Cox, Crimm, Damron, DeWeese, Ford, Gee, Geveden, Gooch, D. Graham, G. Graham, Hatcher, Haydon, Hoffman, Hoover, Horlander, Jenkins, Johns, Jordan, Kerr, Lee, Lindsay, Long, Marcotte, Marzian, Mason, McKee, Miller, Miniard, Moberly, Murgatroyd, Napier, Nesler, Palumbo, Polston, Pope, Rader, Rasche, Reinhardt, Richards, Riggs, Riner, Siler, Simpson, Sims, Stacy, Stein, Stine, Stumbo, Thomas, Treesh, Turner, Vincent, Walton, Wayne, Weaver, Wilkey, Worthington, Yonts, Zimmerman. **Nays 4**--Crall, Maricle, Nunn, Stewart.

The motion to adjourn was adopted.

TUESDAY, FEBRUARY 17, 1998

TWENTY-SEVENTH LEGISLATIVE DAY

The House was called to order by Speaker Richards.

Prayer by Trooper Phil Yates, Chaplain, Kentucky State Police.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Burch, P. Clark, Deskins, Lovell, Napier, and Ratliff.

Representative Ballard moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative Ballard moved that the reading of the Journal of February 12, 1998, be dispensed with and the same approved. Agreed.

Representative Ballard moved that the Rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Ballard moved that all properly filed co-sponsor requests be approved. Agreed.

Report On Enrolled Bills

HB 87, **HB 112**, and **HB 256** delivered to the Senate and signed by the President. Delivered to the Governor on February 17, 1998 at 2:19 p.m.

Introduction of Bills

HB 614, by Representative Riggs: AN ACT relating to insurance.

HB 615, by Representative Geveden: AN ACT relating to public utilities.

HB 616, by Representative Lindsay: AN ACT relating to secondary area vocational education and technology centers.

HB 617, by Representative Lee: AN ACT relating to the regulation of entities that provide child care or child placement services.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills:

Appropriations and Revenue: **HB 597**

Banking and Insurance: **HB 600, SB 135**

Cities: **HB 610**

Education: **HB 606, SB 202**

Health and Welfare: **HB 601, HB 603**

Judiciary: **HB 595, HB 599, HB 607**

Licensing and Occupations: **HB 602, HB 608, HB 609, HB 611, SB 126**

Natural Resources and Environment: **HB 598**

State Government: **HB 596, HB 605**

Tourism Development and Energy: **HB 612, HB 613**

Transportation: **HB 604**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Licensing and Occupations: **HB 565**

Labor and Industry: **HB 534**

Banking and Insurance: **HB 555**

Judiciary: **HB 544, HB 85, HB 13**

Report of Committees

The Committee on State Government reported **HB 126, HB 352, HB 355, HB 359, HB 361, HB 363, HB 366, HB 375, HB 391,** with Committee Substitute and Committee Amendment attached thereto, **HB 393,** with Committee Substitute attached thereto, **HB 438, HB 445, HB 486,** and **SB 172** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 126, AN ACT relating to plans review and inspections of buildings.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

All buildings shall be constructed according to the construction documents approved by the building official having jurisdiction of the building in accordance with KRS 198B.060. No on-site inspector shall order changes in the construction of a building which are contrary to the approved construction documents. If an on-site inspector finds that any part of the construction is contrary to the approved plans, the on-site inspector may order correction, and if the on-site inspector believes that the approved documents are incomplete or in violation of the uniform state building code, the on-site inspector shall refer the matter to the building official having jurisdiction for the approval of the construction documents. Any approved changes to the construction of the building shall be recorded with the construction documents before the certificate of occupancy shall be issued.

HB 352, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. The General Assembly hereby confirms Executive Order 97-26, dated January 7, 1997, dealing with the internal structure of the Department of Alcoholic Beverage Control. Under that order, the Administrative Services Branch is abolished and all personnel, records, files, equipment, and funds are transferred to the Division of Support Services Administration, which is created and which shall be responsible for financial and personnel functions. The General Counsel Branch is abolished and all personnel, records, files, equipment, and funds are transferred to the Office of Legal Services, which is created. The Enforcement Branch, including the positions of Deputy Chiefs of Enforcement, is abolished and all personnel, records, files, equipment, and funds are transferred to the Enforcement Division, which is created. The Tobacco Branch is abolished, and all of its personnel, records, files, equipment, and funds are transferred to the Division of Support Services Administration. The Field Office Branch, within the Commissioner's Office, is abolished and all personnel, records, files, equipment, and funds are transferred to the Field Offices, which is created within the Division of Distilled Spirits, and which will report to the Malt Beverage and Distilled Spirits Administrators.

HB 355, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 287.011 is amended to read as follows:

(1) There is created a Department of Financial Institutions, which constitutes a department of the state government within the meaning of KRS Chapter 12. The department shall be headed by a commissioner of financial institutions, who shall be the executive head of the department and shall be charged with the administration of the department.

(2) The Department of Financial Institutions shall exercise all administrative functions of the state in relation to the regulation, supervision, chartering and licensing of banks, trust companies, savings and loan associations, consumer loan companies, investment and industrial loan companies, and credit unions, and in relation to the regulation of securities.

(3) There is established within the Department of Financial Institutions the following divisions ***and offices:***~~[, each of which shall be headed by a director appointed by the commissioner, subject to the prior approval of the Governor, pursuant to KRS 12.050.]~~

(a) The Division of ***Financial Institutions, which shall be headed by a director appointed by the commissioner, subject to prior written approval of the Governor in accordance with KRS 12.050. The division shall consist of entities deemed appropriate by the commissioner***~~[Law and Regulatory Compliance which shall be composed of~~

~~the Applications and Registration Branch, the Investigations Branch, the Law Branch, and the Public Affairs Branch~~];

(b) The Division of ***Securities, which shall be headed by a director appointed by the commissioner in accordance with KRS 12.050. The division shall consist of entities deemed appropriate by the commissioner;***[~~Planning and Management which shall be composed of the Human/Fiscal Resources Branch and the Technology Branch; and~~]

(c) The Division of ***Administrative Services, which shall be headed by a director appointed by the commissioner in accordance with KRS 12.050. The division shall be composed of organizational entities deemed appropriate by the commissioner;***[~~Supervision which shall be composed of the Western Kentucky Examination Branch, Districts 1 through 3 Supervision Sections; the Eastern Kentucky Examination Branch, Districts 4 through 6 Supervision Sections; and the Analysis and Remedial Supervision Branch.~~]

(d) The Office of the Commissioner, which shall be composed of organizational entities deemed appropriate by the commissioner; and

(e) The Office of General Counsel, which shall be headed by a general counsel appointed by the commissioner in accordance with KRS 12.050. The office shall be composed of organizational entities as deemed appropriate by the commissioner.

Section 2. The General Assembly confirms Executive Order 97-723, dated June 12, 1997, to the extent it is not otherwise confirmed by this Act.

HB 359, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. The General Assembly confirms Executive Order 97-734, dated June 13, 1997, which establishes the Division of Trial Services and the Division of Post-Trial Services within the Department of Public Advocacy.

HB 361, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. The General Assembly hereby confirms Executive Order 97-1091, dated August 25, 1997, which creates within the Office of the Secretary, Public Protection and Regulation Cabinet:

(1) The Office of General Counsel, which shall report directly to the cabinet secretary; and

(2) The Division of Administrative Services, which shall advise the cabinet secretary and provide oversight on budget, fiscal, and personnel services to select agencies within the cabinet.

HB 363, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. The General Assembly hereby confirms Executive Order 97-1037 as amended by 97-1114, which abolishes the Division of Rates and Research; renames the Division of Engineering and Services to the Division of Engineering; and establishes a Division of Research, a Division of Consumer Services, and a Division of Filings. The Division of Consumer Services shall be headed by a division director appointed by the executive director of the Public Service Commission. The Division of Filings shall be headed by a director with the title of secretary of the commission appointed by the executive director of the Public Service Commission, and shall be composed of organizational entities deemed appropriate by the executive director.

HB 366, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. The General Assembly hereby confirms Executive Order 97-1386, dated October 20, 1997, which creates the Division of Mine Licensing within the Department of Mines and Minerals; changes the name of the Division of Mine Safety and Health to the Division of Mine Safety Inspection; and changes the name of the Division of Mining, Training-Education, Certification and Instruction to the Division of Miner Training, Education and Certification.

HB 375, AN ACT relating to the Commission on Sports, Physical Activity, and Wellness.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 11 IS CREATED TO READ AS FOLLOWS:

(1) There is created the Governor's Commission on Sports, Physical Activity, and Wellness, which shall be attached to the Office of the Governor for administrative purposes.

(2) The commission shall consist of eighteen (18) members, including one (1) person designated by and representing the Governor, and seventeen (17) additional members appointed by the Governor from among representatives of health and fitness organizations, amateur sports organizations, education, the sports and entertainment industry, and the private sector, including business and community organizations. Of the seventeen (17) members appointed by the Governor, three (3) shall be selected from the state at large and two (2) members shall be selected from each of the seven (7) Kentucky Supreme Court districts. Of the eighteen (18) members of the commission, nine (9) shall be males and nine (9) shall be females. The Governor shall designate one (1) member to serve as chairperson of the commission.

(3) Members of the commission first appointed or reappointed to a full term after the effective date of this section shall serve for terms of four (4) years. The member designated as chairperson shall chair the commission for a term of two (2) years.

(4) The commission shall meet at least four (4) times per year and as necessary upon the call of the chairperson.

(5) Members of the commission who are not otherwise state officers or employees shall receive actual and reasonable travel expenses incurred while attending meetings of the commission.

(6) The commission shall:

(a) Promote and sponsor an Olympic-style, year-round program of statewide amateur athletic competition to be known as the Bluegrass State Games;

(b) Serve as a resource to the Governor and the General Assembly on issues regarding sports, physical activity, and wellness;

(c) Increase awareness and develop physical fitness and activity goals for all Kentuckians;

(d) Encourage intergenerational activities, including fitness and sports, in strengthening the family unit;

(e) Support the missions of the National Association of Governors' Councils on Physical Fitness and Sports and the President's Council on Physical Fitness and Sports;

(f) Support collaboration among federal, state, and local agencies, education, business, industry, and other private sector organizations, and others in the promotion of sports, physical activity, and wellness;

(g) Submit an annual report to the Governor and the General Assembly on the state of sports, physical activity, and wellness in the Commonwealth;

(h) Solicit state and federal grant funds, where feasible, to carry out its programs and responsibilities; and

(i) Establish a fundraising subcommittee which shall work with the private sector to identify resources to support the projects planned and endorsed by the commission.

(7) The Bluegrass State Games shall be designed to encourage the participation of a broad range of age and skill levels and shall be open to all residents of the state.

Section 2. The General Assembly confirms Executive Order 97-932, issued July 25, 1997, to the extent that it is not otherwise confirmed by Section 1 of this Act.

HB 391, AN ACT relating to architectural and engineering services.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding the provisions of KRS 45A.800 to 45A.835, the Finance and Administration Cabinet and the Transportation Cabinet may enter into price contracts for architectural and engineering services.

(2) Price contracts shall be awarded to firms qualified by the Finance and Administration Cabinet, Department of Facilities Management or by the Transportation Cabinet, Department of Highways. For Finance and Administration Cabinet qualification, a joint selection committee composed of two (2) Finance and Administration Cabinet merit employee architects, two (2) Finance and Administration Cabinet merit employee engineers, and one (1) nonvoting finance and administration technical adviser shall meet at least quarterly during each fiscal year to review and make recommendations to the commissioner of the Department for Facilities Management for qualification of interested firms. For Transportation Cabinet qualification, a selection committee composed of two (2) Transportation Cabinet merit employee engineers and one (1) nonvoting Transportation Cabinet technical adviser shall meet at least quarterly during each fiscal year to review and make recommendations to the commissioner of the Department of Highways for qualification of interest firms.

(a) The respective committees shall evaluate those firms submitting statements of interest in obtaining a price

contract. The submitting firms shall be reviewed according to the following criteria:

1. Qualifications;

2. Ability of professional personnel; and

3. Past record and experience.

(b) Firms qualified by the commissioner of the Department for Facilities Management or by the commissioner of the Department of Highways shall be awarded price contracts by the respective departments for the type of work for which they have been qualified.

(c) The commissioner of the Department for Facilities Management or the commissioner of the Department of Highways may select firms to perform work under price contract for small projects for which the architectural or engineering fees do not exceed fifty thousand dollars ($50,000). However, no firm that has received more than one hundred thousand dollars ($100,000) in price contract fees in any one (1) fiscal year shall be selected to work under a price contract unless the secretary of finance and administration or the secretary of transportation makes a written determination that the selection is in the best interest of the Commonwealth.

SECTION 2. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) The Finance and Administration Cabinet and the Transportation Cabinet may, by administrative regulations promulgated under KRS Chapter 13A, designate certain types of construction projects for which architects and engineers may be selected for contract services from a pool in accordance with this section. The types of projects for which pools may be used for the selection of architects or engineers shall be limited to those projects for which the professional services to be rendered for each project are substantially similar and for which architectural or engineering fees are at least fifty thousand dollars ($50,000).

(2) Each pool of architects or engineers shall contain the names of architects or engineers qualified under this section to perform the services for a particular type of project. The selection committee established in Section 4 of this Act, without the using agency representative, shall annually select architects for each pool in accordance with the standards for application and selection established by administrative regulation under subsection (3) of this section. Once qualified, an architect or engineer may remain qualified for a particular pool for two (2) years unless disqualified under subsection (5) of this section. Upon expiration of the two (2) year period, an architect or engineer may reapply for qualification.

(3) The procedures and criteria for each annual pool selection shall be set forth in administrative regulations promulgated by the Finance and Administration Cabinet and the Transportation Cabinet. The administrative regulations shall provide for adequate notice to architects and engineers of the annual pool selection, an application procedure for the pool selection, a deadline for submission of the application, and the criteria for selection for each pool.

(4) Immediately after the annual selection of architects or engineers for the pools:

(a) The architects and engineers selected for a particular pool shall be randomly ranked by the selection committee for that pool;

(b) Following their ranking, architects and engineers shall be selected by the Finance and Administration cabinet or the Transportation Cabinet from the pool list in the order in which they are ranked; and

(c) Selection from the pool, using the order of ranking established under paragraph (a) of this subsection, shall be repeated when necessary until the next annual selection is completed.

(5) The secretary of finance and administration or the secretary of transportation may remove an architect or engineer from a pool for good cause. Any architect or engineer who has been removed from a pool may, within thirty (30) days after the removal, petition the secretary who removed the architect or engineer for reinstatement. Within sixty (60) days following the secretary's receipt of a petition, the selection committee shall meet to consider the request for reinstatement. If the selection committee recommends that the architect or engineer be reinstated to the pool and the secretary accepts the recommendation, the affected architect or engineer shall be reinstated and placed at the end of the pool list ranking.

(6) Nothing in this section shall be construed to require use of any pool for a particular project if the responsible cabinet has determined that the project does not meet the criteria established for pool projects.

Section 3. KRS 45A.800 is amended to read as follows:

As used in KRS 45A.800 to 45A.835, 45A.195, 45A.440, and 45A.695, unless the context requires otherwise:

(1) "Architect" means an architect licensed[~~ to practice~~] under KRS Chapter 323 or a landscape architect licensed[~~ to practice~~] under KRS Chapter 323A;

(2) "Engineer" means an engineer licensed[~~ to practice~~] under KRS Chapter 322;

(3) "Procuring agency" means either the Finance and Administration Cabinet or the Transportation Cabinet;

(4) "Project" means any undertaking requiring the professional services of an architect or engineer, except as provided in KRS 45A.100;

(5) "User agency" means the state agency or any public supported institution of higher education, when it declines to exercise the authority granted under KRS 164A.590, that will occupy or otherwise be the primary beneficiary of a completed Finance and Administration Cabinet project; and

(6) "User division" means the division of the Transportation Cabinet that requires the procuring of engineering services for a project.

Section 4. KRS 45A.810 is amended to read as follows:

(1) (a) One (1) or more architectural services selection committees and one (1) or more engineering services selection committees shall be created in the Finance and Administration Cabinet.

(b) One (1) or more engineering and related services selection committees shall be created in the Transportation Cabinet.

(2) Except when an emergency exists as defined by KRS 45A.095(3)***, when architectural or engineering services are procured under Sections 1 and 2 of this Act, or when the project is constructed under KRS 45A.045(11)(a) or (b)***:

(a) An architectural services selection committee created in the Finance and Administration Cabinet shall participate in every instance of that cabinet's procuring architectural services;

(b) An engineering services selection committee created in the Finance and Administration Cabinet shall participate in every instance of that cabinet's procuring engineering services; and

(c) An engineering and related services selection committee created in the Transportation Cabinet shall participate in every instance of that cabinet's procuring engineering or related services.

(3) An architectural services selection committee created in the Finance and Administration Cabinet shall consist of six (6) or more members selected in the manner specified within each paragraph:

(a) Two (2) architects. The secretary of the Finance and Administration Cabinet shall appoint a pool of ***at least*** six (6) architects who are employees of the cabinet. At least three (3) of the architects shall be merit employees of the cabinet. The secretary, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select architects from the pool. The first employee selected shall be placed on the selection committee. If the first employee selected is a merit employee, the second employee selected shall be placed on the selection committee. If the first employee selected is a nonmerit employee, the selection process shall continue until a merit employee is selected. That merit employee shall be placed on the selection committee;

(b) ***One (1) or more additional employees of the Department for Facilities Management, appointed by the commissioner of the Department for Facilities Management, to serve as a nonvoting technical adviser for a given project selection. Advisory members shall serve on a project-by-project basis and shall have the requisite knowledge, training, or experience pertaining to the professional requirements of the project.***

(c) Two (2) merit employees of the user agency appointed by the head of that agency to serve for the duration of the selection committee's participation in the project for which they were appointed by the user agency;

(d)[~~(c)~~]An ***architect***[~~individual~~]. The Kentucky Society of Architects shall nominate nine (9) ***architects***[~~individuals~~], and the Governor shall appoint three (3) of these ***architects***[~~individuals~~] to serve in the pool from which the secretary of the Finance and Administration Cabinet, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select one (1) ***architect***[~~individual~~] to serve on the committee; and

(e)[~~(d)~~]One (1) or more merit employees of the Auditor of Public Accounts, appointed by the Auditor, who shall serve as nonvoting members of the committee. If one (1) employee is appointed, then that employee shall attend all committee proceedings. If more than one (1) employee is appointed, then at least one (1) of the employees shall attend each committee proceeding.

(4) The engineering services selection committee created in the Finance and Administration Cabinet shall consist of six (6) or more members selected in the manner specified in each paragraph:

(a) Two (2) engineers. The secretary of the Finance and Administration Cabinet shall appoint a pool of ***at least*** six (6) engineers who are employees of the cabinet. At least three (3) of the engineers shall be merit employees of the cabinet. The secretary, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select engineers from the pool. The first employee selected shall be placed on the selection committee. If the first employee selected is a merit employee, the second employee selected shall be placed on the selection committee. If the first employee selected is a nonmerit employee, the selection process shall continue until a merit employee is selected. That merit employee shall be placed on the selection committee;

(b) Two (2) merit employees of the user agency appointed by the head of that agency to serve for the duration of the selection committee's participation in the project for which they were appointed by the user agency;

(c) An ***engineer***[~~individual~~]. The Kentucky Society of Professional Engineers and the Consulting Engineers Council of Kentucky shall together nominate nine (9) ***engineers***[~~individuals~~], and the Governor shall appoint three (3) of these ***engineers***[~~individuals~~] to serve in the pool from which the secretary of the Finance and Administration Cabinet, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select one (1) ***engineer***[~~individual~~] to serve on the committee; and

(d) One (1) or more merit employees of the Auditor of Public Accounts, appointed by the Auditor, who shall serve as nonvoting members of the committee. If one (1) employee is appointed, then that employee shall attend all committee proceedings. If more than one (1) employee is appointed, then at least one (1) of the employees shall attend each committee proceeding***; and***

(e) One (1) or more additional employees of the Department for Facilities Management to serve as nonvoting technical adviser for a specific project selection. Advisory members shall serve on a project-by-project basis and shall have the requisite knowledge, training, or experience pertaining to the professional requirements of the project.

(5)[~~Notwithstanding the provisions of subsections (3) and (4) of this section, when the Finance and Administration Cabinet procures for one (1) project architectural services for an estimated fee of fifty thousand dollars ($50,000) or more and engineering services for an estimated fee of one hundred thousand dollars ($100,000) or more, then:~~

~~(a) The secretary of the Finance and Administration Cabinet shall appoint one (1) of the cabinet engineers serving on the engineering services selection committee to serve as a nonvoting member of the architectural services selection committee; and~~

~~(b) He shall appoint one (1) of the cabinet architects serving on the architectural services selection committee to serve as a nonvoting member of the engineering services selection committee.~~

~~(6)~~] The engineering and related services selection committee created in the Transportation Cabinet shall consist of six (6) or more members selected in the manner specified in each paragraph:

(a) Two (2) engineers. The secretary of the Transportation Cabinet shall appoint a pool of six (6) engineers who are employees of the cabinet. At least three (3) of the engineers shall be merit employees of the cabinet. The secretary, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select engineers from the pool. The first employee selected shall be placed on the selection committee. If the first employee selected is a merit employee, the second employee selected shall be placed on the selection committee. If the first employee selected is a nonmerit employee, the selection process shall continue until a merit employee is selected. That merit employee shall be placed on the selection committee;

(b) Two (2) engineers who are merit employees of the user division appointed by the head of that division to serve for the duration of the selection committee's participation in the project for which they were appointed by the user agency. However, if two (2) user divisions have approximately equal responsibilities or separate responsibilities for the project, each user division head shall appoint one (1) member to the selection committee;

(c) An ***engineer***[~~individual~~]. The Kentucky Society of Professional Engineers and the Consulting Engineers Council of Kentucky shall together nominate nine (9) ***engineers***[~~individuals~~], and the Governor shall appoint three (3) of these ***engineers***[~~individuals~~] to serve in the pool from which the secretary of the Transportation Cabinet, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select one (1) ***engineer***[~~individual~~] to serve on the committee; and

(d) One (1) or more merit employees of the Auditor of Public Accounts, appointed by the Auditor, who shall serve as nonvoting members of the committee. If one (1) employee is appointed, then that employee shall attend all committee proceedings. If more than one (1) employee is appointed, then at least one (1) of the employees shall attend each committee proceeding.

(6)[~~(7)~~] (a) All selection committee members shall have experience which qualifies them to serve on the committee.

(b) The same appointment procedures set out in this section apply to any user agency or user division listed in subsection (3), (4), or (6) of this section that does not operate under a merit system.

(c) Any individual appointed to serve in a pool from which selection committee members are drawn shall serve in the pool for an initial one (1) year term and may be reappointed to succeed himself[~~ for another one (1) year term~~]. He shall serve until his successor is appointed and qualified.[~~ At the conclusion of his service in a pool, he shall be prohibited from serving in a pool until a year has elapsed.~~] A successor or a replacement, in the case of a vacancy in the pool, shall be appointed in the same manner as the initial appointee. If a selection committee member, drawn from a pool, leaves a selection committee, his replacement shall be drawn from the pool in the same manner as he. The replacement shall have the merit or nonmerit status of his predecessor.

(d) Any individual appointed by the Auditor of Public Accounts to serve on selection committees shall serve an initial one (1) year term and may be reappointed to succeed himself[~~ for another one (1) year term~~]. He shall serve until his successor is appointed and qualified. At the conclusion of his service, he shall be prohibited from serving on a selection committee until a year has elapsed. A successor or a replacement, in the case of a vacancy, shall be appointed in the same manner as the initial appointee.

(e) The selection committee members appointed by the head of a user agency or user division[~~ or pursuant to subsection (5) of this section~~] shall serve on a project-by-project basis. These members shall participate only in committee action related to the project for which they were appointed. A replacement, in the case of a vacancy, shall be appointed in the same manner as the initial appointee.

Section 5. KRS 45A.825 is amended to read as follows:

(1) (a) A firm shall not be considered for providing architectural or engineering services to the Finance and Administration Cabinet or engineering or related services to the Transportation Cabinet unless the relevant procuring agency has prequalified the firm prior to advertised notice of a request for proposals to which that firm intends to respond.

(b) A firm's prequalification shall remain in effect for twelve (12) months from the date of prequalification.

(2) (a) The procuring agency shall consult with the user agency or user division before arriving at a request for proposals.

(b) The request for proposals:

1. Shall include as an evaluation factor whether the work tasks are to be performed in Kentucky or outside Kentucky;

2. Shall indicate the relative weight of evaluation factors; and

3. Shall establish a timetable for:

a. The selection committee's first meeting held pursuant to subsection (6) of this section; and

b. The selection committee's activities conducted pursuant to subsection (7)(b) of this section or subsection (8)(b), (d), and (e) of this section, as appropriate.

(c) Through advertisement, and any other available means, the procuring agency shall provide notice of a request for proposals and notice of the materials that the procuring agency will provide to a firm to assist that firm in responding to a request for proposals. Those materials shall include, but not be limited to, the request for proposals and the project evaluation sheet to be used by the relevant selection committee. The advertisement shall also set a deadline for filing responses to a request for proposals with the procuring agency. It shall be the intent of this subsection that engineering and architectural firms in all regions of the Commonwealth are given an equal opportunity to be selected.

(3) A firm shall respond to a request for proposals by submitting, before the deadline, a one (1) page letter of interest as well as a completed form, devised by the procuring agency, which states the firm's experience and its qualifications for the project as described in the request for proposals. A firm which fails to meet the deadline shall be barred from the procurement process.

(4) The employees of a procuring agency and the members of the selection committee shall keep all responses to a request for proposals confidential until the procuring agency has awarded a contract.

(5) The secretary of the procuring agency shall designate a procuring agency employee to determine which firms have prequalified pursuant to subsection (1) of this section and have filed, in a timely fashion, responses to a request for proposals. He shall create a list of the firms which have done so and certify the list.

(6) The procuring agency shall organize the selection committee's first meeting. At that meeting, each selection committee member shall sign a statement of confidentiality. Also, at that meeting, the selection committee shall:

(a) Elect from among the voting members of the committee a chairman and a vice chairman who shall hold their positions for the duration of the selection committee's participation in the project;

(b) Be provided with:

1. The certified list created pursuant to subsection (5) of this section;

2. The firms' responses to the request for proposals;

3. The request for proposals;

4. The advertised notice of request for proposals; and

5. The project evaluation sheets; and

(c) Discuss the future conduct of its affairs.

(7) (a) When the Department of Transportation procures any engineering or related services, or when the Finance and Administration Cabinet procures architectural services for an estimated fee of less than fifty thousand dollars ($50,000) or engineering services for an estimated fee of less than one hundred thousand dollars ($100,000), this subsection and subsection (9) of this section shall govern the procurement process.

(b) The selection committee shall meet in executive session to:

1. Evaluate the materials with which it has been provided;
2. Select the three (3) most qualified firms and rank them in order of preference, based upon the weighted evaluation factors established in the request for proposals; and
3. Notify the procuring agency of the ranking.

(c) The procuring agency shall send a letter to each firm which responded to the request for proposals, informing the firm of:

1. The three (3) finalists;
2. Their ranking; and
3. The rest of the procedure that will be followed in the awarding of the contract.

(d) The procuring agency shall then begin negotiations with the top-ranked firm pursuant to subsection (9) of this section.

(8) (a) When the Finance and Administration Cabinet is procuring architectural services for an estimated fee of fifty thousand dollars ($50,000) or more or engineering services for an estimated fee of one hundred thousand dollars ($100,000) or more, this subsection and subsection (9) of this section shall govern the procurement process.

(b) The selection committee shall meet in executive session to:

1. Evaluate the materials with which it has been provided;
2. Select, but not rank, the three (3) most qualified firms, based upon the weighted evaluation factors established in the request for proposals; and
3. Notify the procuring agency of the three (3) finalists.

(c) The procuring agency shall send a letter to each firm which responded to the request for proposals, informing the firm of:

1. The three (3) finalists; and
2. The rest of the procedure that will be followed in the awarding of the contract.

(d) The selection committee shall interview the three (3) finalists, preferably on the same day. The finalists shall be interviewed one (1) at a time, and each interview shall be attended only by representatives of the finalist and members of the selection committee. Members of the selection committee shall keep confidential the substance of an interview until the procuring agency has awarded a contract.

(e) The selection committee shall meet in executive session to:

1. Rank the three (3) finalists based upon the weighted evaluation factors established in the request for proposals; and
2. Forward the ranking to the procuring agency.

(f) The procuring agency shall send a letter to each finalist, informing the finalist of:

1. His ranking; and
2. The rest of the procedure that will be followed in the awarding of the contract.

(g) The procuring agency shall then begin negotiations with the top-ranked firm pursuant to subsection (9) of this section.

(9) The secretary of the procuring agency shall designate a procuring agency employee as the procuring officer in charge of negotiating a contract with the top-ranked firm, as determined by the selection committee, at compensation which the procuring officer determines in writing to be fair and reasonable to the Commonwealth. In making this decision, the employee shall take into account the estimated value of the services to be rendered, and the scope, complexity, and professional nature thereof. Should the procuring officer be unable to negotiate a satisfactory contract with the top-ranked firm, at a price that he considers fair and reasonable to the Commonwealth, he shall formally terminate negotiations with the firm. The procuring officer shall then undertake negotiations with the second-ranked firm. Failing accord with the second-ranked firm, the purchasing officer shall formally terminate negotiations. The purchasing officer shall then undertake negotiations with the third-ranked firm. Should the purchasing officer be unable to negotiate a satisfactory contract with any of the selected firms, he shall formally terminate negotiations, and the procurement procedure shall start again from the beginning pursuant to KRS 45A.810.

(10) Once a procuring officer has negotiated a contract, the procuring agency shall send a letter to the other finalists, informing them of:

(a) Which firm has successfully negotiated a contract; and

(b) The rest of the procedure that will be followed in the awarding of the contract.

(11) Notwithstanding the provisions of KRS 45A.045, when the Transportation Cabinet is the procuring agency, the negotiated contract shall take effect without the approval of the secretary of the Finance and Administration Cabinet.

(12) The provisions of this section shall not apply to the procurement of architectural or engineering services under Sections 1 and 2 of this Act.

Section 6. KRS 45A.820 is amended to read as follows:

(1) Selection committee members who are not employees of state agencies or state universities shall receive a salary of ***two***[~~one~~] hundred dollars ***($200)***[~~($100)~~] per day for those days authorized by the selection committee for selection committee activities.

(2) Selection committee members who are employees of state agencies or state universities shall not receive a salary for their time spent on selection committee activities, and the state government salaries of these committee members shall not be reduced due to time spent away from other state government activities.

(3) All selection committee members shall be reimbursed for costs necessarily incurred in carrying out their duties. All reimbursements shall be authorized by the selection committee.

(4) The procuring agency shall pay all costs generated under this section by a selection committee.

Section 7. KRS 45A.830 is amended to read as follows:

(1) ***For architectural and engineering services procured under Section 5 of this Act,***[~~After~~] the procuring officer ***shall supply a copy of the proposed contract to each member of the selection committee involved in the procurement process after the procuring officer*** has negotiated an architectural or engineering services contract for the Finance and Administration Cabinet or an engineering or related services contract for the Transportation Cabinet, but before the contract is submitted to the Personal Service Contract Review Subcommittee[~~, the procuring officer shall supply a copy of the proposed contract to each member of the selection committee involved in the procurement process~~].

(2) ***For architectural and engineering services procured under Section 5 of this Act,*** the secretary of the procuring agency, the procuring officer, and each voting member of the selection committee shall sign separate certificates, devised by the procuring agency, which shall provide the signatory with the option of certifying that, to the best of his knowledge, he is either aware or unaware of circumstances which may constitute a violation of this chapter which has arisen in the procurement process. Any employee of the Auditor of Public Accounts, who was appointed to serve as a nonvoting member of the selection committee and who attended any committee proceeding, shall participate in the preparation of a report for filing with the Personal Service Contract Review Subcommittee certifying that the applicable procedural provisions of subsections (4), (6), (7), and (8) of KRS 45A.825 were, or were not, met. Before filing the report, the employee or employees who participated in its preparation shall sign it.

(3) ***For architectural and engineering services procured under Section 5 of this Act,*** the procuring agency shall file with the Personal Service Contract Review Subcommittee:

(a) The certificates;

(b) The selection committee's ranking of firms; and

(c) A statement affirming that responding firms in all regions of the Commonwealth were given equal consideration for selection.

The Committee Substitute to **HB 391** is as follows:

AN ACT relating to architectural and engineering services.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding the provisions of KRS 45A.800 to 45A.835, the Finance and Administration Cabinet and the Transportation Cabinet may enter into price contracts for architectural, engineering, and engineering-related services. If the agencies choose to enter into a price contract, subsection (2) of this section shall apply.

(2) Price contracts shall be awarded to firms qualified by the Finance and Administration Cabinet, Department of Facilities Management or by the Transportation Cabinet, Department of Highways. The Finance and Administration Cabinet selection committee established by Section 4 of this Act shall meet at least quarterly during each fiscal year to review and make recommendations to the commissioner of the Department for Facilities Management for qualification of interested firms. The Transportation Cabinet selection committee established by Section 4 of this Act shall meet at least quarterly during each fiscal year to review and make recommendations to the commissioner of the Department of Highways for qualification of interested firms.

(a) The respective committees shall evaluate those firms submitting statements of interest in obtaining a price contract. The submitting firms shall be reviewed according to the following criteria:

1. Qualifications;

2. Ability of professional personnel; and

3. Past record and experience.

(b) Firms qualified by the commissioner of the Department for Facilities Management or by the commissioner of the Department of Highways shall be awarded price contracts by the respective departments for the type of work for which they have been qualified.

(c) The commissioner of the Department for Facilities Management or the commissioner of the Department of Highways may select firms to perform work under price contract for small projects for which the architectural, engineering, or engineering-related fees do not exceed fifty thousand dollars ($50,000). However, no firm that has received more than one hundred thousand dollars ($100,000) in price contract fees in any one (1) fiscal year in the contract discipline being awarded shall be selected to work under a price contract unless the secretary of finance and administration or the secretary of transportation makes a written determination that the selection is in the best interest of the Commonwealth and the determination is confirmed by the appropriate cabinet's selection committee established by Section 4 of this Act.

SECTION 2. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) If choosing to operate under this section, the Finance and Administration Cabinet and the Transportation Cabinet shall, by administrative regulations promulgated under KRS Chapter 13A, designate each type of project for which a pool of firms is to be established and from which the firm to provide the needed architectural, engineering, or engineering-related contract services is to be selected. The project types designated by these administrative regulations shall be limited to those projects for which the professional services to be rendered for each individual contract are substantially similar and to those project types for which architectural, engineering, or engineering-related fees are expected to be at least fifty thousand dollars ($50,000).

(2) (a) The Finance and Administration Cabinet selection committee established in Section 4 of this Act, without the user agency representative, shall annually select the architectural, engineering, or engineering-related services firms for each pool in accordance with the standards for application and selection established by administrative regulation under subsection (4) of this section; and

(b) The Transportation Cabinet selection committee established under Section 4 of this Act shall annually select the engineering or engineering-related services firms for each pool in accordance with the standards for application and selection established by administrative regulation under subsection (4) of this section.

(3) Once selected for a particular pool, a firm providing architectural, engineering, or engineering-related services shall remain in the pool for two (2) years unless disqualified under subsection (6) of this section. Upon the expiration of the two (2) year period, a firm may reapply for selection.

(4) The procedures and criteria for qualifying and selecting the firms to be placed in each annual pool shall be set forth in administrative regulations promulgated by the Finance and Administration Cabinet and the Transportation Cabinet. The administrative regulations shall provide for adequate notice to firms of the establishment of the individual pools, an application procedure for a firm interested in the pool for a particular type of project, the deadline for submission of the application, and the criteria to be used for the establishment of each pool.

(5) The procedures for determining which firm is to be selected from the pool to provide services for a particular project shall be set forth in administrative regulations promulgated by the Finance and Administration Cabinet and the Transportation Cabinet.

(6) The secretary of finance and administration or the secretary of transportation may remove a firm from a pool for good cause. Any firm that has been removed from a pool may, within thirty (30) days after the removal, petition the secretary who removed the firm for reinstatement. Within sixty (60) days following the secretary's receipt of a petition, the selection committee, without the Finance and Administration Cabinet user representative, shall meet to consider the request for reinstatement. If the selection committee recommends that the firm be reinstated to the pool and the secretary accepts the recommendation, the affected firm shall be reinstated.

(7) After one (1) year of disqualification, a firm that has been removed from a pool under subsection (6) of this section may reapply to be qualified.

(8) Nothing in this section shall be construed to require use of any pool for a particular project if the responsible cabinet has determined that the project does not meet the criteria established for pool projects.

Section 3. KRS 45A.800 is amended to read as follows:

As used in KRS 45A.800 to 45A.835, 45A.195, 45A.440, and 45A.695, unless the context requires otherwise:

(1) "Architect" means an architect licensed[~~ to practice~~] under KRS Chapter 323 or a landscape architect licensed[~~ to practice~~] under KRS Chapter 323A;

(2) "Engineer" means an engineer licensed[~~ to practice~~] under KRS Chapter 322;

(3) "Procuring agency" means either the Finance and Administration Cabinet or the Transportation Cabinet;

(4) "Project" means any undertaking requiring[~~ the~~] professional ***architectural, engineering, or engineering-related*** services[~~ of an architect or engineer~~], except as provided in KRS 45A.100;

(5) "User agency" means the state agency or any public supported institution of higher education, when it declines to exercise the authority granted under KRS 164A.590, that will occupy or otherwise be the primary beneficiary of a completed Finance and Administration Cabinet project;[~~ and~~]

(6) "User division" means the division of the Transportation Cabinet that requires the procuring of engineering ***or engineering-related*** services for a project***;***

(7) "Engineering-related services" means specialized professional services performed by individuals, consultants, or other organizations of recognized technical competence, education, or experience that are involved in the planning, design, construction, maintenance, or operation of Kentucky's transportation systems or construction projects; and

(8) "Firm" means an individual or other entity that offers professional architectural, engineering, or engineering-related services.

Section 4. KRS 45A.810 is amended to read as follows:

(1) (a) One (1) or more architectural services selection committees and one (1) or more engineering ***or engineering-related*** services selection committees shall be created in the Finance and Administration Cabinet.

(b) One (1) or more engineering and ***engineering-related***[~~engineering~~] services selection committees shall be created in the Transportation Cabinet.

(2) Except when an emergency exists as defined by KRS 45A.095(3)***, when architectural, engineering, or engineering-related services are procured under Sections 1 and 2 of this Act, or when the project is constructed under KRS 45A.045(11)(a) or (b)***:

(a) An architectural services selection committee created in the Finance and Administration Cabinet shall participate in every instance of that cabinet's procuring architectural services;

(b) An engineering ***and engineering-related*** services selection committee created in the Finance and Administration Cabinet shall participate in every instance of that cabinet's procuring engineering ***or engineering-related*** services; and

(c) An engineering and ***engineering-related***[~~related~~] services selection committee created in the Transportation Cabinet shall participate in every instance of that cabinet's procuring engineering or ***engineering-related***[~~related~~] services.

(3) An architectural services selection committee created in the Finance and Administration Cabinet shall consist of six (6) or more members selected in the manner specified within each paragraph:

(a) Two (2) architects. The secretary of the Finance and Administration Cabinet shall appoint a pool of ***at least*** six (6) architects who are employees of the cabinet. At least three (3) of the architects shall be merit employees of the cabinet. The secretary, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select architects from the pool. The first employee selected shall be placed on the selection committee. If the first employee selected is a merit employee, the second employee selected shall be placed on the selection committee. If the first employee selected is a nonmerit employee, the selection process shall continue until a merit employee is selected. That merit employee shall be placed on the selection committee;

(b) ***One (1) or more additional employees of the Department for Facilities Management, appointed by the commissioner of the Department for Facilities Management, to serve as a nonvoting technical adviser for a given project selection. Advisory members shall serve on a project-by-project basis and shall have the requisite knowledge, training, or experience pertaining to the professional requirements of the project.***

(c) Two (2) merit employees of the user agency appointed by the head of that agency to serve for the duration of the selection committee's participation in the project for which they were appointed by the user agency;

(d)[~~(c)~~]An individual. The Kentucky Society of Architects shall nominate nine (9) individuals, and the Governor shall appoint three (3) of these individuals to serve in the pool from which the secretary of the Finance and Administration Cabinet, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select one (1) individual to serve on the committee;[~~ and~~]

(e)[~~(d)~~]One (1) or more merit employees of the Auditor of Public Accounts, appointed by the Auditor, who ***may, at the discretion of the Auditor,***[~~shall~~] serve as nonvoting members of the committee. If one (1) employee is appointed, then that employee ***may***[~~shall~~] attend ***any***[~~all~~] committee proceedings. If more than one (1) employee is appointed, then ***either***[~~at least one (1)~~] of the employees ***may***[~~shall~~] attend ***any***[~~each~~] committee proceeding***; and***

(f) Upon completion of the selection process set forth in this subsection, the commissioner of the Department of

Facilities Management shall submit a statement to the Auditor of Public Accounts attesting to full compliance with the selection process for each architectural firm appointed to provide architectural services. In addition, a complete record of the selection process for each project shall be maintained by the department and shall be subject to audit by the Auditor of Public Accounts.

(4) The engineering ***and engineering-related*** services selection committee created in the Finance and Administration Cabinet shall consist of six (6) or more members selected in the manner specified in each paragraph:

(a) Two (2) engineers. The secretary of the Finance and Administration Cabinet shall appoint a pool of ***at least*** six (6) engineers who are employees of the cabinet. At least three (3) of the engineers shall be merit employees of the cabinet. The secretary, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select engineers from the pool. The first employee selected shall be placed on the selection committee. If the first employee selected is a merit employee, the second employee selected shall be placed on the selection committee. If the first employee selected is a nonmerit employee, the selection process shall continue until a merit employee is selected. That merit employee shall be placed on the selection committee;

(b) Two (2) merit employees of the user agency appointed by the head of that agency to serve for the duration of the selection committee's participation in the project for which they were appointed by the user agency;

(c) An individual. The Kentucky Society of Professional Engineers and the Consulting Engineers Council of Kentucky shall together nominate nine (9) individuals, and the Governor shall appoint three (3) of these individuals to serve in the pool from which the secretary of the Finance and Administration Cabinet, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select one (1) individual to serve on the committee;[~~ and~~]

(d) One (1) or more merit employees of the Auditor of Public Accounts, appointed by the Auditor, who ***may, at the discretion of the Auditor,***[~~shall~~] serve as nonvoting members of the committee. If one (1) employee is appointed, then that employee ***may***[~~shall~~] attend ***any***[~~all~~] committee proceedings. If more than one (1) employee is appointed, then ***either***[~~at least one (1)~~] of the employees ***may***[~~shall~~] attend ***any***[~~each~~] committee proceeding***;***

(e) One (1) or more additional employees of the Department for Facilities Management to serve as nonvoting technical adviser for a specific project selection. Advisory members shall serve on a project-by-project basis and shall have the requisite knowledge, training, or experience pertaining to the professional requirements of the project; and

(f) Upon completion of the selection process set forth in this subsection, the commissioner of the Department of Facilities Management shall submit a statement to the Auditor of Public Accounts attesting to full compliance with the selection process for each firm appointed to provide engineering or engineering-related services. In addition, a complete record of the selection process for each project shall be maintained by the department and shall be subject to audit by the Auditor of Public Accounts.

(5)[~~Notwithstanding the provisions of subsections (3) and (4) of this section, when the Finance and Administration Cabinet procures for one (1) project architectural services for an estimated fee of fifty thousand dollars ($50,000) or more and engineering services for an estimated fee of one hundred thousand dollars ($100,000) or more, then:~~

~~(a) The secretary of the Finance and Administration Cabinet shall appoint one (1) of the cabinet engineers serving on the engineering services selection committee to serve as a nonvoting member of the architectural services selection committee; and~~

~~(b) He shall appoint one (1) of the cabinet architects serving on the architectural services selection committee to serve as a nonvoting member of the engineering services selection committee.~~

~~(6)~~] The engineering and ***engineering-related***[~~related~~] services selection committee created in the Transportation Cabinet shall consist of six (6) or more members selected in the manner specified in each paragraph:

(a) Two (2) engineers. The secretary of the Transportation Cabinet shall appoint a pool of six (6) engineers who are employees of the cabinet. At least three (3) of the engineers shall be merit employees of the cabinet. The secretary, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select engineers from the pool. The first employee selected shall be placed on the selection committee. If the first employee selected is a merit employee, the second employee selected shall be placed on the selection committee. If the first employee selected is a nonmerit employee, the selection process shall continue until a merit employee is selected. That merit employee shall be placed on the selection committee;

(b) Two (2) engineers who are merit employees of the user division appointed by the head of that division to serve for the duration of the selection committee's participation in the project for which they were appointed by the user agency. However, if two (2) user divisions have approximately equal responsibilities or separate responsibilities for the project, each user division head shall appoint one (1) member to the selection committee;

(c) An individual. The Kentucky Society of Professional Engineers and the Consulting Engineers Council of Kentucky shall together nominate nine (9) individuals, and the Governor shall appoint three (3) of these individuals to serve in the pool from which the secretary of the Transportation Cabinet, or his designee, under the supervision of the Auditor of Public Accounts, or his designee, shall randomly select one (1) individual to serve on the committee;~~[and]~~

(d) One (1) or more merit employees of the Auditor of Public Accounts, appointed by the Auditor, who ***may, at the discretion of the Auditor,***~~[shall]~~ serve as nonvoting members of the committee. If one (1) employee is appointed, then that employee ***may***~~[shall]~~ attend ***any***~~[all]~~ committee proceedings. If more than one (1) employee is appointed, then ***either***~~[at least one (1)]~~ of the employees ***may***~~[shall]~~ attend ***any***~~[each]~~ committee proceeding***; and***

(e) Upon completion of the selection process set forth in this subsection, the commissioner of the Department of Highways shall submit a statement to the Auditor of Public Accounts attesting to full compliance with the selection process for each firm appointed to provide engineering or engineering-related services. In addition, a complete record of the selection process for each project shall be maintained by the department and shall be subject to audit by the Auditor of Public Accounts.

(6)~~[(7)]~~ (a) All selection committee members shall have experience which qualifies them to serve on the committee.

(b) The same appointment procedures set out in this section apply to any user agency or user division listed in subsection (3), (4), or (6) of this section that does not operate under a merit system.

(c) Any individual appointed to serve in a pool from which selection committee members are drawn shall serve in the pool for an initial one (1) year term and may be reappointed to succeed himself~~[for another one (1) year term]~~. He shall serve until his successor is appointed and qualified.~~[At the conclusion of his service in a pool, he shall be prohibited from serving in a pool until a year has elapsed.]~~ A successor or a replacement, in the case of a vacancy in the pool, shall be appointed in the same manner as the initial appointee. If a selection committee member, drawn from a pool, leaves a selection committee, his replacement shall be drawn from the pool in the same manner as he. The replacement shall have the merit or nonmerit status of his predecessor.

(d) Any individual appointed by the Auditor of Public Accounts to serve on selection committees shall serve an initial one (1) year term and may be reappointed to succeed himself~~[for another one (1) year term]~~. He shall serve until his successor is appointed and qualified.~~[At the conclusion of his service, he shall be prohibited from serving on a selection committee until a year has elapsed.]~~ A successor or a replacement, in the case of a vacancy, shall be appointed in the same manner as the initial appointee.

(e) The selection committee members appointed by the head of a user agency or user division~~[or pursuant to subsection (5) of this section]~~ shall serve on a project-by-project basis. These members shall participate only in committee action related to the project for which they were appointed. A replacement, in the case of a vacancy, shall be appointed in the same manner as the initial appointee.

Section 5. KRS 45A.825 is amended to read as follows:

(1) (a) A firm shall not be considered for providing architectural***, engineering,*** or ***engineering-related***~~[engineering]~~ services to the Finance and Administration Cabinet or engineering or ***engineering-related***~~[related]~~ services to the Transportation Cabinet unless the relevant procuring agency has prequalified the firm prior to advertised notice of a request for proposals to which that firm intends to respond.

(b) A firm's prequalification shall remain in effect for twelve (12) months from the date of prequalification.

(2) (a) The procuring agency shall consult with the user agency or user division before arriving at a request for proposals.

(b) The request for proposals:

1. Shall include as an evaluation factor whether the work tasks are to be performed in Kentucky or outside Kentucky;

2. Shall indicate the relative weight of evaluation factors; and

3. Shall establish a timetable for:

a. The selection committee's first meeting held pursuant to subsection (6) of this section; and

b. The selection committee's activities conducted pursuant to subsection (7)(b) of this section or subsection (8)(b), (d), and (e) of this section, as appropriate.

(c) Through advertisement, and any other available means, the procuring agency shall provide notice of a request for proposals and notice of the materials that the procuring agency will provide to a firm to assist that firm in responding to a request for proposals. Those materials shall include, but not be limited to, the request for proposals and the project evaluation sheet to be used by the relevant selection committee. The advertisement shall also set a deadline for filing responses to a request for proposals with the procuring agency. It shall be the intent of this subsection that~~[engineering and architectural]~~ firms in all regions of the Commonwealth are given an equal opportunity to be selected.

(3) A firm shall respond to a request for proposals by submitting, before the deadline, a one (1) page letter of interest as well

as a completed form, devised by the procuring agency, which states the firm's experience and its qualifications for the project as described in the request for proposals. A firm which fails to meet the deadline shall be barred from the procurement process.

(4) The employees of a procuring agency and the members of the selection committee shall keep all responses to a request for proposals confidential until the procuring agency has awarded a contract.

(5) The secretary of the procuring agency shall designate a procuring agency employee to determine which firms have prequalified pursuant to subsection (1) of this section and have filed, in a timely fashion, responses to a request for proposals. He shall create a list of the firms which have done so and certify the list.

(6) The procuring agency shall organize the selection committee's first meeting. At that meeting, each selection committee member shall sign a statement of confidentiality. Also, at that meeting, the selection committee shall:

(a) Elect from among the voting members of the committee a chairman and a vice chairman who shall hold their positions for the duration of the selection committee's participation in the project;

(b) Be provided with:

1. The certified list created pursuant to subsection (5) of this section;
2. The firms' responses to the request for proposals;
3. The request for proposals;
4. The advertised notice of request for proposals; and
5. The project evaluation sheets; and

(c) Discuss the future conduct of its affairs.

(7) (a) When the~~[Department of]~~ Transportation ***Cabinet*** procures any engineering or ***engineering-related***~~[related]~~ services, or when the Finance and Administration Cabinet procures architectural services for an estimated fee of less than fifty thousand dollars ($50,000) or engineering ***or engineering-related*** services for an estimated fee of less than one hundred thousand dollars ($100,000), this subsection and subsection (9) of this section shall govern the procurement process.

(b) The selection committee shall meet in executive session to:

1. Evaluate the materials with which it has been provided;
2. Select the three (3) most qualified firms and rank them in order of preference, based upon the weighted evaluation factors established in the request for proposals; and
3. Notify the procuring agency of the ranking.

(c) The procuring agency shall send a letter to each firm which responded to the request for proposals, informing the firm of:

1. The three (3) finalists;
2. Their ranking; and
3. The rest of the procedure that will be followed in the awarding of the contract.

(d) The procuring agency shall then begin negotiations with the top-ranked firm pursuant to subsection (9) of this section.

(8) (a) When the Finance and Administration Cabinet is procuring architectural services for an estimated fee of fifty thousand dollars ($50,000) or more or engineering ***or engineering-related*** services for an estimated fee of one hundred thousand dollars ($100,000) or more, this subsection and subsection (9) of this section shall govern the procurement process.

(b) The selection committee shall meet in executive session to:

1. Evaluate the materials with which it has been provided;
2. Select, but not rank, the three (3) most qualified firms, based upon the weighted evaluation factors established in the request for proposals; and
3. Notify the procuring agency of the three (3) finalists.

(c) The procuring agency shall send a letter to each firm which responded to the request for proposals, informing the firm of:

1. The three (3) finalists; and
2. The rest of the procedure that will be followed in the awarding of the contract.

(d) The selection committee shall interview the three (3) finalists, preferably on the same day. The finalists shall be interviewed one (1) at a time, and each interview shall be attended only by representatives of the finalist and members of the selection committee. Members of the selection committee shall keep confidential the substance of an interview until the procuring agency has awarded a contract.

(e) The selection committee shall meet in executive session to:

1. Rank the three (3) finalists based upon the weighted evaluation factors established in the request for proposals; and

2. Forward the ranking to the procuring agency.

(f) The procuring agency shall send a letter to each finalist, informing the finalist of:

1. His ranking; and

2. The rest of the procedure that will be followed in the awarding of the contract.

(g) The procuring agency shall then begin negotiations with the top-ranked firm pursuant to subsection (9) of this section.

(9) The secretary of the procuring agency shall designate a procuring agency employee as the procuring officer in charge of negotiating a contract with the top-ranked firm, as determined by the selection committee, at compensation which the procuring officer determines in writing to be fair and reasonable to the Commonwealth. In making this decision, the employee shall take into account the estimated value of the services to be rendered, and the scope, complexity, and professional nature thereof. Should the procuring officer be unable to negotiate a satisfactory contract with the top-ranked firm, at a price that he considers fair and reasonable to the Commonwealth, he shall formally terminate negotiations with the firm. The procuring officer shall then undertake negotiations with the second-ranked firm. Failing accord with the second-ranked firm, the purchasing officer shall formally terminate negotiations. The purchasing officer shall then undertake negotiations with the third-ranked firm. Should the purchasing officer be unable to negotiate a satisfactory contract with any of the selected firms, he shall formally terminate negotiations, and the procurement procedure shall start again from the beginning pursuant to KRS 45A.810.

(10) Once a procuring officer has negotiated a contract, the procuring agency shall send a letter to the other finalists, informing them of:

(a) Which firm has successfully negotiated a contract; and

(b) The rest of the procedure that will be followed in the awarding of the contract.

(11) Notwithstanding the provisions of KRS 45A.045, when the Transportation Cabinet is the procuring agency, the negotiated contract shall take effect without the approval of the secretary of the Finance and Administration Cabinet.

(12) The provisions of this section shall not apply to the procurement of architectural, engineering, or engineering-related services under Sections 1 and 2 of this Act.

Section 6. KRS 45A.820 is amended to read as follows:

(1) Selection committee members who are not employees of state agencies or state universities shall receive a salary of ***two***~~[one]~~ hundred dollars ***($200)***~~[($100)]~~ per day for those days authorized by the selection committee for selection committee activities.

(2) Selection committee members who are employees of state agencies or state universities shall not receive a salary for their time spent on selection committee activities, and the state government salaries of these committee members shall not be reduced due to time spent away from other state government activities.

(3) All selection committee members shall be reimbursed for costs necessarily incurred in carrying out their duties. All reimbursements shall be authorized by the selection committee.

(4) The procuring agency shall pay all costs generated under this section by a selection committee.

Section 7. KRS 45A.830 is amended to read as follows:

(1) ***For architectural, engineering, and engineering-related services procured under Section 5 of this Act,***~~[After]~~ the procuring officer ***shall make available a copy of the proposed contract to each member of the selection committee involved in the procurement process after the procuring officer*** has negotiated an architectural***, engineering,*** or ***engineering-related***~~[engineering]~~ services contract for the Finance and Administration Cabinet or an engineering or ***engineering-related***~~[related]~~ services contract for the Transportation Cabinet, but before the contract is submitted to the Personal Service Contract Review Subcommittee~~[, the procuring officer shall supply a copy of the proposed contract to each member of the selection committee involved in the procurement process]~~.

(2) ***For architectural, engineering, and engineering-related services procured under Section 5 of this Act,*** the secretary of the procuring agency, the procuring officer, and each voting member of the selection committee shall sign separate certificates, devised by the procuring agency, which shall provide the signatory with the option of certifying that, to the best of his knowledge, he is either aware or unaware of circumstances which may constitute a violation of this chapter which has arisen in the procurement process. Any employee of the Auditor of Public Accounts, who ***served***~~[was appointed to serve]~~ as a nonvoting member of the selection committee and who attended any committee proceeding, ***may***~~[shall]~~ participate in the preparation of a report for filing with the Personal Service Contract Review Subcommittee

certifying that the applicable procedural provisions of subsections (4), (6), (7), and (8) of KRS 45A.825 were, or were not, met. Before filing the report, the employee or employees who participated in its preparation shall sign it.

(3) ***For architectural, engineering, and engineering-related services procured under Section 5 of this Act,*** the procuring agency shall file with the Personal Service Contract Review Subcommittee:

- (a) The certificates;
- (b) The selection committee's ranking of firms; and
- (c) A statement affirming that responding firms in all regions of the Commonwealth were given equal consideration for selection.

Section 8. KRS 45A.805 is amended to read as follows:

(1) The General Assembly finds and declares it to be the policy of the Commonwealth of Kentucky to:

- (a) Insure the fair and equitable treatment of all firms interested in providing architectural***, engineering,*** or ***engineering-related***[~~engineering~~] services to the Commonwealth;
- (b) Announce publicly all requirements for architectural***, engineering,*** and ***engineering-related***[~~engineering~~] services; and
- (c) Award a contract for architectural***, engineering,*** or ***engineering-related***[~~engineering~~] services to the best firm, qualified to perform the work on a project, on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

Section 9. Whereas it is imperative to make changes in the architect and engineer procurement procedure in order to insure timely construction of projects funded by the 1998 General Assembly, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

The Committee Amendment No. 1 Title to **HB 391** is as follows:

By inserting, after "services", the words "and declaring an emergency".

HB 393, AN ACT relating to aviation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 6 of this Act, unless the context otherwise requires:

(1) "Division of Air Transport" includes the capital city airport;

(2) "State aircraft" means aircraft owned by the Commonwealth, leased by the Commonwealth, or otherwise under the control of the Commonwealth and administratively assigned to the Division of Air Transport. It shall also include air charters by the division; and

(3) "Official business" means any activity involving travel in a state aircraft if the activity is reasonably required, expected, or appropriate, considering the nature of the using public official's job responsibilities. The activities shall include, but not be limited to, attendance by officials at nonpartisan ceremonial functions and events where their appearance is normally expected by virtue of their office or where official representation of the Commonwealth is otherwise appropriate, and to nonpolitical flights by the Governor and members of his immediate family when accompanying or representing him.

SECTION 2. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

(1) The Adjutant General of Kentucky, as executive head of the Department of Military Affairs, shall be responsible for overall policy development and supervision of the Division of Air Transport and capital city airport.

(2) An airport administrator shall be employed by the Department of Military Affairs.

(3) The airport administrator of the capital city airport shall be responsible, under the supervision of the Adjutant General, for the management and administration of the Division of Air Transport and the capital city airport.

SECTION 3. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

(1) The functions of the Division of Air Transport shall be to:

- ***(a) Manage and operate the capital city airport;***
- ***(b) Oversee the maintenance and care of all state aircraft;***
- ***(c) Control the scheduling and operational use of state aircraft, including air charters; and***
- ***(d) Collect from using agencies and officers the costs of operating state aircraft, including air charters.***

(2) Subject to the approval of the Adjutant General and in accordance with applicable state and federal statutes and regulations, the division shall promulgate administrative regulations under KRS Chapter 13A to:

(a) Establish user fees to be paid by users of the services and facilities of the capital city airport for charges including, but not limited to, hangar fees, tie-down fees, fuel, and aircraft supplies; and

(b) Establish fees for the usage of state aircraft.

SECTION 4. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

(1) Except as provided in subsection (2) of this section, state aircraft, including air charters, shall be used only for official business.

(2) State aircraft shall not be used for personal business, except when the Governor or Lieutenant Governor, for reasons of security, protocol, ceremonial functions, or overall demands of time, require travel considerations not accorded to other officials. In recognition of these realities, flights that may be solely for personal business, or partly for official business or partly for personal business, may be scheduled for the Governor or the Lieutenant Governor and their immediate families.

(a) The cost of flights scheduled solely for personal business of the Governor or Lieutenant Governor shall be charged to that officer in accordance with the rate schedule set forth in the administrative regulations authorized by Section 3 of this Act.

(b) If a particular flight is in part official business and part personal business, the Governor or the Lieutenant Governor shall make a reasonable allocation of the flight time between official and personal business and be responsible for paying with non-state funds to the Division of Air Transport the charge for the part of the flight that is allocable to personal business. The rate charged shall be calculated using costs that would be considered in a rate developed by a commercial air charter company. In these cases, the allocation made and the basis for the allocation shall be indicated on the aircraft request form.

(3) Constitutional officers, other elected state officials, members of the General Assembly, officers and employees of the cabinets, departments, and agencies of state government, officers and employees of other governmental units, and other persons traveling under the auspices of a state agency or in connection with state business deemed desirable by an agency head, including dependents of state officials, and news media representatives and other persons having an interest in the official purpose of the trip may be authorized to use state aircraft. Charges for travel in state aircraft shall be paid by the requesting state agency in accordance with the rate schedule established in administrative regulations authorized by Section 3 of this Act.

SECTION 5. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

(1) All requests for use of state aircraft shall be approved in advance by the:

(a) Constitutional officer;

(b) Program cabinet secretary or his designee in writing;

(c) For the judicial branch, the Chief Justice of the Supreme Court or the director of the Administrative Office of the Courts; or

(d) For the legislative branch, the co-chairs of the Legislative Research Commission or the director of the Legislative Research Commission.

(2) Verbal requests for state aircraft transportation may be honored. However, all requests for state aircraft shall be provided in writing to the division within five (5) working days of the date of the flight.

(3) Approving officials shall be responsible for determining that a trip is for official business, that use of state aircraft is the most appropriate means of transportation, and that the proposed passenger complement conforms to the requirements of subsection (3) of Section 4 of this Act. In determining the passenger complement, requesting agencies shall weigh the benefit to the agency of the inclusion of additional passengers against the increased costs that might be incurred if a larger aircraft is required to accommodate additional passengers on a trip.

(4) All requests for use of state aircraft shall be submitted on a form prescribed by the Division of Air Transport and shall contain at a minimum the following information:

(a) Cabinet or agency name;

(b) Department name with appropriate billing account number;

(c) Purpose of the trip;

(d) Destination, including any planned stopovers and the reason for them;

(e) Names of all passengers on the flight; and

(f) Identification of any percentage of the flight that is for personal business in cases of the Governor or Lieutenant Governor as allowed under Section 4 of this Act.

SECTION 6. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

(1) The Division of Air Transport shall arrange for all trips and maintain flight cards, passenger manifests, payment documents, and interaccount bills pertaining to each flight.

(2) Pilots for all state agencies shall maintain a flight manifest for all flights which shall include the passengers' names, information pertaining to points of origin and destination, and any side trips or stopovers for each flight.

(3) The Division of Air Transport shall maintain original manifests for all trips using state aircraft.

(4) Originals of requests for the use of state aircraft shall be kept by the Division of Air Transport, with the following exceptions:

(a) The Governor and Lieutenant Governor shall maintain originals of all requests for the use of state aircraft made by their respective offices; and

(b) In cases where the secretary of the Cabinet for Economic Development has certified in an aircraft request that disclosure of the identities of passengers or the purpose of a trip will violate needs for confidentiality required for economic development efforts, the secretary of the Cabinet for Economic Development shall maintain complete original records of the request in his office.

The Committee Substitute to **HB 393** is as follows:

AN ACT relating to aviation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 6 of this Act, unless the context otherwise requires:

(1) "Division of Air Transport" includes the capital city airport;

(2) "State aircraft" means aircraft owned by the Commonwealth, leased by the Commonwealth, or otherwise under the control of the Commonwealth and administratively assigned to the Division of Air Transport. It shall also include air charters by the division; and

(3) "Official business" means any activity involving travel in a state aircraft if the activity is reasonably required, expected, or appropriate, considering the nature of the using public official's job responsibilities. The activities shall include, but not be limited to, attendance by officials at nonpartisan ceremonial functions and events where their appearance is normally expected by virtue of their office or where official representation of the Commonwealth is otherwise appropriate, and to nonpolitical flights by the Governor and members of his immediate family when accompanying or representing him.

SECTION 2. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

(1) The Adjutant General of Kentucky, as executive head of the Department of Military Affairs, shall be responsible for overall policy development and supervision of the Division of Air Transport and capital city airport.

(2) A division director shall head the Division of Air Transport within the Department of Military Affairs.

(3) The division director shall be responsible for the management and administration of the Division of Air Transport and the capital city airport.

SECTION 3. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

(1) The functions of the Division of Air Transport shall be to:

(a) Manage and operate the capital city airport;

(b) Oversee the maintenance and care of all state aircraft;

(c) Control the scheduling and operational use of state aircraft, including air charters; and

(d) Collect from using agencies and officers the costs of operating state aircraft, including air charters.

(2) Subject to the approval of the Adjutant General and in accordance with applicable state and federal statutes and regulations, the division shall promulgate administrative regulations under KRS Chapter 13A to:

(a) Establish user fees to be paid by users of the services and facilities of the capital city airport for charges including, but not limited to, hangar fees, tie-down fees; fuel, and aircraft supplies; and

(b) Establish fees for the usage of state aircraft.

SECTION 4. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

(1) Except as provided in subsection (2) of this section, state aircraft, including air charters, shall be used only for official business.

(2) State aircraft shall not be used for personal business, except when the Governor or Lieutenant Governor, for reasons of security, protocol, ceremonial functions, or overall demands of time, require travel considerations not accorded to other officials. In recognition of these realities, flights that may be solely for personal business, or partly for official business or partly for personal business, may be scheduled for the Governor or the Lieutenant Governor and their immediate families.

(a) The cost of flights scheduled solely for personal business of the Governor or Lieutenant Governor shall be charged to that officer in accordance with the rate schedule set forth in the administrative regulations authorized by Section 3 of this Act.

(b) If a particular flight is in part official business and part personal business, the Governor or the Lieutenant Governor shall make a reasonable allocation of the flight time between official and personal business and be responsible for paying with non-state funds to the Division of Air Transport the charge for the part of the flight that is allocable to personal business. The rate charged shall be calculated using costs that would be considered in a rate developed by a commercial air charter company. In these cases, the allocation made and the basis for the allocation shall be indicated on the aircraft request form.

(3) Constitutional officers, other elected state officials, members of the General Assembly, officers and employees of the cabinets, departments, and agencies of state government, officers and employees of other governmental units, and other persons traveling under the auspices of a state agency or in connection with state business deemed desirable by an agency head, including dependents of state officials, and news media representatives and other persons having an interest in the official purpose of the trip may be authorized to use state aircraft. Charges for travel in state aircraft shall be paid by the requesting state agency in accordance with the rate schedule established in administrative regulations authorized by Section 3 of this Act.

SECTION 5. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

(1) All requests for use of state aircraft shall be approved in advance by the:

(a) Constitutional officer;

(b) Program cabinet secretary or his designee in writing;

(c) For the judicial branch, the Chief Justice of the Supreme Court or the director of the Administrative Office of the Courts; or

(d) For the legislative branch, the co-chairs of the Legislative Research Commission or the director of the Legislative Research Commission.

(2) Verbal requests for state aircraft transportation may be honored. However, all requests for state aircraft shall be provided in writing to the division within five (5) working days of the date of the flight.

(3) Approving officials shall be responsible for determining that a trip is for official business, that use of state aircraft is the most appropriate means of transportation, and that the proposed passenger complement conforms to the requirements of subsection (3) of Section 4 of this Act. In determining the passenger complement, requesting agencies shall weigh the benefit to the agency of the inclusion of additional passengers against the increased costs that might be incurred if a larger aircraft is required to accommodate additional passengers on a trip.

(4) All requests for use of state aircraft shall be submitted on a form prescribed by the Division of Air Transport and shall contain at a minimum the following information:

(a) Cabinet or agency name;

(b) Department name with appropriate billing account number;

(c) Purpose of the trip;

(d) Destination, including any planned stopovers and the reason for them;

(e) Names of all passengers on the flight; and

(f) Identification of any percentage of the flight that is for personal business in cases of the Governor or Lieutenant Governor as allowed under Section 4 of this Act.

SECTION 6. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

(1) The Division of Air Transport shall arrange for all trips and maintain flight cards, passenger manifests, payment documents, and interaccount bills pertaining to each flight.

(2) Pilots for all state agencies shall maintain a flight manifest for all flights which shall include the passengers' names, information pertaining to points of origin and destination, and any side trips or stopovers for each flight.

(3) The Division of Air Transport shall maintain original manifests for all trips using state aircraft.

(4) Originals of requests for the use of state aircraft shall be kept by the Division of Air Transport, with the following exceptions:

(a) The Governor and Lieutenant Governor shall maintain originals of all requests for the use of state aircraft made by their respective offices; and

(b) In cases where the secretary of the Cabinet for Economic Development has certified in an aircraft request that disclosure of the identities of passengers or the purpose of a trip will violate needs for confidentiality required for economic development efforts, the secretary of the Cabinet for Economic Development shall maintain complete original records of the request in his office.

HB 438, AN ACT relating to state personnel.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 18A.037 is amended to read as follows:

(1) The commissioner shall develop and propose a new system of classification and compensation to be transmitted to the Legislative Research Commission by November 15, 1997. The system proposed by the commissioner shall be developed using a nationally-recognized system for evaluating job requirements. The proposed system shall determine the requirements of each job classification by using factors such as, but not limited to, knowledge, skill, effort, responsibility, accountability, problem solving, discretion, challenge, and working conditions, to ensure pay equity as required by KRS Chapters 337 and 344.

(2) [~~The commissioner shall consult with the secretary of the Labor Cabinet and the secretary of the Finance and Administration Cabinet in developing the new system of classification and compensation.~~

~~(3)~~]The commissioner shall include, as a part of the proposal, estimated funding requirements for the implementation of the system.

Section 2. KRS 18A.110 is amended to read as follows:

(1) The commissioner shall promulgate comprehensive administrative regulations for the classified service governing:

(a) Applications and examinations;

(b) Certification and selection of eligibles;

(c) Classification and compensation plans;

(d) Incentive programs;

(e) Layoffs;

(f) Registers;

(g) Types of appointments;

(h) Attendance; hours of work; compensatory time; annual, court, military, sick, voting, and special leaves of absence, provided that the commissioner shall not promulgate administrative regulations that would reduce the rate at which employees may accumulate leave time below the rate effective on December 10, 1985.

(2) The commissioner shall promulgate comprehensive administrative regulations for the unclassified service.

(3) (a) Except as provided by KRS 18A.355, the commissioner shall not promulgate administrative regulations that would reduce an employee's salary; and

(b) As provided by KRS 18A.0751(4)(e), the commissioner may submit a proposed administrative regulation providing for an initial probationary period in excess of six (6) months to the board for its approval.

(4) The commissioner may promulgate administrative regulations to implement state government's affirmative action plan under KRS 18A.138.

(5) (a) The administrative regulations shall comply with the provisions of this chapter and KRS Chapter 13A, and shall have the force and effect of law after compliance with the provisions of KRS Chapters 13A and 18A and the procedures adopted thereunder;

(b) Administrative regulations promulgated by the commissioner shall not expand or restrict rights granted to, or duties imposed upon, employees and administrative bodies by the provisions of this chapter; and

(c) No administrative body other than the Department of Personnel shall promulgate administrative regulations governing the subject matters specified in this section.

(6) Prior to filing an administrative regulation with the Legislative Research Commission, the commissioner shall submit the administrative regulation to the board for review.

(a) The board shall review the administrative regulation proposed by the commissioner not less than twenty (20) days after its submission to it;

(b) Not less than five (5) days after its review, the board shall submit its recommendations in writing to the commissioner;

(c) The commissioner shall review the recommendations of the board and may revise the proposed administrative regulation if he deems it necessary; and

(d) After the commissioner has completed the review provided for in this section, he may file the proposed administrative regulation with the Legislative Research Commission pursuant to the provisions of KRS Chapter 13A.

(7) The administrative regulations shall provide:

(a) For the preparation, maintenance, and revision of a position classification plan for all positions in the classified service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for, and the same schedule of pay may be equitably applied to, all positions in the same class***.***[~~;~~

~~1.~~]The commissioner shall allocate the position of every employee in the classified service to one (1) of the classes in the plan. The commissioner shall reallocate existing positions, after consultation with appointing authorities, when it is determined that they are incorrectly allocated, and there has been no substantial change in duties from those in effect when such positions were last classified. The occupant of a position being reallocated shall continue to serve in the reallocated position with no reduction in salary;

[~~2. The secretary of the Finance and Administration Cabinet may review and approve all proposed position establishments and abolishments on the basis of the availability of funds. Reclassifications and reallocations may also be reviewed and approved by the secretary of the Finance and Administration Cabinet on the basis of the availability of funds. The Finance and Administration Cabinet shall notify the department of any review and approval conducted under the provisions of this section;~~]

(b) For a pay plan for all employees in the classified service, after consultation with appointing authorities and the ***state budget director***[~~secretary of the Finance and Administration Cabinet~~]. The plan shall take into account such factors as:

1. The relative levels of duties and responsibilities of various classes of positions;
2. Rates paid for comparable positions elsewhere taking into consideration the effect of seniority on such rates; and
3. The state's financial resources.

Amendments to the pay plan shall be made in the same manner. Each employee shall be paid at one (1) of the rates set forth in the pay plan for the class of position in which he is employed, provided that the full amount of the annual increment provided for by the provisions of KRS 18A.355, and the full amount of an increment due to a promotion, salary adjustment, reclassification, or reallocation, shall be added to an employee's base salary or wages;

(c) For open competitive examinations to test the relative fitness of applicants for the respective positions. The examinations shall be announced publicly at least fifteen (15) days in advance of the date fixed for the filing of applications therefor, and may be advertised through the press, radio, and other media. The commissioner shall continue to receive applications and examine candidates on a continuous basis long enough to assure a sufficient number of eligibles to meet the needs of the service. Except as provided by this chapter, he shall add the names of successful candidates to existing eligible lists in accordance with their respective ratings. The commissioner shall be free to use any investigation of education and experience and any test of capacity, knowledge, manual skill, character, personal traits, or physical fitness, which in his judgment, serves the need to discover the relative fitness of applicants;

(d) As provided by this chapter, for the establishment of eligible lists for appointment, upon which lists shall be placed the names of successful candidates in the order of their relative excellence in the respective examinations. Except as provided by this chapter, an eligible's score shall expire automatically one (1) year from the date of testing, unless the life of the score is extended by action of the commissioner for a period not to exceed one (1) additional year. Except for those individuals exercising reemployment rights, all eligibles may be removed from the register when a new examination is established;

(e) For the rejection of candidates or eligibles who fail to comply with reasonable requirements of the commissioner in regard to such factors as age, physical condition, training, and experience, or who have attempted any deception or fraud in connection with an examination;

(f) Except as provided by this chapter, for the appointment of a person whose score is included in the five (5) highest scores earned on the examination;

(g) For emergency employment for not more than thirty (30) working days with or without examination, with the consent of the commissioner;

(h) For provisional employment without competitive examination when there is no appropriate eligible list available. No provisional employment shall continue longer than six (6) months, nor shall successive provisional appointment be allowed to the same position;

(i) For annual, sick and special leaves of absence, with or without pay, or reduced pay, after approval by the Governor as provided by KRS 18A.155(1)(d);

(j) For layoffs, in accordance with the provisions of KRS 18A.113, 18A.1131, and 18A.1132, by reasons of lack of work, abolishment of a position, a material change in duties or organization, or a lack of funds;

(k) For the development and operation of programs to improve the work effectiveness of employees in the state service, including training, whether in-service or compensated educational leave, safety, health, welfare, counseling, recreation, employee relations, and employee mobility; and

(l) For other administrative regulations not inconsistent with this chapter and KRS Chapter 13A, as may be proper and necessary for its enforcement.

Section 3. KRS 18A.1131 is amended to read as follows:

(1) A layoff of a state employee with status in the executive branch due to the abolition of a position, lack of work or a material change in duties or organization shall comply with the provisions of this section.

(2) Prior to the notification of an employee that he is subject to layoff and prior to the layoff of an employee, the appointing authority shall submit a lay-off plan to the commissioner~~[and the secretary of the Finance and Administration Cabinet]~~ for~~[their]~~ approval. Such plan shall contain the name of the employee and the reasons, in detail, for such layoff. Upon approval of the plan by the commissioner~~[and the secretary]~~, the employee shall be notified that he is subject to layoff, and of:

(a) The reason for the layoff;

(b) The procedures established by the provisions of KRS 18A.113 and this section for the layoff of employees; and

(c) The rights granted employees subject to layoff and to laid-off employees.

(3) (a) An employee subject to layoff shall be transferred to a vacant position of the same pay grade, level of duties and responsibilities for which he is qualified within the cabinet. Such position shall be located in the same county as the position from which the employee is subject to layoff;

(b) If such a vacancy does not exist, the employee shall be transferred to a vacant position within the cabinet for which he is qualified. Such position shall be located in the same county as the position from which the employee is subject to layoff; and

(c) If such a position is not available, the employee shall be notified of all vacant positions within the cabinet for which he is qualified to take an examination. The employee shall have the right to take an examination for any vacant position within the cabinet for which he is qualified. If he passes the examination, he shall be appointed to that position before any applicant or eligible on a register, except another laid-off employee with greater seniority already on such register.

(4) (a) If no position is available to an employee subject to layoff under the procedure established by subsection (3) of this section, the appointing authority shall notify the employee and the department; and

(b) The department shall coordinate efforts to transfer an employee subject to layoff to another agency. It shall have the authority to transfer an employee subject to layoff under this section, with the approval of the appointing authority of the agency to which the employee is to be transferred.

(5) If no position is available, the employee shall have the right to take an examination for any position for which he is qualified. If he passes the examination, he shall be hired before any applicant or eligible on a register, except a laid-off employee with greater seniority already on such register.

(6) If no position is available to an employee subject to layoff under the procedure established by subsections (3) and (4) of this section, the employee shall be notified in writing that he is to be laid off effective fifteen (15) days after receipt of notice, and of the rights and privileges granted laid-off employees.

Section 4. KRS 18A.1132 is amended to read as follows:

(1) Prior to a layoff of state employees in the executive branch, required by a projected or actual reduction in tax receipts contemplated under the provisions of subsections (1) and (6) of KRS 48.130, each cabinet shall prepare a lay-off plan that complies with the provisions of KRS 18A.113 and this section.

(2) Each lay-off plan shall provide that a layoff of state employees shall occur only after all other cost saving measures are taken and have failed to alleviate the projected or actual deficit. These measures shall be specified in the plan, in detail, and shall include but not be limited to:

(a) A hiring freeze of all types of appointments;

(b) A reduction or delay of expenditures that would not prevent the provision of services required by law;

(c) Consolidation of offices and job duties that would not prevent the provision of services required by law;

(d) Transfer of funds as provided by the budget reduction plan enacted pursuant to KRS Chapter 48;

(e) Transfer of funds appropriated for or allotted to vacant positions as provided by the budget reduction plan provided for by KRS 48.130, unless it is certified that the positions are essential and cannot be filled in the period during which layoffs are to occur by transfer of existing employees of the appointing authority;

(f) The filling of vacancies and promotions from within the cabinet; and

(g) Transfers of employees within the cabinet as provided by KRS 18A.1131(3) and (4).

(3) Each cabinet shall submit:

(a) Its lay-off plan; and

(b) A list of employees who would remain subject to layoff after the implementation of cost-saving measures;

to the commissioner[~~ and to the secretary of the Finance and Administration Cabinet~~] for review. Upon approval[~~ by the secretary~~], the lay-off plans shall be submitted to the Governor for approval.

(4) Upon approval of the plan by the Governor, the commissioner shall attempt to transfer employees as provided by KRS 18A.1131(4)(b). Employees who cannot be so transferred may be laid off.

(5) If no position is available to an employee subject to layoff under the procedures established by this section, the employee shall be notified in writing that he is to be laid off effective fifteen (15) days after receipt of notice, and of the rights and privileges granted laid-off employees.

(6) When the hiring freeze is ended, laid-off employees shall be hired before any applicant or eligible except laid-off employees already on such registers.

Section 5. KRS 18A.155 is amended to read as follows:

(1) The commissioner shall prepare and submit proposed administrative regulations to the Governor for employees in unclassified positions enumerated in paragraphs (g), (h), (i), (j), (k), (p), (u), and (v) of subsection (1) of KRS 18A.115. Such administrative regulations shall become effective after approval by the Governor and promulgation in accordance with KRS Chapters 12 and 13A. The administrative regulations shall provide:

(a) For the preparation, maintenance and revision of a position classification plan for all aforementioned positions in the unclassified service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class. After such classification plan has been approved by the Governor, the commissioner shall allocate the positions of every employee in the unclassified service to one (1) of the classes of the plan. Any employee affected by the allocation of a position to a class shall, after filing with the commissioner a written request for reconsideration thereof in such manner and form as the commissioner may prescribe, be given a reasonable opportunity to be heard thereon by the commissioner;

(b) For a pay plan for all aforementioned employees in the unclassified service, after consultation with appointing authorities and the ***state budget director***[~~secretary of Finance and Administration~~], and taking into account such factors as:

1. The relative levels of duties and responsibilities of various classes of positions;
2. Rates paid for comparable positions elsewhere; and
3. The state's financial resources.

Such pay plan shall become effective only after it has been approved by the Governor after submission to him by the commissioner[~~ through the secretary of Finance and Administration~~]. Amendments to the pay plan may be made in the same manner. Each employee shall be paid at one (1) of the rates set forth in the pay plan for the position in which he is employed;

(c) For transfer from a position in one (1) department to a similar position in another department involving similar qualifications, duties, responsibilities, and salary ranges;

(d) For annual, sick and special leaves of absence, with or without pay, or reduced pay, after approval by the Governor as provided in subsection (1) of this section;

(e) For the development and operation of programs to improve the work effectiveness and morale of employees in the unclassified service, including training, safety, health, welfare, counseling, recreation, and employee relations; and

(f) For such other rules and administrative regulations, not inconsistent with KRS 18A.005 to 18A.200, as may be proper and necessary for its enforcement.

(2) Nothing herein shall be construed to preclude the optional use of administrative regulations promulgated under this section on behalf of employees enumerated in paragraphs (a), (b), (d), (e) and (q) of subsection (1) of KRS 18A.115 and on behalf of members of state boards and commissions who work on a full-time, salaried basis.

Section 6. KRS 18A.165 is amended to read as follows:

[~~(1)~~]All officers and employees of the Commonwealth shall comply with, and aid in all proper ways in carrying out, the provisions of KRS 18A.005 to 18A.200 and the rules, regulations, and orders of the board thereunder. All officers and employees shall furnish any records or information pertaining to the administration of KRS 18A.005 to 18A.200 which the commissioner or the board may request. The commissioner or the board may require the Attorney General to institute and maintain such legal action as the commissioner or the board may consider necessary or appropriate to secure compliance with KRS 18A.005 to 18A.200 and the rules and orders thereunder.

[~~(2) The secretary of the Finance and Administration Cabinet may review and approve all proposed position establishments and abolishments. Reclassifications and reallocations may also be reviewed and approved by the secretary of the Finance and Administration Cabinet on the basis of the availability of funds. The Finance and Administration Cabinet shall notify the department and the board of any review and approval conducted under the provisions of this section.~~]

Section 7. KRS 12.060 is amended to read as follows:

(1) The heads of statutory departments, with the approval of the ***commissioner***[~~secretary~~] of ***personnel***[~~the Finance and Administration Cabinet~~], may establish such subordinate positions as may be necessary and make appointments thereto, within the limitations of their appropriations, and removals therefrom. All appointees to such positions shall be under the supervision, direction and control of the heads of the respective departments and shall perform such duties as the heads of the departments prescribe. The appointment of all employees not otherwise provided for shall be made by the heads of the departments.

(2) The head of any department, with the approval of the ***commissioner***[~~secretary~~] of ***personnel***[~~the Finance and Administration Cabinet~~], may abolish unnecessary offices and positions, transfer officers and employees between positions, and change the duties, titles and compensation of existing offices and positions, subject to any provision of law in relation thereto.

Section 8. If the reorganization of the Department of Personnel into the Personnel Cabinet is confirmed by this 1998 Regular Session of the General Assembly, the reference to the commissioner of personnel appearing in subsections (1) and (2) of Section 7 of this Act shall be codified as the secretary of personnel.

HB 445, AN ACT relating to capital projects.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 45.750 is amended to read as follows:

(1) As used in KRS 45.760 to 45.810:

(a) "Committee" means the Capital Projects and Bond Oversight Committee.

(b) "Capital construction item" means:

1. The construction, reconstruction, acquisition, and structural maintenance of buildings;

2. The installation of utility services, including roads and sewers;

3. The acquisition or improvement of real property;

4. The purchase and installation initially ***or during major renovation*** of equipment, facilities, and furnishings of a permanent nature for buildings;

5. The acquisition of any building to be occupied by any:

a. Subdivision of state government as defined in KRS 12.010 or enumerated in KRS 12.020;

b. Municipal corporation which exercises its authority on a statewide basis including, but not limited to, the Kentucky Employees Retirement System, Teachers' Retirement System of the State of Kentucky, Kentucky Higher Education Student Loan Corporation, Kentucky Lottery Corporation, Kentucky Housing Corporation, or any entity with a governing body whose membership is substantially similar to the membership of the governing body of a municipal corporation which exercises its authority on a statewide basis; and

c. Institution of higher education.

(c) "Lease" means any lease, lease-purchase, or lease with an option to purchase of any real property space occupied by:

1. Any entity listed in paragraph (b)5. of this subsection;

2. The legislative branch; or

3. The judicial branch when leased from a private sector landlord.

(d) "Equipment" means:

1. Any major item of equipment, including aircraft;

2. Any movable furnishing, appurtenance, or other equipment, necessary to make a building operable; and

3. Equipment purchased or otherwise acquired, or equipment to be purchased or otherwise to be acquired, under a lease or lease-purchase contract or agreement or an arrangement equivalent to a lease or lease-purchase contract or agreement.

(e) "System" means any computer or telecommunications system, as defined in an administrative regulation which shall be promulgated by the Kentucky Information Resources Management Commission.

(f) "Capital projects" means, regardless of the source of cash or other consideration:

1. Any capital construction item, or any combination of capital construction items necessary to make a building or utility installation complete, estimated to cost four hundred thousand dollars ($400,000) or more in cash or other consideration;

2. Any lease of real property space with an annual rental cost exceeding two hundred thousand dollars ($200,000);

3. The use allowance paid by the judicial branch for a real property space pursuant to KRS 26A.090(2) and 26A.115 when the use allowance for the space exceeds two hundred thousand dollars ($200,000) on an annual basis;

4. Any item of equipment estimated to cost one hundred thousand dollars ($100,000) or more in cash or other consideration;

5. Any lease of an item of movable equipment if the ***annual cost of the lease is one hundred thousand dollars ($100,000) or more or if the*** total cost of the~~[lease,]~~ lease-purchase~~[,]~~ or lease with an option to purchase is one hundred thousand dollars ($100,000) or more; and

6. Any system estimated to cost four hundred thousand dollars ($400,000) or more in cash or other consideration.

(g) "Emergency repair, maintenance, or replacement project" means the maintenance, repair, or reconstruction of a capital construction project or the maintenance, repair, or replacement of a major item of equipment that is:

1. Necessitated by injury or damage resulting from a disaster; or

2. Necessary to maintain government operations or to prevent or minimize injury or damage that could reasonably be expected to result from an impending disaster; or

3. Necessitated by an unforeseen mechanical breakdown, electrical breakdown, or structural defect that must be corrected to make a facility or item of equipment usable.

(h) "Disaster" means a fire, flood, tornado, other natural disaster, riot, enemy attack, sabotage, explosion, power failure, energy shortage, transportation emergency, or other man-caused disaster.

(i) "Capital construction funds" means any funds used for capital construction, including, but not limited to, appropriated capital construction funds, agency funds, federal funds, private funds, or funds from any source held by an agency for management or investment purposes.

(j) "Entity head" means the Chief Justice of the Supreme Court, the President of the Senate and the Speaker of the House of Representatives, the secretary of the Finance and Administration Cabinet, the president of any university which complies with KRS 164A.585, 164A.595, and 164A.600, the board of trustees of the Kentucky Employees Retirement System, the board of trustees of the Teachers' Retirement System of the State of Kentucky, the board of directors of the Kentucky Higher Education Student Loan Corporation, the board of directors of the Kentucky Lottery Corporation, or the board of directors of the Kentucky Housing Corporation.

(2) Except as provided in subsection (3) of this section, KRS 45.760 to 45.810 shall apply to capital projects and bonds for use by:

(a) The state government;

(b) One of its departments or agencies, as defined in KRS 12.010 or enumerated in KRS 12.020;

(c) A municipal corporation which exercises its authority on a statewide basis including, but not limited to, the Kentucky Employees Retirement System, Teachers' Retirement System of the State of Kentucky, Kentucky Higher Education Student Loan Corporation, Kentucky Lottery Corporation, and Kentucky Housing Corporation; and

(d) Institutions of higher education.

(3) KRS 45.760 to 45.810 shall not apply to:

(a) Capital projects or bonds used directly in or for the construction or maintenance of roads, including, but not limited to, bulldozers, graders, earth movers, and real estate purchased for rights-of-way; and

(b) Political subdivisions, except for those defined in KRS 12.010, enumerated in KRS 12.020, or created as a municipal corporation which exercises its authority on a statewide basis including, but not limited to, the Kentucky Employees Retirement System, Teachers' Retirement System of the State of Kentucky, Kentucky

Higher Education Student Loan Corporation, Kentucky Lottery Corporation, Kentucky Housing Corporation, or any entity with a governing body whose membership is substantially similar to the membership of the governing body of a municipal corporation which exercises its authority on a statewide basis. However, the provisions of KRS 45.750 to 45.810 shall not apply to acquisition or maintenance of any building or land which is purchased as a legal investment by any of the state retirement systems, which is not to be occupied by the retirement system, and which is financed solely with those assets of the retirement system used for investment purposes.

Section 2. KRS 45.793 is amended to read as follows:

(1) Beginning in October, 1992, the Finance and Administration Cabinet shall provide to the committee at its January, April, July, and October regular meetings a status report on the progress of capital projects ***not yet completed*** which received line item authorization ***by***[~~in either of the two (2) preceding sessions of~~] the Kentucky General Assembly and which were:

(a) Financed with at least four hundred thousand dollars ($400,000) from the general fund, the road fund, restricted agency funds, federal funds, investment income, capital construction surplus funds, or bond surplus funds, excluding items of equipment; or

(b) State or agency bond-funded.

(2) For each capital project identified in subsection (1)(a) of this section, the status report shall include, but not be limited to, the:

(a) Project title;

(b) Amount authorized, including any project cost modification reported to the committee pursuant to KRS 45.760, 45.770, and 45.800;

(c) Source of funds;

(d) County or counties in which the project is located;

(e) Current phase of the project;

(f) Status of the assistance agreement, if applicable;

(g) Explanation of any delay or major change in the project; and

(h) Other information which might be useful in explaining the status of the project.

(3) For each capital project identified in subsection (1)(b) of this section, the status report shall include the information required in subsection (2) of this section as well as the status of the bond sale which shall include, but not be limited to:

(a) The estimated sale date or date sold;

(b) The bond issue series name or number;

(c) An explanation of the difference, if any, between the budgeted and actual annual debt service requirements; and

(d) If the bonds have not yet been sold, an explanation of why authorized bonds have not been sold.

HB 486, AN ACT relating to the Commission on Military Affairs and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 154.12-203 is amended to read as follows:

(1) There is created the Kentucky Commission on Military Affairs. The commission shall be a separate administrative body of state government within the meaning of KRS Chapter 12.

(2) It shall be the purpose of the Kentucky Commission on Military Affairs to:

(a) Address matters of military significance to Kentucky;

(b) Maintain a cooperative and constructive relationship between state agencies and the military entities in Kentucky***, as necessary to ensure coordination and implementation of unified, comprehensive, statewide strategies involved with, or affected by, the military***;

(c) Advise the Governor, the General Assembly, the Kentucky congressional delegation, and other appropriate government officials on all matters in which the military services and the Commonwealth have mutual interests, needs, and concerns;

(d) Take action to promote and optimize state and Department of Defense initiatives that will improve the military value of Kentucky's National Guard, active, and reserve military force structure and installations, and improve the quality of life for military personnel residing in the Commonwealth;

(e) Coordinate, as necessary, the state's interest in future Department of Defense base closure and restructuring activities;

(f) Recommend state, federal, and local economic development projects which would promote, foster, and support economic progress through military presence in the Commonwealth;

(g) Promote and assist the private sector in developing spin-off investments, employment, and educational opportunities associated with high technology programs and activities at Kentucky's military installations;

(h) Recommend to the Kentucky Economic Development Partnership the long-range options and potential for the defense facilities located in Kentucky; and

(i) Develop strategies to encourage military personnel to retire and relocate in Kentucky and promote those leaving the military as a viable quality workforce for economic development and industrial recruitment***; and***

(j) Allocate available grant money to qualified applicants to further the purposes of paragraphs (a) to (i) of this subsection.

(3) The Kentucky Commission on Military Affairs shall consist of:

(a) The Governor, or his designated representative;

(b) The secretary of the Cabinet for Economic Development, or his designated representative;

(c) The adjutant general of the Commonwealth, or his designated representative;

(d) ***The executive director of the Kentucky Long-Term Policy Research Center, or his designated representative;***

(e) The secretaries of the following cabinets, or their designees:

1. Finance and Administration;
2. Human Resources;
3. Justice;
4. Natural Resources and Environmental Protection;
5. Transportation;[~~ and~~]
6. Workforce Development; ***and***
7. ***Education, Arts, and Humanities; and***

(f)[~~(e)~~] The Attorney General, or his designee;

(g)[~~(f)~~] Kentucky's Civilian Aide to the Secretary of the United States Army;

(h)[~~(g)~~] The commander or his designee of each of the following. as nonvoting, ex-officio members:

1. Fort Campbell;
2. Fort Knox;
3. United States Army Recruiting Command;
4. Bluegrass Army Depot;
5. Louisville District of the United States Army Corps of Engineers;
6. ***The One Hundredth Training Division;***
7. ***Louisville/Jefferson County Redevelopment Authority; and***
8. Any other installation or organization with a major military mission in the Commonwealth;

[~~7. The One Hundredth Training Division;~~] and

(i)[~~(h)~~] Five (5) at-large members appointed by the Governor who shall be residents of counties significantly impacted by military installations.

(4) The terms of the five (5) at-large members shall be staggered so that two (2) appointments shall expire at two (2) years, one (1) appointment shall expire at three (3) years, and two (2) appointments shall expire at four (4) years, from the dates of initial appointment.

(5) The Governor shall appoint the chair and vice chair of the commission from the five (5) at-large members, by September 30, 1996. The chair shall call a meeting of the commission by October 31, 1996, for the purpose of creating an executive committee.

(a) The commission shall establish an executive committee consisting of the Secretary of the Cabinet for Economic Development, the Adjutant General of the Commonwealth, and the five (5) at-large members.

(b) The chair and vice chair of the commission shall serve as chair and vice chair of the executive committee.

(c) The executive committee shall serve as the search committee for an executive director of the commission and shall have any other authority the commission delegates to it.

(6) The commission shall meet two (2) times each year, and may meet at other times on call of the chair, to establish the commission's goals and to review issues identified and recommendations made by the executive committee. A majority of

the members shall constitute a quorum for the transaction of the commission's business. ***Members' designees shall have voting privileges at commission meetings.***

(7) Members of the commission shall serve without compensation, but shall be reimbursed for their necessary travel expenses actually incurred in the discharge of their duties on the commission, subject to Finance and Administration Cabinet administrative regulations.

(8) ***The commission may establish committees or work groups composed of commission members and citizens as necessary to advise the commission in carrying out its responsibilities, duties, and powers. Citizen members of committees or work groups shall not have a vote.***

(9) The commission may promulgate necessary administrative regulations as prescribed by KRS Chapter 13A.

(10) The commission may adopt bylaws and operating policies necessary for its efficient and effective operation.

(11) There shall be an executive director, who shall be the administrative head and chief executive officer of the commission, recommended by the executive committee, approved by the commission, and appointed by the Governor. The executive director shall have authority to hire staff, contract for services, expend funds and operate the normal business activities of the commission with approval of the executive committee.

(12)~~[(9)]~~ The Kentucky Commission on Military Affairs and its executive committee shall be an independent agency attached to the Office of the Governor.

Section 2. If the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Service is confirmed by this 1998 Regular Session of the General Assembly, the reference to Human Resources appearing in subsection (3) of Section 1 of this Act shall be codified as Families and Children.

Section 3. Whereas the Commission on Military Affairs cannot allocate grant moneys that will otherwise lapse at the close of the current fiscal year absent the authority to promulgate administrative regulations governing the allocation, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

SB 172, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 235.010 is amended to read as follows:

As used in this chapter, unless the context clearly requires a different meaning:

(1) "Vessel" means every description of watercraft, other than a seaplane on the water;

(2) "Motorboat" means any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion, except for the following:

(a) Boats or vessels propelled totally by a direct current battery-powered motor when used on private waters; and

(b) Boats propelled by human power employing the use of hand or foot operation;

(3) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security;

(4) "Waters of this state" means any waters within the territorial limits of this state;

(5) "Person" means an individual, partnership, firm, corporation, association, or other entity;

(6) "Operate" means to navigate or otherwise use a motorboat or a vessel;

(7) "Cabinet" means the Tourism ***Development*** Cabinet;

(8) "Department" means the Department of Fish and Wildlife Resources;

(9) "License" and "certificate of number" as used herein are synonymous;

(10) "Clerk" means county clerk;

(11) "Division of ***Law Enforcement***~~[Water Patrol]~~" means the Division of ***Law Enforcement***~~[Water Patrol]~~, Department of Fish and Wildlife Resources within the Tourism Cabinet;

(12) "Title" means the certificate of title; and

(13) "Commissioner" means the commissioner of the Department of Fish and Wildlife Resources.

Section 2. KRS 235.030 is amended to read as follows:

This chapter shall be known as the State Boating Act and shall be administered by the ~~[Division of Water Patrol within the]~~department~~[of Fish and Wildlife Resources in the Tourism Cabinet]~~ except the Transportation Cabinet shall be responsible for administering the boat numbering, registration, and titling requirements.

Section 3. KRS 235.190 is amended to read as follows:

(1) Any holder of a certificate of registration shall notify the county clerk within fifteen (15) days if his address no longer conforms to the address appearing on the certificate and shall, as a part of the notification, furnish the county clerk with his new address. The ***department***[~~Division of Water Patrol~~] may provide in its administrative regulations for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of an outstanding certificate to show the new address of the holder.

(2) Any holder of a certificate shall give notice to the ***department***[~~Division of Water Patrol~~] within fifteen (15) days of the theft or recovery of a vessel to which he is the holder of the certificate of number.

Section 4. KRS 235.200 is amended to read as follows:

(1) Every vessel shall have aboard:

(a) Personal floatation devices of the type and quantity as prescribed by the U.S. Coast Guard;

(b) When in operation during hours of darkness, or during times of poor visibility, such lights as prescribed by ***administrative*** regulations of the ***department***[~~Division of Water Patrol~~];

(c) If carrying or using any inflammable or toxic fluid in any inclosure for any purpose, and if not an entirely open motorboat, an efficient natural or mechanical ventilation system which shall be capable of removing resulting gases prior to, and during, the time such motorboat is occupied by any person;

(d) Such additional equipment designed to promote the safety of navigation and of persons as the ***department***[~~Division of Water Patrol~~] may find to be appropriate and for which it has provided in its ***administrative***[~~rules and~~] regulations;

(e) If such motorboat is equipped with toilet facilities, a storage container or a treatment or disposal system of size and construction sufficient to protect and preserve the waters of this state from pollution. The storage container or treatment or disposal system shall conform to the construction, performance and utilization criteria as may be established by regulations promulgated pursuant to this chapter;

(f) The certificate number.

(2) Except during an authorized race or regatta, which shall include trial runs in preparation for such race or regatta to be conducted at a time and place designated by the ***department***[~~Division of Water Patrol~~], it shall be illegal to operate any motorboat without an effective exhaust muffling system, or in any manner which renders the exhaust muffling system ineffective in muffling the sound of engine exhaust.

(3) No person shall operate or give permission for the operation of a motorboat which is not equipped as required by this section or modification thereof, or which is not safe for operation as a motorboat.

Section 5. KRS 235.205 is amended to read as follows:

No vessel equipped with a siren or a flashing, rotating or oscillating blue light may be operated upon waterways of this state except[~~ patrol~~] boats operated by the ***department***[~~Division of Water Patrol~~] or law-enforcement vessels of any law-enforcement agency of the Commonwealth having jurisdiction upon the waters of this state or law-enforcement vessels of the United States authorized by federal law or regulations.

Section 6. KRS 235.250 is amended to read as follows:

(1) It shall be the duty of the operator of a vessel involved in a collision, accident, or other casualty, so far as he can do so without serious danger to his own vessel, crew, and passengers (if any), to render to other persons affected by the collision, accident, or other casualty such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident or other casualty, and also to give his name, address, and identification of his vessel in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty.

(2) In the case of collision, accident, or other casualty involving a vessel, the operator thereof, if the collision, accident or other casualty results in death or injury to a person or damage to property in excess of one hundred dollars ($100), shall file with the ***department***[~~division~~] a full description of the collision, accident, or other casualty, including such information as said agency may, by regulation, require. When the operator of a vessel, who is not the owner of it, cannot submit the casualty or accident report required by subsection (1) of this section, the owner shall submit the casualty or accident report.

Section 7. KRS 235.260 is amended to read as follows:

All required accident reports and supplemental reports shall be without prejudice to the individual making them, and shall be for the confidential use of the ***department***[~~Division of Water Patrol~~], except that the ***department***[~~division~~] may disclose the identity of a person involved in an accident when his identity is not otherwise known or when he denies his presence at an accident. No such report shall be used in evidence in any trial arising out of an accident, but the ***department***[~~division~~] shall furnish upon demand of any person who has, or claims to have, made such a report or, upon demand of any court, a certificate showing that a specified accident report has or has not been made to the ***department***[~~division~~], solely in order to prove compliance or noncompliance with the requirements of KRS 235.250 that such a report be made.

Section 8. KRS 235.270 is amended to read as follows:

In accordance with any request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the ***department***[~~Division of Water Patrol~~] pursuant to KRS 235.250 shall be transmitted to said official or agency of the United States.

Section 9. KRS 235.280 is amended to read as follows:

The[~~ Division of Water Patrol with the approval of the~~] commissioner of the department***, with approval of the Department*** of Fish and Wildlife Resources ***Commission*** shall promulgate administrative regulations in accordance with KRS Chapter 13A to govern the fair, reasonable, equitable, and safe use of all waters of this state ***and otherwise to carry out the purposes of this chapter***.

Section 10. KRS 235.290 is amended to read as follows:

(1) The ***department***[~~Division of Water Patrol~~] may authorize the holding of regattas, motorboat or other boat races, marine parades, tournaments, or exhibitions involving more than one hundred (100) boats on any waters of this state. It shall adopt and may, from time to time, amend regulations concerning the safety of motorboats and other vessels and persons thereon, either observers or participants. When a regatta, motorboat or other boat race, marine parade, tournament, or exhibition involving more than one hundred (100) boats is proposed to be held, the person in charge thereof shall, at least fifteen (15) days prior thereto, file an application with the ***department***[~~division~~] for permission to hold the regatta, motorboat or other boat race, marine parade, tournament, or exhibition. The application shall set forth the date, time, and location where it is proposed to hold the regatta, motorboat or other boat race, marine parade, tournament, or exhibition, and it shall not be conducted without authorization of the ***department***[~~division~~] in writing.

(2) The provisions of this section shall not exempt any person from compliance with applicable federal law or regulation, but nothing contained herein shall be construed to require the securing of a state permit pursuant to this section if a permit therefor has been obtained from an authorized agency of the United States.

Section 11. KRS 235.310 is amended to read as follows:

(1) The commissioner of the Department of Fish and Wildlife Resources shall designate[~~ the~~] officers and employees of the ***department***[~~division~~] to enforce the provisions of this chapter and these officers when duly authorized by the commissioner shall have the general powers of a peace officer for the enforcement of other offenses against the Commonwealth. In enforcing the provisions of this chapter these officers and all other peace officers of the Commonwealth and its subdivisions shall have the right to enter upon all waters of this state, either private or public, for the purpose of inspecting certificate of registration and boat numbering, and shall have the right to enter upon all boats on such waters for the purpose of examining their registration documents. They may arrest on sight, without warrant, any person detected by them in the act of violating any of the provisions of this chapter. They shall have the same rights as sheriffs to require aid in arresting, with or without process, any person found by them violating any of the provisions of this chapter or other offenses against the Commonwealth.

(2) The[~~ water patrol~~] officers ***designated in subsection (1) of this section*** shall be authorized to possess and use radio communication equipment capable of receiving and transmitting on state police radio frequency. The Department of State Police shall cooperate with the ***department***[~~Division of Water Patrol~~] for the purpose of radio communication of ***these***[~~water patrol~~] officers when any assistance is necessary.

Section 12. KRS 235.330 is amended to read as follows:

(1) All moneys collected under the provisions of this chapter, except that specified for distribution to the county clerks or Transportation Cabinet, shall be paid into the State Treasury in the manner prescribed by law, and credited to a ***special fund known as the Fish and Game Fund***[~~trust and agency account to be used by the Division of Water Patrol~~].

(2) Appropriations for the operation of the Division of ***Law Enforcement***[~~Water Patrol~~] may also be made from the general expenditure fund.

Section 13. KRS 61.900 is amended to read as follows:

As used in KRS 61.902 to 61.930:

(1) "Commission" means a commission issued to an individual by the secretary of justice, entitling the individual to perform special law enforcement duties on public property;

(2) "Council" means the Kentucky Law Enforcement Council;

(3) "Cabinet" means the Justice Cabinet;

(4) "Public property" means property currently owned or used by any organizational unit or agency of state, county, city, metropolitan government, or a combination of these. The term shall include property currently owned or used by public

airport authorities;

(5) "Secretary" means the secretary of the Justice Cabinet;

(6) "Special law enforcement officer":

(a) Means one (1) whose duties include the protection of specific public property from intrusion, entry, larceny, vandalism, abuse, intermeddling, or trespass;

(b) Means one (1) whose duties include the prevention, observation, or detection of, or apprehension for, any unlawful activity on specific public property;

(c) Means one (1) whose special duties include the control of the operation, speed, and parking of motor vehicles, bicycles, and other vehicles, and the movement of pedestrian traffic on specific public property;

(d) Means one (1) whose duties include the answering of any intrusion alarm on specific public property;

(e) Shall include the Capitol police, the Capital Plaza police, public school district security officers, public airport authority security officers, and the officers of the other public security forces established for the purpose of protecting specific public property; and

(f) Shall not include members of a lawfully organized police unit or police force of state, county, city, or metropolitan government, or a combination of these, who are responsible for the detection of crime and the enforcement of the general criminal law enforcement of the state; it shall not include any of the following officials or officers:

1. Sheriffs, sworn deputy sheriffs, city marshals, constables, sworn deputy constables, and coroners;
2. Auxiliary and reserve police appointed under KRS 95.160 or 95.445, or citation and safety officers authorized by KRS 83A.087 and 83A.088;
3. State park rangers and~~[conservation]~~ officers ***of the Division of Law Enforcement within the Department of Fish and Wildlife Resources***;
4. Officers of the Transportation Cabinet~~[and Division of Water Patrol]~~ responsible for law enforcement;
5. Officers of the Department of Corrections responsible for law enforcement;
6. Fire marshals and deputy fire marshals;
7. Other officers not mentioned above who are employed directly by state government and are responsible for law enforcement;
8. Federal peace officers;
9. Those campus security officers who are commissioned under KRS 164.950;
10. Private security guards, private security patrolmen, and investigators licensed pursuant to state statute; and
11. Railroad policemen covered by KRS 277.270 and 277.280; and

(7) "Sworn public peace officer" means one (1) who derives plenary or special law enforcement powers from, and is a full-time employee of, the federal government, the Commonwealth, or any political subdivision, agency, department, branch, or service of either, or of any municipality.

Section 14. KRS 150.021 is amended to read as follows:

(1) The Department of Fish and Wildlife Resources shall constitute a department of state government within the meaning of KRS Chapter 12. The department shall consist of a commissioner, a Fish and Wildlife Resources Commission, the Division of ***Law Enforcement,***~~[Water Patrol, and the conservation officers]~~ and other agents and employees provided for in this chapter. The department shall enforce the laws and regulations adopted under this chapter relating to wildlife and shall exercise all powers necessarily incident thereto.

(2) Any powers conferred by this chapter upon the Department of Fish and Wildlife Resources, the Fish and Wildlife Resources Commission, or the commissioner of the Department of Fish and Wildlife Resources, and any powers conferred by KRS Chapter 235 shall be exercised subject to the provisions of KRS Chapters 42, 45, 45A, 56, and 64, which chapters in all respects are controlling.

Section 15. KRS 247.232 is amended to read as follows:

As used in KRS 247.234 and 247.236:

(1) "Amusement ride" means any mechanized device or combination of devices which carry passengers along, around, or over a fixed or restricted course for the purpose of giving its passengers amusement, pleasure, thrills, or excitement. "Amusement ride" does not include coin-operated amusement devices that carry no more than two (2) persons and devices regulated by the Federal Aviation Administration, the state and federal railroad commission, and vessels under the jurisdiction of the United States Coast Guard or the ***Kentucky Department of Fish and Wildlife Resources***~~[State Division of Water Patrol]~~;

(2) "Amusement attraction" means any building or structure around, over, or through which people may walk, climb, slide, jump, or move that provides amusement, pleasure, thrills, or excitement. "Amusement attraction" does not include tractor pulls, auto or motorcycle events, horse shows, rodeos and other animal shows, games and concessions, nonmechanical playground equipment, such as swings, slides, seesaws, climbers, trampolines, rider propelled merry-go-rounds, stationary spring-mounted animal devices, and physical fitness equipment, unless designated by regulation of the Commissioner;

(3) "Carnival" means an enterprise offering amusement or entertainment to the public by means of one (1) or more amusement rides and attractions;

(4) "Fair" means an enterprise principally devoted to the exhibition of products of agriculture, science, or industry in conjunction with the operation of one (1) or more amusement rides or attractions;

(5) "Owner" means any person who owns an amusement ride or attraction or, in the event that the amusement ride or attraction is leased, the lessee; and

(6) "Commissioner" means the Commissioner of Kentucky Department of Agriculture or his authorized representative.

Section 16. KRS 431.005 is amended to read as follows:

(1) A peace officer may make an arrest:

(a) In obedience to a warrant; or

(b) Without a warrant when a felony is committed in his presence; or

(c) Without a warrant when he has probable cause to believe that the person being arrested has committed a felony; or

(d) Without a warrant when a misdemeanor, as defined in KRS 431.060, has been committed in his presence; or

(e) Without a warrant when a violation of KRS 189.290, 189.393, 189.520, 189.580, 511.080, or 525.070 has been committed in his presence, except that a violation of KRS 189A.010 or KRS 281A.210 need not be committed in his presence in order to make an arrest without a warrant if the officer has probable cause to believe that the person has violated KRS 189A.010 or KRS 281A.210.

(2) (a) Any peace officer may arrest a person without warrant when the peace officer has probable cause to believe that the person has intentionally or wantonly caused physical injury to a family member or member of an unmarried couple.

(b) For the purposes of this subsection, the term "family member" means a spouse, including a former spouse, a parent, a grandparent, a child, a stepchild, or any other person related by consanguinity or affinity within the second degree.

(c) For the purpose of this subsection, the term "member of an unmarried couple" means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together.

(3) For purposes of subsection (2) of this section, a "peace officer" is:

(a) A full-time sworn officer of the Kentucky State Police, a full-time sworn officer of the Kentucky Horse Park, a commissioned full-time state park ranger, a full-time~~[state water patrol]~~ officer ***of the Division of Law Enforcement within the Department of Fish and Wildlife Resources who is exercising authority under KRS Chapter 235***, a full-time city policeman, a full-time county policeman, a full-time university safety and security officer appointed pursuant to KRS 164.950 to 164.970, a full-time city-county policeman, a duly elected sheriff, or a full-time paid deputy sheriff; or

(b) A part-time paid law enforcement officer, or a special paid deputy, who has completed a Kentucky law enforcement council approved education and training program referred to in KRS 403.784.

(c) The provisions of this section relating to training shall not apply to a deputy sheriff who is subject to the training requirements specified in KRS 70.263(3).

(4) If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with KRS 431.064 and verifies that the alleged violator has notice of the conditions, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

(5) A private person may make an arrest when a felony has been committed in fact and he has probable cause to believe that the person being arrested has committed it.

Section 17. KRS 433.757 is amended to read as follows:

(1) When any litter, as defined in KRS 512.010 is thrown or dropped from a motorboat or vessel as defined in KRS 235.010, the operator thereof shall be deemed prima facie to have violated KRS 512.070.

(2) It shall be the duty of~~[law enforcement]~~ officers of the ***Department of Fish and Wildlife Resources***~~[Division of Water Patrol]~~ as provided in KRS 235.010 and~~[fish and wildlife conservation officers as provided in]~~ KRS Chapter 150 and all

other law enforcement and peace officers of the Commonwealth and its political subdivisions to enforce the provisions of KRS 512.070.

(3) Any city or county may offer and pay rewards for the giving of information leading to the arrest and conviction of any person, firm or corporation for a violation of KRS 512.070.

Section 18. The following KRS sections are repealed:

235.020 Division of Water Patrol.

235.320 Director's power to make regulations.

Section 19. Executive Order 96-726, dated June 7, 1996, relating to the abolishment of the Division of Water Patrol, is confirmed to the extent that it is not otherwise confirmed by this Act.

The Committee on Rules reported that **SB 17** has been posted for passage in the Orders of the Day for February 18, 1998.

Calendar

HB 17, HB 99, HB 311, HB 369, HB 426, HB 431, HJR 53, HJR 58, SB 20, HB 338, HB 415, HB 448, HB 475, HB 514, HB 516, HB 353, HB 480, HB 483, HB 505, HJR 63, SB 187, HB 81, HB 90, HB 318, HB 342, and **HB 344** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Report On Enrolled Bills

The Committee on Enrollment reported that **SB 1** and **SB 37** have been examined and found correctly enrolled. Said Bills were read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time - 4:20 p.m.)

Floor Amendments

Floor Amendment No. 1 to **HB 517**, by Representative Brown:

on page 4, line 14, by deleting the word "***of***" before "***(1) and (2)***"; and

on line 16, after "***contract***" by deleting the rest of line 16; and

on line 17, by deleting "***commission***"

Floor Amendment No. 1 to **HB 330**, by Representative Moberly:

On page 2, line 23, after "***institutions***", by inserting "***and with local juvenile delinquency prevention councils***"; and

On page 7, line 27, after "***whole***", by inserting "***including representatives from the local juvenile delinquency prevention council, if a council exists in that community***".

Floor Amendment No. 1 to the Committee Substitute to **HB 75**, by Representative Weaver:

On page 4, by deleting lines 12-15 in their entirety; and

On page 5, line 20, by deleting "***(8)***" and by inserting in lieu thereof "***(7)***".

Representative Stumbo moved that the rules be suspended to allow floor privileges to former Representative Rex Smith. Agreed.

Recess

Representative Stumbo moved to suspend the rules to allow the House to recess for a Committee on Rules meeting in the Speaker's Office. Agreed. At the appointed hour, the Speaker resumed the Chair and called the House to order. Representative Stumbo moved that the rules be suspended for a Committee on Rules Report. Agreed.

Report of Committees (Continued)

The Committee on Rules reported that **SB 148, SB 154, HB 75, HB 229, HB 308, HB 17, HB 81, HB 99, HB 318, HB 338, HB 353, HB 369, HB 415, HB 448, HB 514, HB 516, HJR 53, HJR 58, HJR 63,** and **SB 187** have been posted for passage in the Orders of the Day for February 18, 1998.

Floor Amendments (Continued)

Floor Amendment No. 1 to the Committee Substitute to **HB 455**, by Representative Hogancamp:

On page 11, line 27, after the word "***records***", by inserting "***, pertaining to status offenders, public offenders, and youthful offenders,***".

Floor Amendment No. 4 to the Committee Substitute to **HB 160**, by Representative Deweese:

On page 1, line 5, By deleting "two (2)" and inserting in lieu thereof "three (3)";

And also on page 1, line 5, By deleting "complementary and" and inserting in lieu thereof "nonconventional medicine, naturopathy, and acupuncture";

And also on page 1, line 6, By deleting "alternative medicine"';

And also on page 1, line 11, By inserting after "Attorney General" the following phrase ", and a member of the Coalition for Natural Health";

And also on page 1, line 18, By inserting after "medicine" the words "or chiropractic".

Orders of the Day

SB 22 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Weaver moved that **SB 22** be passed.

On the roll call the vote was: Yeas 93, Nays 1 (See February 17 , 1998 roll call on **SB 22** - Appendix.) **SB 22** was passed and the title agreed to. Representative Weaver moved that the vote by which **SB 22** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 317, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Damron moved the adoption of the Committee Substitute to **HB 317**. Agreed.

Representative Damron moved that **HB 317**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 92, Nays 0 (See February 17, 1998 roll call on **HB 317** - Appendix.) **HB 317**, by way of Committee Substitute, was passed and the title agreed to. Representative Damron moved that the vote by which **HB 317**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 2 to the Committee Substitute to **HB 455**, by Representative Barrows:

On page 32, lines 9 to 12, after the "*(d)*" to delete the remaining language; and

On page 32, line 13, to delete the "*(f)*"; and

On page 32, line 15, to delete the "*(g)*" and insert "*(e)*" in lieu thereof; and

On page 32, line 17, to delete the "*(h)*" and insert "*(f)*" in lieu thereof; and

On page 32, line 20, to delete the "*(i)*" and insert "*(g)*" in lieu thereof; and

On page 32, line 21, to delete the "*(j)*" and insert "*(h)*" in lieu thereof; and

On page 32, line 22, to delete the "*(k)*" and insert "*(i)*" in lieu thereof; and

On page 32, line 23, to delete the "*(l)*" and insert "*(j)*" in lieu thereof; and

On page 32, line 25, to delete the "*(m)*" and insert "*(k)*" in lieu thereof; and
On page 32, line 26, to delete the "*(n)*" and insert "*(l)*" in lieu thereof; and
On page 32, line 27, to delete the "*(o)*" and insert "*(m)*" in lieu thereof; and
On page 33, line 1, to delete the "*(p)*" and insert "*(n)*" in lieu thereof; and
On page 66, line 17, to delete "*(1)*"; and
On page 66, line 21, to delete "*(a)*" and insert "*(1)*" in lieu thereof; and
On page 66, line 22, to delete "*(b)*" and insert "*(2)*" in lieu thereof; and
On page 66, line 24, to delete "*(c)*" and insert "*(3)*" in lieu thereof; and
On page 66, line 27, to delete "*(d)*" and insert "*(4)*" in lieu thereof; and
On page 67, lines 7 and 8, to delete the same; and
On page 81 and 82, lines 26 through 7, to delete the same, and
To renumber the ensuing sections accordingly; and
On page 104, line 22, to delete "***Section 85***" and insert "***Section 84***" in lieu thereof; and
On page 106, line 7, to delete "***Section 84 or 85***" and insert "***Section 83 or 84***" in lieu thereof; and
On page 106, line 14, to delete "***Section 84 or 85***" and insert "***Section 83 or 84***" in lieu thereof; and
On page 106, line 22, to delete "***Section 84 or 85***" and insert "***Section 83 or 84***" in lieu thereof; and
On page 107, line 16, to delete "***Section 84 or 85***" and insert "***Section 83 or 84***" in lieu thereof; and
On page 107, line 24, to delete "***Section 84 or 85***" and insert "***Section 83 or 84***" in lieu thereof; and
On page 113, line 4, to delete "***Section 88 to 93***" and insert "***Section 87 to 92***" in lieu thereof; and
On page 115, line 23, to delete "***101 to 112***" and insert "***100 to 111***" in lieu thereof; and
On page 117, line 3, to delete "***Section 101 to 112***" and insert "***Section 100 to 111***" in lieu thereof; and
On page 117, line 6, to delete "***Section 101 to 112***" and insert "***Section 100 to 111***" in lieu thereof; and
On page 117, line 25, to delete "***Section 101 to 112***" and insert "***Section 100 to 111***" in lieu thereof; and
On page 118, line 1, to delete "***Section 101 to 112***" and insert "***Section 100 to 111***" in lieu thereof; and
On page 120, line 19, to delete "***Section 102***" and insert "***Section 101***" in lieu thereof; and
On page 120, line 20, to delete "***Section 111***" and insert "***Section 110***" in lieu thereof; and
On page 121, line 13, to delete "***Section 101 to 112***" and insert "***Section 100 to 111***" in lieu thereof; and
On page 122, line 4, to delete "***Section 102***" and insert "***Section 101***" in lieu thereof; and
On page 122, line 7, to delete "***Section 101 to 112***" and insert "***Section 100 to 111***" in lieu thereof; and
On page 122, line 15, to delete "***Section 101 to 112***" and insert "***Section 100 to 111***" in lieu thereof; and
On page 124, line 4, to delete "***Section 101***" and insert "***Section 100***" in lieu thereof; and
On page 124, line 5, to delete "***Sections 101 or 112***" and insert "***Sections 100 or 111***" in lieu thereof; and
On page 124, line 9, to delete "***Section 101***" and insert "***Section 100***" in lieu thereof; and
On page 124, line 11, to delete "***Section 102***" and insert "***Section 101***" in lieu thereof; and
On page 124, line 13, to delete "***Section 101 to 112***" and insert "***Section 100 to 111***" in lieu thereof; and
On page 124, line 21, to delete "***Section 101 to 112***" and insert "***Section 100 to 111***" in lieu thereof; and
On page 124, line 22, to delete "***Section 101 to 112***" and insert "***Section 100 to 111***" in lieu thereof; and
On page 125, line 11, to delete "***Section 101 to 112***" and insert "***Section 100 to 111***" in lieu thereof; and
On page 125, line 13, to delete "***Section 101 to 112***" and insert "***Section 100 to 111***" in lieu thereof; and
On page 125, line 20, to delete "***Section 101 to 112***" and insert "***Section 100 to 111***" in lieu thereof; and
On page 126, line 2, to delete "***Section 101 to 112***" and insert "***Section 100 to 111***" in lieu thereof; and
On page 135, line 18, to delete "***Section 95***" and insert "***Section 94***" in lieu thereof; and
On page 135, line 19, to delete "***Section 95***" and insert "***Section 94***" in lieu thereof; and
On page 135, line 22, to delete "***Section 95***" and insert "***Section 94***" in lieu thereof; and
On page 138, line 2, to delete "82" and insert "81" in lieu thereof; and
On page 138, line 9, to delete "Section 101 to 112" and insert "Section 100 to 111" in lieu thereof.

Orders of the Day (Continued)

HB 390 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Zimmerman moved that **HB 390** be passed.

On the roll call the vote was: Yeas 91, Nays 1 (See February 17, 1998 roll call on **HB 390** - Appendix.) **HB 390** was passed and the title agreed to. Representative Zimmerman moved that the vote by which **HB 390** was passed be reconsidered and said motion be placed on the table. Agreed.

SCR 3 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Bruce moved that **SCR 3** be adopted.

On the roll call the vote was: Yeas 91, Nays 0 (See February 17, 1998 roll call on **SCR 3** - Appendix.) **SCR 3** was adopted.Representative Bruce moved that the vote by which **SCR 3** was adopted be reconsidered and said motion be placed on the table. Agreed.

HB 370 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative A. Arnold moved that **HB 370** be passed.

On the roll call the vote was: Yeas 87, Nays 3 (See February 17, 1998 roll call on **HB 370** - Appendix.) **HB 370** was passed and the title agreed to. Representative A. Arnold moved that the vote by which **HB 370** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 347 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 347** be passed.

On the roll call the vote was: Yeas 93, Nays 0 (See February 17, 1998 roll call on **HB 347** - Appendix.) **HB 347** was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 347** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 348, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved the adoption of the Committee Substitute to **HB 348**. Agreed.

Representative Stumbo moved that **HB 348**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 88, Nays 1 (See February 17, 1998 roll call on **HB 348** - Appendix.) **HB 348**, by way of Committee Substitute, was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 348**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 351 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 351** be passed.

On the roll call the vote was: Yeas 91, Nays 1 (See February 17, 1998 roll call on **HB 351** - Appendix.) **HB 351** was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 351** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 360 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 360** be passed.

On the roll call the vote was: Yeas 91, Nays 0 (See February 17, 1998 roll call on **HB 360** - Appendix.) **HB 360** was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 360** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 412, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of

members elected.

Representative Long moved the adoption of the Committee Substitute to **HB 412**. Agreed.

Representative Long moved that **HB 412**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 93, Nays 0 (See February 17, 1998 roll call on **HB 412** - Appendix.) **HB 412**, by way of Committee Substitute, was passed and the title agreed to. Representative Long moved that the vote by which **HB 412**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 430, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative J. Adams moved the adoption of the Committee Substitute to **HB 430**. Agreed.

Representative J. Adams moved that **HB 430**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 92, Nays 0 (See February 17, 1998 roll call on **HB 430** - Appendix.) **HB 430**, by way of Committee Substitute, was passed and the title agreed to. Representative J. Adams moved that the vote by which **HB 430**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 428 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Geveden moved that **HB 428** be passed.

On the roll call the vote was: Yeas 89, Nays 3 (See February 17, 1998 roll call on **HB 428** - Appendix.) **HB 428** was passed and the title agreed to. Representative Geveden moved that the vote by which **HB 428** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 433 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative R. Adams moved that **HB 433** be passed.

On the roll call the vote was: Yeas 86, Nays 0 (See February 17, 1998 roll call on **HB 433** - Appendix.) **HB 433** was passed and the title agreed to. Representative R. Adams moved that the vote by which **HB 433** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 476 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Crenshaw moved that **HB 476** be passed.

On the roll call the vote was: Yeas 88, Nays 0 (See February 17, 1998 roll call on **HB 476** - Appendix.) **HB 476** was passed and the title agreed to. Representative Crenshaw moved that the vote by which **HB 476** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 257 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative D. Graham moved that **HB 257** be passed.

On the roll call the vote was: Yeas 91, Nays 0 (See February 17, 1998 roll call on **HB 257** - Appendix.) **HB 257** was passed and the title agreed to. Representative D. Graham moved that the vote by which **HB 257** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 452 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Bowling moved that **HB 452** be passed.

On the roll call the vote was: Yeas 88, Nays 0 (See February 17, 1998 roll call on **HB 452** - Appendix.) **HB 452** was passed and the title agreed to. Representative Bowling moved that the vote by which **HB 452** was passed be reconsidered and said motion be placed on the table. Agreed.

Representative Stumbo moved that **HB 455** be recommitted to Appropriations and Revenue. Agreed.

Motions, Petitions, and Communications

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions, Report of Committees and Posting of Bills and Resolutions for Consideration. Agreed.

Introduction of Bills

HB 618, by Representative Palumbo: AN ACT relating to health insurance coverage for cancer drugs.

HB 619, by Representative Nunn: AN ACT relating to public utilities.

HB 620, by Representative Jenkins: AN ACT relating to criminal surveillance.

HB 621, by Representative Callahan: AN ACT relating to long-term care facilities.

HB 622, by Representative Callahan: AN ACT relating to property tax administration.

HB 623, by Representatives Wilkey and Bowling: AN ACT relating to employee criminal background checks.

HB 624, by Representatives Marzian, P. Clark, Hatcher, Riggs, L. Clark, Horlander, Jordan, Wayne, Miller, D. Butler, Riner and Jenkins: AN ACT relating to a compact between a city of the first class and a county containing a city of the first class and declaring an emergency.

HB 625, by Representative Barrows: AN ACT relating to air boards.

HB 626, by Representative Damron: AN ACT relating to animal control.

HB 627, by Representatives Moberly, L. Clark, Rasche, Murgatroyd, Richards, Curd, Barrows, Stein, and Coleman: AN ACT relating to education assessment and accountability, making an appropriation therefor, and declaring an emergency.

HB 628, by Representatives Walton, Callahan, Murgatroyd, Marcotte, Reinhardt, Stine, Brandstetter, and Kerr: AN ACT relating to property tax.

HB 629, by Representative Collins: AN ACT relating to highways.

Report of Committees (Continued)

The Committee on Appropriations and Revenue reported **HB 32**, with Committee Substitute attached thereto, **HB 394**, and, **HB 419**, with Committee Amendment attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 32, AN ACT relating to motor vehicle usage tax.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 138.470 is amended to read as follows:

There is expressly exempted from the tax imposed by KRS 138.460:

(1) Motor vehicles sold to the United States, or to the Commonwealth of Kentucky or any of its political subdivisions;

(2) Motor vehicles sold to institutions of purely public charity and institutions of education not used or employed for gain by any person or corporation;

(3) Motor vehicles which have been previously registered and titled in any state or by the federal government when being sold or transferred to licensed motor vehicle dealers for resale. Such motor vehicles shall not be leased, rented, or loaned to any person and shall be held for resale only;

(4) Motor vehicles sold by or transferred from dealers registered and licensed in compliance with the provisions of KRS 186.070 and KRS 190.010 to 190.080 to nonresident members of the Armed Forces on duty in this Commonwealth under orders from the United States government;

(5) Commercial motor vehicles, excluding passenger vehicles having a seating capacity for nine (9) persons or less, owned by nonresident owners and used primarily in interstate commerce and based in a state other than Kentucky which are required to be registered in Kentucky by reason of operational requirements or fleet proration agreements and are registered pursuant to KRS 186.145;

(6) Motor vehicles previously registered in Kentucky, transferred between husband and wife, parent and child, stepparent and stepchild, or grandparent and grandchild;

(7) Motor vehicles transferred when a business changes its name and no other transaction has taken place or an individual changes his or her name;

(8) Motor vehicles transferred to a corporation from a proprietorship, or from a corporation to a proprietorship, within six (6) months from the time that the business is incorporated or dissolved;

(9) ***Motor vehicles transferred to a limited liability company from an individual, or from a limited liability company to an individual, within six (6) months from the time that the business is incorporated or dissolved;***

(10) Motor vehicles transferred by will, court order, or under the statutes covering descent and distribution of property, if the vehicles were previously registered in Kentucky;

(11)[~~(10)~~] Motor vehicles transferred between a subsidiary corporation and its parent corporation if there is no consideration, or nominal consideration, or in sole consideration of the cancellation or surrender of stock;

(12)[~~(11)~~] The interest of a partner in a motor vehicle when other interests are transferred to him;

(13)[~~(12)~~] Motor vehicles repossessed by a secured party who has a security interest in effect at the time of repossession and a repossession affidavit as required by KRS 186.045(4). The repossessor shall hold the vehicle for resale only and not for personal use, unless he has previously paid the motor vehicle usage tax on the vehicle; and

(14)[~~(13)~~] Motor vehicles transferred to an insurance company to settle a claim. These vehicles shall be junked or held for resale only.

Section 2. The provisions of this Act take effect August 1, 1998.

The Committee Substitute to **HB 32** is as follows:

AN ACT relating to motor vehicle usage tax.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 138.470 is amended to read as follows:

There is expressly exempted from the tax imposed by KRS 138.460:

(1) Motor vehicles sold to the United States, or to the Commonwealth of Kentucky or any of its political subdivisions;

(2) Motor vehicles sold to institutions of purely public charity and institutions of education not used or employed for gain by any person or corporation;

(3) Motor vehicles which have been previously registered and titled in any state or by the federal government when being sold or transferred to licensed motor vehicle dealers for resale. Such motor vehicles shall not be leased, rented, or loaned to any person and shall be held for resale only;

(4) Motor vehicles sold by or transferred from dealers registered and licensed in compliance with the provisions of KRS 186.070 and KRS 190.010 to 190.080 to nonresident members of the Armed Forces on duty in this Commonwealth under orders from the United States government;

(5) Commercial motor vehicles, excluding passenger vehicles, having a seating capacity for nine (9) persons or less, owned by nonresident owners and used primarily in interstate commerce and based in a state other than Kentucky which are required to be registered in Kentucky by reason of operational requirements or fleet proration agreements and are registered pursuant to KRS 186.145;

(6) Motor vehicles previously registered in Kentucky, transferred between husband and wife, parent and child, stepparent and stepchild, or grandparent and grandchild;

(7) Motor vehicles transferred when a business changes its name and no other transaction has taken place or an individual changes his or her name;

(8) Motor vehicles transferred to a corporation from a proprietorship ***or limited liability company, to a limited liability company from a corporation or proprietorship***, or from a corporation ***or limited liability company*** to a proprietorship, within six (6) months from the time that the business is incorporated or dissolved;

(9) Motor vehicles transferred by will, court order, or under the statutes covering descent and distribution of property, if the vehicles were previously registered in Kentucky;

(10) Motor vehicles transferred between a subsidiary corporation ***or limited liability company*** and its parent corporation ***or limited liability company*** if there is no consideration, or nominal consideration, or in sole consideration of the cancellation or surrender of stock;

(11) The interest of a partner in a motor vehicle when other interests are transferred to him;

(12) Motor vehicles repossessed by a secured party who has a security interest in effect at the time of repossession and a repossession affidavit as required by KRS 186.045(4). The repossessor shall hold the vehicle for resale only and not for personal use, unless he has previously paid the motor vehicle usage tax on the vehicle; and

(13) Motor vehicles transferred to an insurance company to settle a claim. These vehicles shall be junked or held for resale only.

Section 2. The amendment contained in Section 1 of this Act shall apply for motor vehicles transferred after July 31, 1998.

HB 394, AN ACT relating to revenue and taxation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 134.810 is amended to read as follows:

(1) All state, county, city, urban-county government, school, and special taxing district ad valorem taxes shall be due and payable on or before the earlier of the last day of the month in which registration renewal is required by law for a motor vehicle renewed or the last day of the month in which a vehicle is transferred.

(2) All state, county, city, urban-county government, school, and special taxing district ad valorem taxes due on motor vehicles shall become delinquent following the earlier of the end of the month in which registration renewal is required by law or the last day of the second calendar month following the month in which a vehicle was transferred.

(3) Any taxes which are paid within thirty (30) days of becoming delinquent shall be subject to a penalty of three percent (3%) on the taxes due. However, this penalty shall be waived if the tax bill is paid within five (5) days of the tax bill being declared delinquent. Any taxes which are not paid within thirty (30) days of becoming delinquent shall be subject to a penalty of ten percent (10%) on the taxes due. In addition, interest at an annual rate of fifteen percent (15%) shall accrue on said taxes and penalty from the date of delinquency. No penalty or interest shall accrue on a motor vehicle under dealer assignment pursuant to KRS 186A.220.

(4) When a motor vehicle has been transferred before registration renewal or before taxes due have been paid, the owner of record on January 1 of any year shall be liable for the taxes on the motor vehicle, except as hereinafter provided.

(5) If an owner obtains a certificate of registration for a motor vehicle valid through the last day of his second birth month following the month and year in which he applied for a certificate of registration, all state, county, city, urban-county government, school, and special tax district ad valorem tax liabilities arising from the assessment date following initial registration shall be due and payable on or before the last day of the first birth month following the assessment date or date of transfer, whichever is earlier. Any taxes due under the provisions of this subsection and not paid as set forth above shall be considered delinquent and subject to the same interest and penalties found in subsection (3) of this section.

(6) For purposes of the state ad valorem tax only, all motor vehicles held for sale by a licensed Kentucky dealer ***and all motor vehicles with a salvage title held by an insurance company*** on January 1 of any year shall not be taxed as a motor vehicle pursuant to KRS 132.485(3) but shall be subject to ad valorem tax as goods held for sale in the regular course of business under the provisions of KRS 132.020***(10)***[~~(9)~~] and 132.220.

(7) Any provision to the contrary notwithstanding, when any ad valorem tax on a motor vehicle becomes delinquent, the state and each county, city, urban-county government, or other taxing district shall have a lien on all motor vehicles owned or acquired by the person who owned the motor vehicle at the time the tax liability arose. A lien for delinquent ad valorem taxes shall not attach to any motor vehicle transferred while the taxes are due on that vehicle. For the purpose of delinquent ad valorem taxes on leased vehicles only, a lien on a leased vehicle shall not be attached to another vehicle owned by the lessor.

(8) The lien required by subsection (7) of this section shall be filed and released by the automatic entry of appropriate information in the AVIS database. For the filing and release of each lien or set of liens arising from motor vehicle ad valorem property tax delinquency, a fee of one dollar ($1) shall be added to the delinquent tax account. The fee shall be collected and retained by the county clerk who collects the delinquent tax.

(9) The implementation of the automated lien system provided in this section shall not affect the manner in which commercial liens are recorded or released.

Section 2. KRS 132.200 is amended to read as follows:

All property subject to taxation for state purposes shall also be subject to taxation in the county, city, school, or other taxing district in which it has a taxable situs, except the classes of property described in KRS 132.030 and 132.050, and the following classes of property, which shall be subject to taxation for state purposes only:

(1) Farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operation;

(2) Livestock, ratite birds, and domestic fowl;

(3) Capital stock of savings and loan associations;

(4) Machinery and products in course of manufacture, of individuals or corporations actually engaged in manufacturing, and their raw material actually on hand at their plant for the purpose of manufacture. Individuals or corporations actually engaged in the printing, publication, and distribution of a newspaper or operating a job printing plant shall be deemed to be actually engaged in manufacturing;

(5) Commercial radio, television, and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna; however, radio or television towers not essential to the production of the wave or signal broadcast shall not be included;

(6) Unmanufactured agricultural products. They shall be exempt from taxation for state purposes to the extent of the value, or amount, of any unpaid nonrecourse loans thereon granted by the United States government or any agency thereof, and except that cities and counties may each impose an ad valorem tax of not exceeding one and one-half cents ($0.015) on each one hundred dollars ($100) of the fair cash value of all unmanufactured tobacco and not exceeding four and one-half cents ($0.045) on each one hundred dollars ($100) of the fair cash value of all other unmanufactured agricultural products, subject to taxation within their limits that are not actually on hand at the plants of manufacturing concerns for the purpose of manufacture, nor in the hands of the producer or any agent of the producer to whom the products have been conveyed or assigned for the purpose of sale;

(7) Money in hand, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, and shares of stock. Nothing in this section shall forbid local taxation of franchises of corporations or of financial institutions, as provided for in KRS 136.575, or domestic life insurance companies;

(8) All privately-owned leasehold interest in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;

(9) Property which has been certified as a pollution control facility as defined in KRS 224.01-300;

(10) Property which has been certified as an alcohol production facility as defined in KRS 247.910;

(11) On and after January 1, 1977, the assessed value of unmined coal shall be included in the formula contained in KRS 132.590(9) in determining the amount of county appropriation to the office of the property valuation administrator;

(12) Tangible personal property located in a foreign trade zone as designated under 19 U.S.C. sec. 81;

(13) Motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043. However, nothing herein shall be construed to exempt historical motor vehicles from the usage tax imposed by KRS 138.460 based on the vehicle's fair market value at the time of sale;

(14) Property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;

(15) All motor vehicles held for sale in the inventory of a licensed motor vehicle dealer, which are not currently titled and registered in Kentucky and are held on an assignment pursuant to the provisions of KRS 186A.230***, and all motor vehicles with a salvage title held by an insurance company***;

(16) Machinery or equipment owned by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes as defined in KRS 139.095; and

(17) New farm machinery and other equipment held in the retailer's inventory for sale under a floor plan financing arrangement by a retailer, as defined under KRS 365.800.

Section 3. The amendments contained in this Act shall apply to taxable years beginning after December 31, 1998.

HB 419, AN ACT relating to revenue and taxation and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 136.500 is amended to read as follows:

As used in KRS 136.500 to 136.575, unless the context requires otherwise:

(1) "Billing address" means the location indicated in the books and records of the financial institution, on the first day of the taxable year or the date in the taxable year when the customer relationship began, as the address where any notice, statement, or bill relating to a customer's account is mailed;

(2) "Borrower located in this state" means a borrower, other than a credit card holder, that is engaged in a trade or business that maintains its commercial domicile in this state or a borrower that is not engaged in a trade or business;

(3) "Credit card holder located in this state" means a credit card holder whose billing address is in this state;

(4) "Cabinet" means the Revenue Cabinet;

(5) "Commercial domicile" means:

(a) The location from which the trade or business is principally managed and directed; or

(b) The state of the United States or the District of Columbia from which the financial institution's trade or business in the United States is principally managed and directed, if a financial institution is organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

It shall be presumed, subject to rebuttal, that the location from which the financial institution's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of the employees are performed, as of the last day of the taxable year;

(6) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services that are included in the employee's gross income under the Internal Revenue Code. In the case of employees not subject to the Internal Revenue Code, the determination of whether the payments would constitute gross income to the employees under the Internal Revenue Code shall be made as though the employees were subject to the Internal Revenue Code;

(7) "Credit card" means credit, travel, or entertainment card;

(8) "Credit card issuer's reimbursement fee" means the fee a financial institution receives from a merchant's bank because one of the persons to whom the financial institution has issued a credit card has charged merchandise or services to the credit card;

(9) "Employee" means, with respect to a particular financial institution, "employee" as defined in Section 3121(d) of the Internal Revenue Code;

(10) "Financial institution" means:

(a) A national bank organized ***as a body corporate*** and existing ***or in the process of organizing*** as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. sec. 21 et seq., in effect on December 31, ***1997***~~[1995]~~, exclusive of any amendments made subsequent to that date~~[, or a national bank organized after December 31, 1995, that meets the requirements of the National Bank Act in effect on December 31, 1995]~~;

(b) Any bank or trust company incorporated or organized under the laws of any state, except a banker's bank organized under KRS 287.135;

(c) Any corporation organized under the provisions of 12 U.S.C. secs. 611 to 631, in effect on December 31, ***1997***~~[1995]~~, exclusive of any amendments made subsequent to that date, or any corporation organized after December 31, ***1997***~~[1995]~~, that meets the requirements of 12 U.S.C. secs. 611 to 631, in effect on December 31, ***1997***~~[1995]~~; or

(d) Any agency or branch of a foreign depository as defined in 12 U.S.C. sec. 3101, in effect on December 31, ***1997***~~[1995]~~, exclusive of any amendments made subsequent to that date, or any agency or branch of a foreign depository established after December 31, ***1997***~~[1995]~~, that meets the requirements of 12 U.S.C. sec. 3101 in effect on December 31, ***1997***~~[1995]~~;

(11) "Gross rents" means the actual sum of money or other consideration payable for the use or possession of property.

(a) "Gross rents" includes, but is not limited to:

1. Any amount payable for the use or possession of real property or tangible property, whether designated as a fixed sum of money or as a percentage of receipts, profits, or otherwise;

2. Any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs, or any other amount required to be paid by the terms of a lease or other arrangement; and

3. A proportionate part of the cost of any improvement to real property made by or on behalf of the financial institution which reverts to the owner or lessor upon termination of a lease or other arrangement. The amount to be included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year. However, where a building is erected on leased land by or on behalf of the financial institution, the value of the land is determined by multiplying the gross rent by eight (8) and the value of the building is determined in the same manner as if owned by the financial institution;

(b) The following are not included in the term "gross rents":

1. Reasonable amounts payable as separate charges for water and electric service furnished by the lessor;

2. Reasonable amounts payable as service charges for janitorial services furnished by the lessor;

3. Reasonable amounts payable for storage, if these amounts are payable for space not designated and not under the control of the financial institution; and

4. That portion of any rental payment which is applicable to the space subleased from the financial institution and not used by it;

(12) "Internal Revenue Code" means the Internal Revenue Code, Title 26 U.S.C., in effect on December 31, ***1997***~~[1995]~~, exclusive of any amendments made subsequent to that date;

(13) "Loan" means any extension of credit resulting from direct negotiations between the financial institution and its customer, and the purchase, in whole or in part, of the extension of credit from another. Loans include participations, syndications, and leases treated as loans for federal income tax purposes. Loans shall not include properties treated as

loans under Section 595 of the Internal Revenue Code, futures or forward contracts, options, notional principal contracts such as swaps, credit card receivables, including purchased credit card relationships, noninterest-bearing balances due from depository institutions, cash items in the process of collection, federal funds sold, securities purchased under agreements to resell, assets held in a trading account, securities, interests in a real estate mortgage investment company, or other mortgage-backed or asset-backed security, and other similar items;

(14) "Loan secured by real property" means a loan or other obligation for which fifty percent (50%) or more of the aggregate value of the collateral used to secure the loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property;

(15) "Merchant discount" means the fee or negotiated discount charged to a merchant by the financial institution for the privilege of participating in a program where a credit card is accepted in payment for merchandise or services sold to the card holder;

(16) "Person" means an individual, estate, trust, partnership, corporation, ***limited liability company,*** or any other business entity;

(17) "Principal base of operations" means:

(a) With respect to transportation property, the place from which the property is regularly directed or controlled; and

(b) With respect to an employee:

1. The place the employee regularly starts work and to which the employee customarily returns in order to receive instructions from his or her employer; or

2. If the place referred to in subparagraph 1. of this paragraph does not exist, the place the employee regularly communicates with customers or other persons; or

3. If the place referred to in subparagraph 2. of this paragraph does not exist, the place the employee regularly performs any other functions necessary to the exercise of the employee's trade or profession at some other point or points;

(18) "Real property owned" and "tangible personal property owned" mean real and tangible personal property, respectively, on which the financial institution may claim depreciation for federal income tax purposes, or property to which the financial institution holds legal title and on which no other person may claim depreciation for federal income tax purposes or could claim depreciation if subject to federal income tax. Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure;

(19) "Regular place of business" means an office at which the financial institution carries on its business in a regular and systematic manner and which is continuously maintained, occupied, and used by employees of the financial institution;

(20) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country;

(21) "Syndication" means an extension of credit in which two (2) or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount;

(22) "Taxable year" means calendar year 1996 and every calendar year thereafter;

(23) "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels, and motor vehicles, as well as any equipment or containers attached to the property, such as rolling stock, barges, or trailers;[~~ and~~]

(24) "United States obligations" means all obligations of the United States exempt from taxation under 31 U.S.C. sec. 3124(a) or exempt under the United States Constitution or any federal statute, including the obligations of any instrumentality or agency of the United States that are exempt from state or local taxation under the United States Constitution or any statute of the United States***; and***

(25) "Kentucky obligations" means all obligations of the Commonwealth of Kentucky, its counties, municipalities, taxing districts, and school districts, exempt from taxation under the Kentucky Revised Statutes and the Constitution of Kentucky.

Section 2. KRS 136.515 is amended to read as follows:

(1) Net capital shall be determined by adding the value determined under subsection (2) of this section for the current taxable and preceding four (4) calendar years and dividing the resulting sum by five (5). If a financial institution has not been in existence for a period of five (5) calendar years, net capital shall be determined by adding together the values determined under subsection (2) of this section for the number of calendar years the financial institution has been in existence and dividing the resulting sum by the number of years ***the financial institution has been in existence***. For purposes of this section, a partial year shall be treated as a full year.

(2) (a) The value of net capital for each year for purposes of subsection (1) of this section shall be determined by:

1. Adding together the book value of:

a. Capital stock paid in;

b. Surplus;

c. Undivided profits and capital reserves;

d. Net unrealized holding gains or losses on available for sale securities; and

e. Cumulative foreign currency translation adjustments; and

2. Deducting from the total determined under subparagraph 1. of this subsection an amount equal to the same percentage of the total as the book value of United States obligations ***and Kentucky obligations*** bears to the book value of the total assets of the financial institution.

(b) For purposes of this subsection, net capital shall include equity related to investment in subsidiaries.

(c) For purposes of this subsection, ***except as provided in paragraphs (d) and (e) of this subsection,*** the foregoing book values and deductions for United States obligations ***and Kentucky obligations*** for each year shall be determined by the reports of condition for each quarter filed in accordance with the requirements of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or other applicable regulatory authority. Book values shall be calculated by averaging the quarterly book values as determined by the reports of condition.

(d) For any year in which a financial institution does not file four (4) quarterly reports of condition, book values and deductions for United States obligations ***and Kentucky obligations*** shall be determined by adding together the ***respective*** book values and deductions for United States obligations ***and Kentucky obligations as determined by***[~~from~~] each quarterly report of condition filed for the year and ***the respective book values and deductions for United States obligations and Kentucky obligations determined in accordance with generally accepted accounting principles as of the end of each of the remaining quarters and*** dividing the resulting sums by ***four (4)***[~~the number of the reports of condition filed~~].

(e) For any calendar year in which a financial institution ***ceases to be***[~~is not~~] in existence for four (4) quarters, ***other than by combination with another financial institution,*** the book value for that year shall be determined by adding together the book values ***and deductions for United States obligations and Kentucky obligations*** for each quarter in which the financial institution was in existence and dividing the ***sums by four (4)***[~~total by the total number of quarters that the financial institution was in existence that calendar year~~].

(f) In the case of a financial institution which does not file reports of condition, book values shall be determined ***in accordance with***[~~by~~] generally[~~-~~]accepted accounting principles.

(3) For purposes of this section:

(a) A change in identity, form, or place of organization of one (1) financial institution shall be treated as if a single financial institution had been in existence prior to as well as after the change;[~~ and~~]

(b) The combination of two (2) or more financial institutions into one (1) shall be treated as if the constituent financial institutions had been a single financial institution in existence prior to as well as after the combination, and the book values and deductions for United States obligations ***and Kentucky obligations*** from the reports of condition of the constituent institutions shall be combined. A combination shall include any acquisition required to be accounted for by the surviving financial institution under the pooling of interest method in accordance with generally-accepted accounting principles or a statutory merger or consolidation***; and***

(c) 1. The combination of one (1) or more financial institutions and one (1) or more savings and loan associations taxable under KRS 136.300 into a single financial institution shall be treated for the taxable year in which the combination occurred as if the single financial institution had been in existence prior to as well as after the combination, and the book values and deductions for United States obligations and Kentucky obligations from the reports of condition of the financial institution and the reports to the federal regulatory agency which are the equivalent of reports of condition for a savings and loan association shall be combined.

2. The conversion of a savings and loan association taxable under KRS 136.300 into a financial institution shall be treated for the taxable year in which the conversion occurred as if the savings and loan association had been a financial institution prior to as well as after the conversion, and the book values and deductions for United States obligations and Kentucky obligations from the reports to the federal regulatory agency which are the equivalent of reports of condition for a savings and loan association shall be used.

3. The savings and loan association shall not be relieved of the responsibilities of filing and paying tax under KRS 136.300 for taxable years prior to the year of any combination or conversion.

4. Notwithstanding any other provision of KRS 136.500 to 136.575, the financial institution resulting from a combination with or conversion of a saving and loan association shall receive a credit on the

bank franchise tax return equal to the amount of tax paid under KRS 136.300 for the assessment date occurring within the taxable year during which the combination or conversion takes place for bank franchise tax purposes.

Section 3. KRS 141.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Secretary" means the secretary of revenue;

(2) "Cabinet" means the Revenue Cabinet;

(3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 1995, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 1995, that would otherwise terminate, and as modified by KRS 141.0101;

(4) "Dependent" means those persons defined as dependents in the Internal Revenue Code;

(5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal Revenue Code;

(6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;

(7) "Individual" means a natural person;

(8) For taxable years beginning on or after January 1, 1974, "federal income tax" means the amount of federal income tax actually paid or accrued for the taxable year on taxable income as defined in Section 63 of the Internal Revenue Code, and taxed under the provisions of this chapter, minus any federal tax credits actually utilized by the taxpayer;

(9) "Gross income" in the case of taxpayers other than corporations means "gross income" as defined in Section 61 of the Internal Revenue Code;

(10) "Adjusted gross income" in the case of taxpayers other than corporations means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter, and except that nothing in this chapter shall be construed to permit the same item to be deducted more than once:

  (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States and Kentucky;

  (b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Public Law 89-699;

  (c) Include interest income derived from obligations of sister states and political subdivisions thereof;

  (d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;

  (e) Exclude Social Security and railroad retirement benefits subject to federal income tax;

  (f) Include, for taxable years ending before January 1, 1991, all overpayments of federal income tax refunded or credited for taxable years;

  (g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990;

  (h) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by a member or veteran of the armed forces of the United States or any dependent of such person who served in Vietnam;~~[and]~~

  (i) 1. Exclude the applicable amount of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.

    2. The "applicable amount" shall be:

      a. Twenty-five percent (25%), but not more than six thousand two hundred and fifty dollars ($6,250), for taxable years beginning after December 31, 1994, and before January 1, 1996;

      b. Fifty percent (50%), but not more than twelve thousand five hundred dollars ($12,500), for taxable years beginning after December 31, 1995, and before January 1, 1997;

      c. Seventy-five percent (75%), but not more than eighteen thousand seven hundred fifty dollars ($18,750), for taxable years beginning after December 31, 1996, and before January 1, 1998; and

      d. One hundred percent (100%), but not more than thirty-five thousand dollars ($35,000), for taxable years beginning after December 31, 1997.

    3. As used in this paragraph:

a. "Distributions" includes but is not limited to any lump-sum distribution from pension or profit-sharing plans qualifying for the income tax averaging provisions of Section 402 of the Internal Revenue Code; any distribution from an individual retirement account as defined in Section 408 of the Internal Revenue Code; and any disability pension distribution;

b. "Annuity contract" has the same meaning as set forth in Section 1035 of the Internal Revenue Code; and

c. "Pension plans, profit-sharing plans, retirement plans, or employee savings plans" means any trust or other entity created or organized under a written retirement plan and forming part of a stock bonus, pension, or profit-sharing plan of a public or private employer for the exclusive benefit of employees or their beneficiaries and includes plans qualified or unqualified under Section 401 of the Internal Revenue Code and individual retirement accounts as defined in Section 408 of the Internal Revenue Code***; and***

(j) Exclude the distributive share of a shareholder's net income from an S corporation subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300. The shareholder's basis of stock held in a S corporation subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300 shall be the same as the basis for federal income tax purposes.

(11) "Net income" in the case of taxpayers other than corporations means adjusted gross income as defined in subsection (10) of this section, minus the standard deduction allowed by KRS 141.081, or, at the option of the taxpayer, minus the deduction allowed by KRS 141.0202 and minus all the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except those listed below, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter and that nothing in this chapter shall be construed to permit the same item to be deducted more than once:

(a) Any deduction allowed by the Internal Revenue Code for state taxes measured by gross or net income, except that such taxes paid to foreign countries may be deducted;

(b) Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);

(c) The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof; and

(d) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

(12) "Gross income," in the case of corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows:

(a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;

(b) Exclude all dividend income received after December 31, 1969;

(c) Include interest income derived from obligations of sister states and political subdivisions thereof;

(d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;

(e) Include in the gross income of lessors income tax payments made by lessees to lessors, under the provisions of Section 110 of the Internal Revenue Code, and exclude such payments from the gross income of lessees;

(f) Include the amount calculated under KRS 141.205;

(g) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income; and

(h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);

(13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus the deduction allowed by KRS 141.0202 and minus all the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except the following:

(a) Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;

(b) The deductions contained in Sections 243, 244, 245, and 247 of the Internal Revenue Code;

(c) The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;

(d) Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;

(e) Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code); and

(f) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

(14) (a) "Taxable net income," in the case of corporations having property or payroll only in this state, means "net income" as defined in subsection (13) of this section;

(b) "Taxable net income," in the case of corporations having property or payroll both within and without this state means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.120;

(c) "Property" means either real property or tangible personal property which is either owned or leased. "Payroll" means compensation paid to one (1) or more individuals, as described in KRS 141.120(8)(b). Property and payroll are deemed to be entirely within this state if all other states are prohibited by Public Law 86-272, as it existed on December 31, 1975, from enforcing income tax jurisdiction; and

(d) "Taxable net income" in the case of homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (3) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year;

(15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue Code;

(16) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the secretary, "taxable year" means the period for which such return is made;

(17) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;

(18) "Nonresident" means any individual not a resident of this state;

(19) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;

(20) "Employee" means "employee" as defined in Section 3401(c) of the Internal Revenue Code;

(21) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero;

(22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;

(23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the Internal Revenue Code;

(24) "Corporations" means "corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;

(25) "S corporations" means "S corporations" as defined in Section 1361(a) of the Internal Revenue Code. Stockholders of a corporation qualifying as an "S corporation" under this chapter may elect to treat such qualification as an initial qualification under Subchapter S of the Internal Revenue Code Sections.

Section 4. The amendment contained in Section 3 of this Act shall apply retroactively to taxable years beginning after December 31, 1996. The amendments contained in Sections 1 and 2 of this Act shall be effective for taxable years beginning after December 31, 1997.

Section 5. Whereas income tax returns are due before the normal effective date of this Act, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

The Committee Amendment No. 1 to **HB 419** is as follows:

On page 13, line 10, after the "***(i)***" by inserting "***1. a.***"; and

On page 13, line 12, after "***136.300***" by inserting "***; and***

b. Exclude the portion of the distributive share of a shareholder's net income from an S corporation related to a qualified subchapter S subsidiary subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300"; and

On page 13, line 12, after the period, by inserting

"***2.***"; and

On page 13, line 13, after "***corporation***" by inserting "***where the S corporation or its qualified subchapter S subsidiary is***".

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills and Resolutions have been posted for Committee consideration:

Transportation: **HB 14, HB 372, HB 444, HB 504, HB 542, HJR 61, HJR 75, SB 101, SB 102, SB 141**

Counties and Special Districts: **HB 545, HB 548, HB 567, SB 13, SB 43, SB 45, SB 66, SB 78**

Motions, Petitions and Communications (Continued)

Representative Curd moved the adoption of the following **Legislative Citation No. 73**. Agreed. The House of Representatives of the Commonwealth of Kentucky hereby recognizes and commends the U.S. Tobacco/Murray State University Agriculture Leadership Development Program for its efforts to preserve the future of the tobacco industry of this Commonwealth. Inasmuch as this distinguished group seeks to develop the leadership skills of promising dark tobacco farmers, agribusiness people and Murray State agriculture students and to educate tobacco producers on all aspects relevant to the industry, the members of honorable body are pleased to join with Representative Freed Curd in welcoming the U.S. Tobacco/Murray State University Agriculture Leadership Development Program to the Kentucky House of Representatives and in extending to them best wishes for a prosperous and successful future. **Legislative Citation No. 73** was adopted without objection.

Representative Curd moved the adoption of the following **Legislative Citation No. 74**. Agreed. The House of Representatives of the Commonwealth of Kentucky hereby recognizes the Leadership Murray Class. Inasmuch as participation in this leadership program produces citizens who receive an in-depth view of government, education and community, and who are, therefore, better informed about the quality of life and infrastructure of their community, this honorable body is pleased to join Representative Freed Curd in welcoming this distinguished group to Frankfort and in commending its members for participating in this worthy program designed to build strong and able community leaders. **Legislative Citation No. 74** was adopted without objection.

Representative Stumbo moved that **HB 550** be reassigned to Appropriations and Revenue: Agreed.

Representative Stumbo moved that **HB 583** be reassigned to Licensing and Occupations. Agreed.

Representative Stumbo moved that the three day posting requirement be waived on **HB 544, HB 85, HB 13, HB 565** and **SB 169**. Agreed.

Representative Wayne moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Wayne moved that he be recorded as voting "yea" on **HB 422, SB 37, SB 1,** and **HB 374**. Agreed.

Representative Moberly moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Moberly moved that he be recorded as voting "yea" on **HB 476**. Agreed.

Representative Barrows moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Barrows moved that he be recorded as voting "yea" on **HB 317**. Agreed.

Representative Colter moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Colter moved that she be recorded as voting "yea" on **SCR 3**. Agreed.

Representative Palumbo moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative

Palumbo moved that she be recorded as voting "yea" on **HB 428** and **HB 433**. Agreed.

Representative Lee moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Lee moved that he be recorded as voting "yea" on **HB 476**. Agreed.

Representative J. Adams moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative J. Adams moved that he be recorded as voting "yea" on **HB 476** and **HB 412**. Agreed.

The following members filed requests to have their names added as co-sponsors of Bills under rules previously suspended: **HB 13**, Representative Bruce; **HB 11, HB 127**, Representative Baugh; **HB 333, HB 565**, Representative Palumbo; **HB 550, HB 565, HB 609**, Representative Jenkins; **HB 550, HB 565, HB 583, HB 609**, Representative Jordan; **HB 377**, Representative Scott; **HB 391**, Representative Crimm; **HB 444**, Representative Ballard; **HB 550**, Representative Riggs; **HB 605**, Representative Vincent.

The following members filed a request to have his name withdrawn as co-sponsor of a Bill under rules previously suspended: **HB 455**, Representative Damron.

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., February 18, 1998.

On the roll call the vote was **Yeas 78**--J. Adams, R. Adams, Adkins, Alexander, Allen, A. Arnold, J. Arnold, Ballard, Baugh, Bowling, Brandstetter, Brown, Bruce, D. Butler, D. D. Butler, Callahan, Cave, L. Clark, J. Clarke, Collins, Colter, Cox, Crenshaw, Crimm, Curd, Damron, DeWeese, Ford, Gee, Geveden, Gooch, D. Graham, G. Graham, Gray, Hatcher, Haydon, Hoover, Horlander, Jenkins, Johns, Jordan, Kerr, Lee, Lindsay, Marcotte, Marzian, Mason, McKee, Miller, Miniard, Moberly, Murgatroyd, Nesler, Newsome, Palumbo, Polston, Rader, Rasche, Richards, Riner, Scott, Siler, Simpson, Sims, Stacy, Stein, Stine, Stumbo, Thomas, Treesh, Turner, Vincent, Walton, Weaver, Wilkey, Worthington, Yonts, Zimmerman. **Nays 5**--Bratcher, Crall, Maricle, Nunn, Stewart.

The motion to adjourn was adopted.

WEDNESDAY, FEBRUARY 18, 1998

TWENTY-EIGHTH LEGISLATIVE DAY

The House was called to order by Speaker Richards.

Prayer by Reverend K. L. Moore, First Baptist Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Gooch, Lovell and Napier.

Representative Ballard moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative Ballard moved that the reading of the Journal of February 17, 1998, be dispensed with and the same approved. Agreed.

Representative Ballard moved that the Rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Ballard moved that all properly filed co-sponsor requests be approved. Agreed.

Senate Message

Announcing passage of **SB 177** and **SB 190**. (Time: 2:10 p.m.)

Recess

Representative Stumbo moved to suspend the rules to allow the House to recess for a Committee on Rules meeting in the Speaker's Office. Agreed.

At the appointed hour; the Speaker resumed the Chair and called the House to order.

Representative Stumbo moved that the rules be suspended for a Committee on Rules Report. Agreed.

Report of Committees

The Committee on Rules reported that **HB 129, HB 387, HB 168, HB 307, HB 477, HB 90, HB 431,** and **HB 475** have been posted for passage in the Orders of the Day for February 19, 1998.

The Committee on Rules reported that the following Bills have been recommitted:

Appropriations and Revenue: **HB 237, HB 342, HB 344**

Introduction of Bills and Resolutions

HB 630, by Representatives Crenshaw, Stein, Hoffman, Damron, Brandstetter, and Palumbo: AN ACT relating to constables.

HB 631, by Representative Long: AN ACT relating to designating Shelby County as the official Saddlebred Capital of Kentucky.

HB 632, by Representatives Long, Crimm, D. Butler, Palumbo, Brandstetter, Jenkins, and J. Adams: AN ACT relating to engineers and land surveyers.

HB 633, by Representatives Geveden and A. Arnold: AN ACT relating to state personnel.

HB 634, by Representatives J. Adams, Geveden, Bruce, and Pope: AN ACT relating to Real Estate Appraisers.

HCR 76, by Representatives Brandstetter, Jordan, Walton, Simpson, Maricle and Cave: A CONCURRENT RESOLUTION authorizing the formulation of an interim committee to study services for youth at risk.

HCR 77, by Representatives Brandstetter, Palumbo, Reinhardt, Stine, Maricle, Baugh, Sims, and Thomas: A CONCURRENT RESOLUTION directing the Legislative Research Commission to establish a special interim study committee to study the feasibility, benefits, and implementation of a strategy for a Rails to Trails Program throughout the Commonwealth.

HR 78, by Representative Ford: A RESOLUTION adjourning the House of Representatives in loving memory and honor of Ruby Hopkins Napier .

HCR 79, by Representative Marzian: A CONCURRENT RESOLUTION directing the Legislative Research Commission to create the Task Force on Unlicensed Assistive Nursing to study the use of unlicensed assistive nursing personnel in the health care delivery system of the state.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills:

Agriculture and Small Business: **HB 626**

Appropriations and Revenue: **HB 622, HB 628**

Banking and Insurance: **HB 614**

Education: **HB 616, HB 627**

Health and Welfare: **HB 617, HB 618, HB 621**

Judiciary: **HB 620, HB 623**

Tourism Development and Energy: **HB 615, HB 619**

Transportation: **HB 625, HB 629**

Floor Amendments

Floor Amendment No. 1 Title to **HB 587**, by Representative Zimmerman:

By amending the title to read "AN ACT relating to absentee voting and declaring an emergency.".

Floor Amendment No. 2 to **HB 330**, by Representative Ford:

On page 1, line 24 by deleting "***shall***" and inserting "***may***" in lieu thereof.

Floor Amendment No. 3 to **HB 330**, by Representative Ford:

On page 8, line 26 after the period "." by inserting the following:

"***Second priority of funding, on a matching basis, shall be for intervention services targeting students in early grades.***".

Floor Amendment No. 4 to **HB 330**, by Representative Ford:

On page 3, line 13 by deleting "***administrator***" and inserting "***principal***" in lieu thereof; and

On page 3, line 14 after "***(i)***" by inserting "***a local school superintendent;***

(j) ____"; and

On page 3, line 15 by deleting "***(j)***" and inserting "***(k)***" in lieu thereof; and

On page 3, line 20 after the comma "," by inserting "***the Kentucky Association of School Superintendents,***".

Report of Committees (Continued)

The Committee on Judiciary reported **HB 293**, with Committee Substitute attached thereto, and **HB 544**, with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 293, AN ACT relating to wrongful death actions.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 411.130 is amended to read as follows:

(1) Whenever the death of a person results from an injury inflicted by the negligence or wrongful act of another, damages may be recovered for the death from the person who caused it, or whose agent or servant caused it. If the act was willful or the negligence gross, punitive damages may be recovered. The action shall be prosecuted by the personal representative of the deceased. ***The word "person" as used in this subsection includes an unborn child in utero without regard to stage of gestation.***

(2) The amount recovered, less funeral expenses and the cost of administration and costs of recovery including attorney fees, not included in the recovery from the defendant, shall be for the benefit of and go to the kindred of the deceased in the following order:

(a) If the deceased leaves a widow or husband, and no children or their descendants, then the whole to the widow or husband.

(b) If the deceased leaves a widow and children or a husband and children, then one-half (1/2) to the widow or husband and the other one-half (1/2) to the children of the deceased.

(c) If the deceased leaves a child or children, but no widow or husband, then the whole to the child or children.

(d) If the deceased leaves no widow, husband or child, then the recovery shall pass to the mother and father of the deceased, one (1) moiety each, if both are living; if the mother is dead and the father is living, the whole thereof shall pass to the father; and if the father is dead and the mother living, the whole thereof shall go to the mother. In the event the deceased was an adopted person, "mother" and "father" shall mean the adoptive parents of the deceased.

(e) If the deceased leaves no widow, husband or child, and if both father and mother are dead, then the whole of the recovery shall become a part of the personal estate of the deceased, and after the payment of his debts the remainder, if any, shall pass to his kindred more remote than those above named, according to the law of descent and distribution.

Section 2. KRS 411.135 is amended to read as follows:

In a wrongful death action in which the decedent was ***either an unborn child in utero, without regard to stage of gestation, or*** a minor child, the surviving parent, or parents, may recover for loss of affection and companionship that would have been derived from such child during its minority, in addition to all other elements of the damage usually recoverable in a wrongful death action.

SECTION 3. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

(1) Nothing in this chapter shall apply to acts of physicians that cause the death of an unborn child if those acts were committed during any abortion to which the woman has consented, or to any acts of a pregnant woman which caused the death of her unborn child.

(2) As used in this section, "abortion" has the same meaning as in KRS 311.720.

The Committee Substitute to **HB 293** is as follows:

AN ACT relating to wrongful death actions.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 411.130 is amended to read as follows:

(1) Whenever the death of a person results from an injury inflicted by the negligence or wrongful act of another, damages may be recovered for the death ***and for grief and for loss of companionship*** from the person who caused it, or whose agent or servant caused it. If the act was willful or the negligence gross, punitive damages may be recovered. The action shall be prosecuted by the personal representative of the deceased. ***The word "person" as used in this subsection includes an unborn child in utero without regard to stage of gestation.***

(2) The amount recovered, less funeral expenses and the cost of administration and costs of recovery including attorney fees, not included in the recovery from the defendant, shall be for the benefit of and go to the kindred of the deceased in the following order:

(a) If the deceased leaves a widow or husband, and no children or their descendants, then the whole to the widow or husband.

(b) If the deceased leaves a widow and children or a husband and children, then one-half (1/2) to the widow or husband and the other one-half (1/2) to the children of the deceased.

(c) If the deceased leaves a child or children, but no widow or husband, then the whole to the child or children.

(d) If the deceased leaves no widow, husband or child, then the recovery shall pass to the mother and father of the deceased, one (1) moiety each, if both are living; if the mother is dead and the father is living, the whole thereof shall pass to the father; and if the father is dead and the mother living, the whole thereof shall go to the mother. In the event the deceased was an adopted person, "mother" and "father" shall mean the adoptive parents of the deceased.

(e) If the deceased leaves no widow, husband or child, and if both father and mother are dead, then the whole of the recovery shall become a part of the personal estate of the deceased, and after the payment of his debts the remainder, if any, shall pass to his kindred more remote than those above named, according to the law of descent and distribution.

Section 2. KRS 411.135 is amended to read as follows:

In a wrongful death action in which the decedent was ***either an unborn child in utero, without regard to stage of gestation, or*** a minor child, the surviving parent, or parents, may recover for loss of affection and companionship that would have been derived from such child during its minority, in addition to all other elements of the damage usually recoverable in a wrongful death action.

SECTION 3. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

(1) Nothing in this chapter shall apply to acts of physicians that cause the death of an unborn child if those acts were committed during any abortion to which the woman has consented, or to any acts of a pregnant woman which caused the death of her unborn child.

(2) As used in this section, "abortion" has the same meaning as in KRS 311.720.

HB 544, AN ACT relating to the judicial branch and making an appropriation therefor.

WHEREAS, a variety of Kentucky courts currently decide such matters as dissolution of marriage, spousal maintenance, child support, adoption, termination of parental rights, establishment of paternity, domestic violence, and juvenile offenses; and

WHEREAS, these decisions drastically affect Kentucky families; and

WHEREAS, dividing family jurisdiction among multiple courts increases the time and expense involved in resolving these often volatile cases and creates inordinate delay between intake and final resolution; and

WHEREAS, establishment of a court devoted exclusively to and specializing in complexities of family law whereby assignment of all related cases to a single judge enhances the quality of service received by families, promotes continuity of judicial decision making, and encourages development of expertise in the management and resolution of family law cases;

NOW, THEREFORE,

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 23A IS CREATED TO READ AS FOLLOWS:

(1) Six (6) Family Court Pilot Projects are created in the following Supreme Court districts designated by the Chief Justice:

- ***(a) District 1, McCracken County;***
- ***(b) District 2, Warren County;***
- ***(c) District 3, Pulaski, Rockcastle, and Lincoln Counties;***
- ***(d) District 5, Franklin County;***
- ***(e) District 6, Boone and Gallatin Counties; and***
- ***(f) District 7, Pike County.***

(2) The Supreme Court has certified the need for a total of four (4) additional Circuit Court judgeships: one (1) each in Warren and Franklin Counties, one (1) in Pulaski, Rockcastle, and Lincoln Counties, and one (1) in Boone and Gallatin Counties.

(3) The Supreme Court has certified the need for a total of two (2) additional District Court judgeships, one (1) each in Pike County and McCracken County.

SECTION 2. A NEW SECTION OF KRS CHAPTER 23A IS CREATED TO READ AS FOLLOWS:

Any Family Court established in Boone and Gallatin Counties shall consist of one (1) Circuit Court Judge.

SECTION 3. A NEW SECTION OF KRS CHAPTER 23A IS CREATED TO READ AS FOLLOWS:

(1) A Chief Judge of Family Court shall be designated by the Chief Justice at each site identified in subsection (1) of Section 1 of this Act. When a Family Court has a single Family Court Judge, that Judge shall be designated Chief Judge. Each Family Court shall establish a Family Court Council to assist in developing and implementing each new site. The Council shall be multidisciplinary in nature and chaired by the Chief Judge of the Family Court. Each Council shall recommend local rules of Family Court. Pursuant to Supreme Court Rule 1.040(3)(a), local rules shall be written, approved by the Chief Justice, and filed with the Supreme Court Clerk.

(2) The Administrative Office of the Courts shall employ a statewide Family Court Coordinator to assist Family Courts with:

(a) Resource needs;
(b) Standardization of policies;
(c) Practices and procedures;
(d) Training;
(e) Automation;
(f) Data compilation and analysis;
(g) Budgetary needs; and
(h) Coordination of Family Court sites with community and outside agencies.

(3) Family Court jurisdiction shall include, but not be limited to, cases involving:
(a) Domestic or family issues or dissolution of marriage;
(b) Child custody;
(c) Visitation;
(d) Support and equitable distribution;
(e) Adoption and termination of parental rights;
(f) Domestic violence, including emergency protective orders;
(g) Noncriminal juvenile matters, including juvenile mental inquests and self-consent abortions;
(h) Paternity and URESA matters;
(i) Dependency, abuse, or neglect; and
(j) Status offenses, including truancy, unmanageable children, and runaways.

(4) Whenever the Chief Justice, by order pursuant to Section 110(5)(b) of the Constitution of Kentucky, or the Supreme Court, pursuant to Section 116 of the Constitution of Kentucky, establishes a Family Court within a judicial circuit, the District Court and the Circuit Court shall exercise concurrent jurisdiction, or as the Chief Justice or the Supreme Court may direct, exclusive jurisdiction in all matters assigned to Family Court, notwithstanding any other statute relating to the subject matter jurisdiction of the Circuit and District Courts.

Section 4. KRS 23A.040 is amended to read as follows:

The following judicial circuits are entitled to two (2) judges and shall have two (2) numbered divisions of the Circuit Court:

(1) Second Judicial Circuit.
(2) Third Judicial Circuit.
(3) Sixth Judicial Circuit.
(4)[~~ Eighth Judicial Circuit.~~
~~(5)~~] Ninth Judicial Circuit.
(5) Eleventh Judicial Circuit.
(6) Fourteenth Judicial Circuit.
(7)[~~(6)~~] Seventeenth Judicial Circuit.
(8)[~~(7)~~] Twenty-fourth Judicial Circuit.
(9)[~~(8)~~] Twenty-fifth Judicial Circuit.
(10)[~~(9)~~] Twenty-seventh Judicial Circuit.
[~~(10) Twenty-eighth Judicial Circuit.~~]
(11) Thirty-first Judicial Circuit.
(12) Thirty-second Judicial Circuit.
(13) Thirty-fourth Judicial Circuit.
(14) Thirty-fifth Judicial Circuit.
(15) *Fifty-fourth*[~~Forty-eighth~~] Judicial Circuit.

SECTION 5. A NEW SECTION OF KRS CHAPTER 23A IS CREATED TO READ AS FOLLOWS:

The following judicial circuits are entitled to three (3) Circuit Judges and shall have three (3) numbered divisions of the Circuit Court:

(1) Eighth Judicial Circuit.
(2) Twenty-eighth Judicial Circuit.

(3) Forty-eighth Judicial Circuit.

SECTION 6. A NEW SECTION OF KRS CHAPTER 24A IS CREATED TO READ AS FOLLOWS:

Any Family Court established in Floyd County shall consist of one (1) District Court Judge.

Section 7. KRS 24A.010 is amended to read as follows:

(1) The District Court is a court of limited jurisdiction; it has original jurisdiction in all matters specified in KRS 24A.110 to 24A.130.

(2) The District Court may be authorized by law to adjudicate the actions or decisions of local administrative agencies, special districts, or boards. Such adjudication shall not constitute an appeal but an original action.

(3) The District Court has no appellate jurisdiction.

(4) The District Court is a court of record.

(5) The District Court is a court of continuous session. Sessions of the District Court may be scheduled at such times, including nights, weekends, and holidays, and at such locations, as may be convenient, subject to the direction of the Supreme Court by rule or order.

(6) Whenever the Chief Justice, by order pursuant to Section 110(5)(b) of the Constitution of Kentucky, or the Supreme Court, pursuant to Section 116 of the Constitution of Kentucky, establishes a Family Court within a judicial circuit, the District Court shall exercise concurrent jurisdiction, or as the Chief Justice or the Supreme Court may direct, exclusive jurisdiction in all matters assigned to the Family Court, notwithstanding any other statute relating to the subject matter jurisdiction of the Circuit and District Courts.

Section 8. KRS 24A.120 is amended to read as follows:

(1) District Court shall have exclusive jurisdiction in:

(a)[~~(1)~~] Civil cases in which the amount in controversy does not exceed four thousand dollars ($4,000), exclusive of interest and costs, except matters affecting title to real estate and matters of equity; however, nothing herein shall prohibit execution levy on real estate in enforcement of judgment of District Court;

(b)[~~(2)~~] Matters involving probate, except matters contested in an adversary proceeding. Such adversary proceeding shall be filed in Circuit Court in accordance with the Kentucky Rules of Civil Procedure and shall not be considered an appeal; and

(c)[~~(3)~~]Matters not provided for by statute to be commenced in Circuit Court shall be deemed to be nonadversarial within the meaning of subsection (2) of this section and therefore are within the jurisdiction of the District Court.

(2) Whenever the Chief Justice, by order pursuant to Section 110(5)(b) of the Constitution of Kentucky, or the Supreme Court, pursuant to Section 116 of the Constitution of Kentucky, establishes a Family Court within a judicial circuit, the District Court shall exercise concurrent jurisdiction, or as the Chief Justice or the Supreme Court may direct, exclusive jurisdiction in all matters assigned to the Family Court, notwithstanding any other statute relating to the subject matter jurisdiction of the Circuit and District Courts.

Section 9. KRS 24A.050 is amended to read as follows:

The following judicial districts are entitled to two (2) District Judges and shall have two (2) numbered divisions of the District Court:

(1)[~~Second Judicial District.~~

~~(2)~~] Third Judicial District.

(2)[~~(3)~~] Fourth Judicial District.

(3)[~~(4)~~] Ninth Judicial District.

(4)[~~(5)~~] Eleventh Judicial District.

(5)[~~(6)~~] Twelfth Judicial District.

(6)[~~(7)~~] Thirteenth Judicial District.

(7)[~~(8)~~] Fourteenth Judicial District.

(8)[~~(9)~~] Fifteenth Judicial District.

(9)[~~(10)~~] Eighteenth Judicial District.

(10)[~~(11)~~] Twenty-first Judicial District.

(11)[~~(12)~~] Twenty-fourth Judicial District.

(12)[~~(13)~~] Twenty-seventh Judicial District.

(13)[~~(14)~~] Twenty-eighth Judicial District.

(14)[~~(15)~~] Twenty-ninth Judicial District.

(15) Thirty-first Judicial District.

(16) Thirty-second Judicial District.

(17) Thirty-fourth Judicial District.

[~~(18) Thirty-fifth Judicial District.~~]

(18)[~~(19)~~] Thirty-eighth Judicial District.

(19)[~~(20)~~] Fortieth Judicial District.

(20)[~~(21)~~] Forty-first Judicial District.

(21) Forty-third Judicial District

(22) Forty-sixth Judicial District.

(23) Forty-eighth Judicial District.

(24) Fiftieth Judicial District.

(25) Fifty-first Judicial District.

(26) Fifty-third Judicial District.

(27) Fifty-fourth Judicial District.

(28) Fifty-fifth Judicial District.

(29) Fifty-sixth Judicial District.

Section 10. KRS 24A.060 is amended to read as follows:

The following judicial districts are entitled to three (3) District Judges and shall have three (3) numbered divisions of the District Court:

(1) ***Second Judicial District***

(2) Sixth Judicial District.

(3)[~~(2)~~] Eighth Judicial District.

(4)[~~(3)~~] Seventeenth Judicial District.

(5)[~~(4)~~] Twenty-fifth Judicial District.

(6) Thirty-fifth Judicial District.

Section 11. KRS 389A.010 is amended to read as follows:

(1) Notwithstanding any other statutory limitation of the jurisdiction of the District Court:

  (a) Any trustee, guardian, conservator, or personal representative (hereinafter "fiduciary"), not otherwise possessing a power of sale, may move the District Court of the county in which the fiduciary has qualified for an order granting the fiduciary the power to sell or mortgage any real estate or any interest therein possessed by his ward, decedent, or trust; and

  (b) The District Court may enter an order granting the fiduciary the power to sell or mortgage any real estate or any interest therein possessed by the ward, decedent or trust.

(2) The motion shall include an adequate description of the property, a summary of the grounds for the motion, and a request that the bond of the fiduciary be increased in an adequate amount in accordance with KRS 395.130.

(3) Unless waived in writing, written notice of the hearing with a copy of the motion shall be served in a manner authorized by the Rules of Civil Procedure for the initiation of a civil action upon all persons who have a vested or contingent interest in the property interest sought to be sold. Where the property interest sought to be sold belongs to a person under legal disability, service of notice and defense shall be governed by Civil Rules 4.04(3) and 17.03.

  (a) In the case where the subject of the action is the property interest of a person under legal disability, unless waived in writing, written notice by certified mail, return receipt requested shall be given to all known adult next of kin of:

    1. The nature and pendency of the action; and

    2. Not less than thirty (30) days' notice of the time, date and location of the hearing on the motion. At or before the hearing, the fiduciary or his attorney shall file an affidavit on personal knowledge showing compliance with this paragraph and attaching a copy of the notice given and the original of all receipts returned.

  (b) All such persons shall have standing to present evidence and to be heard at the hearing.

(4) An aggrieved party may no later than thirty (30) days from the date of the order, institute an adversary proceeding in

Circuit Court pursuant to ***subsection (1)(b) of Section 8 of this Act***[~~KRS 24A.120(2)~~] in respect to any order affecting the right of the fiduciary to sell or mortgage. Pending the entry of a final order and expiration of the time for an appeal therefrom, neither the fiduciary nor the owner of any vested interest shall make any conveyance or mortgage of the real estate and any attempt to do so shall be null and void.

(5) No proceedings under this section shall be conducted by or before a commissioner of the District Court.

Section 12. KRS 391.035 is amended to read as follows:

(1) Whenever real or personal property passes by the laws of intestate succession, or under a will to a beneficiary not named in such will, proceedings may be had in the District Court to determine the persons entitled to such property.

(2) (a) If an estate is in process of administration the executor, administrator or any person claiming an interest in the property may file a motion in the District Court where administration is in process. If there is no pending administration or administration has been dispensed with, any person claiming an interest in the property may file a motion in the District Court of the county in which the decedent last resided or in the event the decedent was not a Kentucky resident, in the District Court of the county in which the property, or the greater part thereof, is located;

(b) The motion shall set forth all of the facts known to movant relating to the matter, including the names, ages and addresses of all persons who are or may be entitled to share in such property and their relationship to the decedent or to the class of beneficiaries entitled to share. The motion shall also describe the property under consideration and an estimate of its value;

(c) The motion shall be served in a manner authorized by the Rules of Civil Procedure for the initiation of a civil action and shall set forth the place and time (which shall not be less than twenty (20) days from the date of service) when the motion will come on for hearing.

(3) Upon the hearing on the motion any person claiming an interest in the property may introduce proof in support of his claim and the court may entertain the admission of any other relevant evidence to aid the court in determining the persons entitled to share in the property.

(4) After hearing all the evidence the court shall enter judgment in which the names, ages and addresses of the persons entitled to share in the property are set forth and the proportionate interest of each.

(5) In a case where some or all of the property is real estate located in this state a certified copy of the judgment shall be recorded in the office of the appropriate county clerk in lieu of the affidavit required by KRS 382.120.

(6) Any party may at any time prior to judgment institute an adversary proceeding in Circuit Court pursuant to ***subsection (1)(b) of Section 8 of this Act***[~~KRS 24A.120(2)~~].

(7) Any aggrieved party may no later than thirty (30) days from the date of the judgment, institute an adversary proceeding in Circuit Court pursuant to ***subsection (1)(b) of Section 8 of this Act***[~~KRS 24A.120(2)~~].

(8) Any unknown defendants before the court by constructive service alone shall be entitled to the protection afforded by Civil Rule 4.11.

(9) No proceedings under this section shall be conducted by or before a commissioner of the District Court.

Section 13. KRS 395.617 is amended to read as follows:

(1) A fiduciary may, prior to filing a periodic or final settlement and prior to a distribution of assets, file with the court a proposed settlement. The proposed settlement shall be set for hearing and notice given as for any other settlement except that beneficiaries of the estate, other than nonresiduary legatees who have received and receipted for their legacies, shall also receive notice from the fiduciary by certified mail, return receipt requested, at least twenty (20) days prior to the hearing date. The proposed settlement shall set forth all assets and disbursements previously made; shall indicate assets on hand and anticipated to be received subsequent to the date of the proposed settlement and prior to the filing of the periodic or final settlement; and shall further indicate the manner in which the remaining and anticipated assets are proposed to be distributed. The proposal may set forth which assets are to be distributed in kind and to whom and which assets may be liquidated for distribution of cash or for payment of debts, costs of administration, or pecuniary legacies. The proposal may also indicate claims proposed to be allowed or disallowed, in whole or in part, and may also indicate fees and commissions proposed to be paid to the fiduciary and his attorney. The inclusion of evidence and vouchers to accompany the proposal shall not be necessary unless required by the court upon exceptions filed. At the hearing, if no exceptions are filed, the proposal, if made according to law, shall be approved. If exceptions are filed, other evidence besides that reported may be heard, and the court shall, upon the whole case, reject, confirm, alter, or amend the proposal. Following the entry of an order of approval or of an order of amendment, the fiduciary shall disburse the assets in accordance therewith. Following the distribution, the fiduciary shall file a settlement accompanied by evidence and vouchers showing that distribution was effected in conformity with the court order. If it appears to the court that the distribution was in conformity, the court shall confirm the settlement and, if the settlement is final, discharge the fiduciary and his surety without further hearing or notice to any person.

(2) An aggrieved party may, no later than thirty (30) days from the entry of the order upon the proposed settlement, institute

an adversary proceeding in Circuit Court pursuant to ***subsection (1)(b) of Section 8 of this Act***[~~KRS 24A.120(2)~~].

Section 14. There is appropriated one million five hundred and four thousand one hundred dollars ($1,504,100.00) from the General Fund in fiscal year 1998-1999 and two million seven hundred and fifty-six thousand one hundred dollars ($2,756,100.00) from the General Fund in fiscal year 1999-2000 to implement the six (6) Family Court Pilot Projects identified in subsection (1) of Section 1 of this Act.

Section 15. Unless otherwise noted in this section, the effective date of this Act is July 1, 1998. Subsection (15) of Section 9 of this Act takes effect January 1, 1999. The amendment removing the Eighth Judicial Circuit and the Twenty-eighth Judicial Circuit from former subsections (4) and (10) of Section 4 of this Act, subsections (1) and (2) of Section 5 of this Act, the amendment removing the Second Judicial District from former subsection (1) of Section 9 of this Act, and subsection (1) of Section 10 of this Act shall all take effect July 1, 1999. Subsection (6) of Section 4 of this Act and subsection (21) of Section 9 of this Act take effect January 1, 2000.

The Committee Substitute to **HB 544** is as follows:

AN ACT relating to the judicial branch and making an appropriation therefor.

WHEREAS, a variety of Kentucky courts currently decide such matters as dissolution of marriage, spousal maintenance, child support, adoption, termination of parental rights, establishment of paternity, domestic violence, and juvenile offenses; and

WHEREAS, these decisions drastically affect Kentucky families; and

WHEREAS, dividing family jurisdiction among multiple courts increases the time and expense involved in resolving these often volatile cases and creates inordinate delay between intake and final resolution; and

WHEREAS, establishment of a court devoted exclusively to and specializing in complexities of family law whereby assignment of all related cases to a single judge enhances the quality of service received by families, promotes continuity of judicial decision making, and encourages development of expertise in the management and resolution of family law cases;

NOW, THEREFORE,

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 23A IS CREATED TO READ AS FOLLOWS:

(1) Six (6) Family Court Pilot Projects are created in the following Supreme Court districts designated by the Chief Justice:

(a) District 1, McCracken County;

(b) District 2, Warren County;

(c) District 3, Pulaski, Rockcastle, and Lincoln Counties;

(d) District 5, Franklin County;

(e) District 6, Boone and Gallatin Counties; and

(f) District 7, Pike County.

(2) The Supreme Court has certified the need for a total of four (4) additional Circuit Court judgeships: one (1) each in Warren and Franklin Counties, one (1) in Pulaski, Rockcastle, and Lincoln Counties, and one (1) in Boone and Gallatin Counties.

(3) The Supreme Court has certified the need for a total of two (2) additional District Court judgeships, one (1) each in Pike County and McCracken County.

SECTION 2. A NEW SECTION OF KRS CHAPTER 23A IS CREATED TO READ AS FOLLOWS:

Any Family Court established in Boone and Gallatin Counties shall consist of one (1) Circuit Court Judge.

SECTION 3. A NEW SECTION OF KRS CHAPTER 23A IS CREATED TO READ AS FOLLOWS:

(1) A Chief Judge of Family Court shall be designated by the Chief Justice at each site identified in subsection (1) of Section 1 of this Act. When a Family Court has a single Family Court Judge, that Judge shall be designated Chief Judge. Each Family Court shall establish a Family Court Council to assist in developing and implementing each new site. The Council shall be multidisciplinary in nature and chaired by the Chief Judge of the Family Court. Each Council shall recommend local rules of Family Court. Pursuant to Supreme Court Rule 1.040(3)(a), local rules shall be written, approved by the Chief Justice, and filed with the Supreme Court Clerk.

(2) The Administrative Office of the Courts shall employ a statewide Family Court Coordinator to assist Family Courts with:

(a) Resource needs;

(b) Standardization of policies;

(c) Practices and procedures;
(d) Training;
(e) Automation;
(f) Data compilation and analysis;
(g) Budgetary needs; and
(h) Coordination of Family Court sites with community and outside agencies.

(3) Family Court jurisdiction shall include, but not be limited to, cases involving:
(a) Domestic or family issues or dissolution of marriage;
(b) Child custody;
(c) Visitation;
(d) Support and equitable distribution;
(e) Adoption and termination of parental rights;
(f) Domestic violence, including emergency protective orders;
(g) Noncriminal juvenile matters, including juvenile mental inquests and self-consent abortions;
(h) Paternity and URESA matters;
(i) Dependency, abuse, or neglect; and
(j) Status offenses, including truancy, unmanageable children, and runaways.

(4) Whenever the Chief Justice, by order pursuant to Section 110(5)(b) of the Constitution of Kentucky, or the Supreme Court, pursuant to Section 116 of the Constitution of Kentucky, establishes a Family Court within a judicial circuit, the District Court and the Circuit Court shall exercise concurrent jurisdiction, or as the Chief Justice or the Supreme Court may direct, exclusive jurisdiction in all matters assigned to Family Court, notwithstanding any other statute relating to the subject matter jurisdiction of the Circuit and District Courts.

Section 4. KRS 23A.040 is amended to read as follows:

The following judicial circuits are entitled to two (2) judges and shall have two (2) numbered divisions of the Circuit Court:

(1) Second Judicial Circuit.
(2) Third Judicial Circuit.
(3) Sixth Judicial Circuit.
(4)[~~Eighth Judicial Circuit.~~
~~(5)~~] Ninth Judicial Circuit.
(5) Eleventh Judicial Circuit.
(6) Fourteenth Judicial Circuit.
(7)[~~(6)~~] Seventeenth Judicial Circuit.
(8)[~~(7)~~] Twenty-fourth Judicial Circuit.
(9)[~~(8)~~] Twenty-fifth Judicial Circuit.
(10)[~~(9)~~] Twenty-seventh Judicial Circuit.
[~~(10) Twenty-eighth Judicial Circuit.~~]
(11) Thirty-first Judicial Circuit.
(12) Thirty-second Judicial Circuit.
(13) Thirty-fourth Judicial Circuit.
(14)[~~Thirty-fifth Judicial Circuit.~~
~~(15)~~] *Fifty-fourth*[~~Forty-eighth~~] Judicial Circuit.

SECTION 5. A NEW SECTION OF KRS CHAPTER 23A IS CREATED TO READ AS FOLLOWS:

The following judicial circuits are entitled to three (3) Circuit Judges and shall have three (3) numbered divisions of the Circuit Court:

(1) Eighth Judicial Circuit.
(2) Twenty-eighth Judicial Circuit.
(3) Thirty-fifth Judicial Circuit.
(4) Forty-eighth Judicial Circuit.

SECTION 6. A NEW SECTION OF KRS CHAPTER 24A IS CREATED TO READ AS FOLLOWS:

Any Family Court established in Floyd County shall consist of one (1) District Court Judge.

Section 7. KRS 24A.010 is amended to read as follows:

(1) The District Court is a court of limited jurisdiction; it has original jurisdiction in all matters specified in KRS 24A.110 to 24A.130.

(2) The District Court may be authorized by law to adjudicate the actions or decisions of local administrative agencies, special districts, or boards. Such adjudication shall not constitute an appeal but an original action.

(3) The District Court has no appellate jurisdiction.

(4) The District Court is a court of record.

(5) The District Court is a court of continuous session. Sessions of the District Court may be scheduled at such times, including nights, weekends, and holidays, and at such locations, as may be convenient, subject to the direction of the Supreme Court by rule or order.

(6) Whenever the Chief Justice, by order pursuant to Section 110(5)(b) of the Constitution of Kentucky, or the Supreme Court, pursuant to Section 116 of the Constitution of Kentucky, establishes a Family Court within a judicial circuit, the District Court shall exercise concurrent jurisdiction, or as the Chief Justice or the Supreme Court may direct, exclusive jurisdiction in all matters assigned to the Family Court, notwithstanding any other statute relating to the subject matter jurisdiction of the Circuit and District Courts.

Section 8. KRS 24A.120 is amended to read as follows:

(1) District Court shall have exclusive jurisdiction in:

(a)[~~(1)~~] Civil cases in which the amount in controversy does not exceed four thousand dollars ($4,000), exclusive of interest and costs, except matters affecting title to real estate and matters of equity; however, nothing herein shall prohibit execution levy on real estate in enforcement of judgment of District Court;

(b)[~~(2)~~] Matters involving probate, except matters contested in an adversary proceeding. Such adversary proceeding shall be filed in Circuit Court in accordance with the Kentucky Rules of Civil Procedure and shall not be considered an appeal; and

(c)[~~(3)~~]Matters not provided for by statute to be commenced in Circuit Court shall be deemed to be nonadversarial within the meaning of subsection (2) of this section and therefore are within the jurisdiction of the District Court.

(2) Whenever the Chief Justice, by order pursuant to Section 110(5)(b) of the Constitution of Kentucky, or the Supreme Court, pursuant to Section 116 of the Constitution of Kentucky, establishes a Family Court within a judicial circuit, the District Court shall exercise concurrent jurisdiction, or as the Chief Justice or the Supreme Court may direct, exclusive jurisdiction in all matters assigned to the Family Court, notwithstanding any other statute relating to the subject matter jurisdiction of the Circuit and District Courts.

Section 9. KRS 24A.050 is amended to read as follows:

The following judicial districts are entitled to two (2) District Judges and shall have two (2) numbered divisions of the District Court:

(1)[~~Second Judicial District.~~
~~(2)~~] Third Judicial District.
(2)[~~(3)~~] Fourth Judicial District.
(3)[~~(4)~~] Ninth Judicial District.
(4)[~~(5)~~] Eleventh Judicial District.
(5)[~~(6)~~] Twelfth Judicial District.
(6)[~~(7)~~] Thirteenth Judicial District.
(7)[~~(8)~~] Fourteenth Judicial District.
(8)[~~(9)~~] Fifteenth Judicial District.
(9)[~~(10)~~] Eighteenth Judicial District.
(10)[~~(11)~~] Twenty-first Judicial District.
(11)[~~(12)~~] Twenty-fourth Judicial District.
(12)[~~(13)~~] Twenty-seventh Judicial District.
(13)[~~(14)~~] Twenty-eighth Judicial District.
(14)[~~(15)~~] Twenty-ninth Judicial District.

(15) Thirty-first Judicial District.
(16) Thirty-second Judicial District.
(17) Thirty-fourth Judicial District.
(18) Thirty-fifth Judicial District.
(19) Thirty-eighth Judicial District.
(20) Fortieth Judicial District.
(21) Forty-first Judicial District.
(22) Forty-third Judicial District
(23)[~~(22)~~] Forty-sixth Judicial District.
(24)[~~(23)~~] Forty-eighth Judicial District.
(25)[~~(24)~~] Fiftieth Judicial District.
(26)[~~(25)~~] Fifty-first Judicial District.
(27)[~~(26)~~] Fifty-third Judicial District.
(28)[~~(27)~~] Fifty-fourth Judicial District.
(29)[~~(28)~~] Fifty-fifth Judicial District.
(30)[~~(29)~~] Fifty-sixth Judicial District.

Section 10. KRS 24A.060 is amended to read as follows:

The following judicial districts are entitled to three (3) District Judges and shall have three (3) numbered divisions of the District Court:

(1) ***Second Judicial District***
(2) Sixth Judicial District.
(3)[~~(2)~~] Eighth Judicial District.
(4)[~~(3)~~] Seventeenth Judicial District.
(5)[~~(4)~~] Twenty-fifth Judicial District.

Section 11. KRS 389A.010 is amended to read as follows:

(1) Notwithstanding any other statutory limitation of the jurisdiction of the District Court:

(a) Any trustee, guardian, conservator, or personal representative (hereinafter "fiduciary"), not otherwise possessing a power of sale, may move the District Court of the county in which the fiduciary has qualified for an order granting the fiduciary the power to sell or mortgage any real estate or any interest therein possessed by his ward, decedent, or trust; and

(b) The District Court may enter an order granting the fiduciary the power to sell or mortgage any real estate or any interest therein possessed by the ward, decedent or trust.

(2) The motion shall include an adequate description of the property, a summary of the grounds for the motion, and a request that the bond of the fiduciary be increased in an adequate amount in accordance with KRS 395.130.

(3) Unless waived in writing, written notice of the hearing with a copy of the motion shall be served in a manner authorized by the Rules of Civil Procedure for the initiation of a civil action upon all persons who have a vested or contingent interest in the property interest sought to be sold. Where the property interest sought to be sold belongs to a person under legal disability, service of notice and defense shall be governed by Civil Rules 4.04(3) and 17.03.

(a) In the case where the subject of the action is the property interest of a person under legal disability, unless waived in writing, written notice by certified mail, return receipt requested shall be given to all known adult next of kin of:

1. The nature and pendency of the action; and

2. Not less than thirty (30) days' notice of the time, date and location of the hearing on the motion. At or before the hearing, the fiduciary or his attorney shall file an affidavit on personal knowledge showing compliance with this paragraph and attaching a copy of the notice given and the original of all receipts returned.

(b) All such persons shall have standing to present evidence and to be heard at the hearing.

(4) An aggrieved party may no later than thirty (30) days from the date of the order, institute an adversary proceeding in Circuit Court pursuant to ***subsection (1)(b) of Section 8 of this Act***[~~KRS 24A.120(2)~~] in respect to any order affecting the right of the fiduciary to sell or mortgage. Pending the entry of a final order and expiration of the time for an appeal

therefrom, neither the fiduciary nor the owner of any vested interest shall make any conveyance or mortgage of the real estate and any attempt to do so shall be null and void.

(5) No proceedings under this section shall be conducted by or before a commissioner of the District Court.

Section 12. KRS 391.035 is amended to read as follows:

(1) Whenever real or personal property passes by the laws of intestate succession, or under a will to a beneficiary not named in such will, proceedings may be had in the District Court to determine the persons entitled to such property.

(2) (a) If an estate is in process of administration the executor, administrator or any person claiming an interest in the property may file a motion in the District Court where administration is in process. If there is no pending administration or administration has been dispensed with, any person claiming an interest in the property may file a motion in the District Court of the county in which the decedent last resided or in the event the decedent was not a Kentucky resident, in the District Court of the county in which the property, or the greater part thereof, is located;

(b) The motion shall set forth all of the facts known to movant relating to the matter, including the names, ages and addresses of all persons who are or may be entitled to share in such property and their relationship to the decedent or to the class of beneficiaries entitled to share. The motion shall also describe the property under consideration and an estimate of its value;

(c) The motion shall be served in a manner authorized by the Rules of Civil Procedure for the initiation of a civil action and shall set forth the place and time (which shall not be less than twenty (20) days from the date of service) when the motion will come on for hearing.

(3) Upon the hearing on the motion any person claiming an interest in the property may introduce proof in support of his claim and the court may entertain the admission of any other relevant evidence to aid the court in determining the persons entitled to share in the property.

(4) After hearing all the evidence the court shall enter judgment in which the names, ages and addresses of the persons entitled to share in the property are set forth and the proportionate interest of each.

(5) In a case where some or all of the property is real estate located in this state a certified copy of the judgment shall be recorded in the office of the appropriate county clerk in lieu of the affidavit required by KRS 382.120.

(6) Any party may at any time prior to judgment institute an adversary proceeding in Circuit Court pursuant to ***subsection (1)(b) of Section 8 of this Act***[~~KRS 24A.120(2)~~].

(7) Any aggrieved party may no later than thirty (30) days from the date of the judgment, institute an adversary proceeding in Circuit Court pursuant to ***subsection (1)(b) of Section 8 of this Act***[~~KRS 24A.120(2)~~].

(8) Any unknown defendants before the court by constructive service alone shall be entitled to the protection afforded by Civil Rule 4.11.

(9) No proceedings under this section shall be conducted by or before a commissioner of the District Court.

Section 13. KRS 395.617 is amended to read as follows:

(1) A fiduciary may, prior to filing a periodic or final settlement and prior to a distribution of assets, file with the court a proposed settlement. The proposed settlement shall be set for hearing and notice given as for any other settlement except that beneficiaries of the estate, other than nonresiduary legatees who have received and receipted for their legacies, shall also receive notice from the fiduciary by certified mail, return receipt requested, at least twenty (20) days prior to the hearing date. The proposed settlement shall set forth all assets and disbursements previously made; shall indicate assets on hand and anticipated to be received subsequent to the date of the proposed settlement and prior to the filing of the periodic or final settlement; and shall further indicate the manner in which the remaining and anticipated assets are proposed to be distributed. The proposal may set forth which assets are to be distributed in kind and to whom and which assets may be liquidated for distribution of cash or for payment of debts, costs of administration, or pecuniary legacies. The proposal may also indicate claims proposed to be allowed or disallowed, in whole or in part, and may also indicate fees and commissions proposed to be paid to the fiduciary and his attorney. The inclusion of evidence and vouchers to accompany the proposal shall not be necessary unless required by the court upon exceptions filed. At the hearing, if no exceptions are filed, the proposal, if made according to law, shall be approved. If exceptions are filed, other evidence besides that reported may be heard, and the court shall, upon the whole case, reject, confirm, alter, or amend the proposal. Following the entry of an order of approval or of an order of amendment, the fiduciary shall disburse the assets in accordance therewith. Following the distribution, the fiduciary shall file a settlement accompanied by evidence and vouchers showing that distribution was effected in conformity with the court order. If it appears to the court that the distribution was in conformity, the court shall confirm the settlement and, if the settlement is final, discharge the fiduciary and his surety without further hearing or notice to any person.

(2) An aggrieved party may, no later than thirty (30) days from the entry of the order upon the proposed settlement, institute an adversary proceeding in Circuit Court pursuant to ***subsection (1)(b) of Section 8 of this Act***[~~KRS 24A.120(2)~~].

Section 14. There is appropriated one million five hundred and four thousand one hundred dollars ($1,504,100.00) from the General Fund in fiscal year 1998-1999 and two million seven hundred and fifty-six thousand one hundred dollars ($2,756,100.00) from the General Fund in fiscal year 1999-2000 to implement the six (6) Family Court Pilot Projects identified in subsection (1) of Section 1 of this Act.

Section 15. Unless otherwise noted in this section, the effective date of this Act is July 1, 1998. Subsection (15) of Section 9 of this Act takes effect January 1, 1999. The amendment removing the Eighth Judicial Circuit and the Twenty-eighth Judicial Circuit from former subsections (4) and (10) of Section 4 of this Act, subsections (1) and (2) of Section 5 of this Act, the amendment removing the Second Judicial District from former subsection (1) of Section 9 of this Act, and subsection (1) of Section 10 of this Act shall all take effect July 1, 1999. Subsection (6) of Section 4 of this Act and subsection (21) of Section 9 of this Act take effect January 1, 2000.

The Committee on Elections and Constitutional Amendments reported **HB 164,** with Committee Substitute attached thereto, **HB 291, HB 587,** with Committee Substitute attached thereto, and **SB 67,** with House Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 164, AN ACT proposing an amendment to the Constitution of Kentucky relating to local government finance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. IT IS PROPOSED THAT THE PRESENT CONSTITUTION OF KENTUCKY BE AMENDED BY REPEALING PRESENT SECTION 181 AND ENACTING IN LIEU THEREOF PROVISIONS TO READ AND BE NUMBERED AS FOLLOWS:

Section 181a. Any city, county, urban-county, or charter county government organized under general law may by ordinance exercise any power and perform any function within its boundaries regarding the assessment, levy, and collection of any taxes, the assumption of indebtedness in any amount, and the imposition of any license and franchise fees that are in furtherance of a public purpose of a city, county, urban-county, or charter county government and not in conflict with any provision of this Constitution. Any ordinance enacted under this section shall state the purpose for which a tax is levied, a debt is assumed, or a fee is imposed, and the funds generated by the tax levy, debt assumption, or fee imposition shall be used for no other purposes. Nothing in this Constitution shall prevent the enactment of general laws directing the payment of funds collected for the Commonwealth to a city, county, urban-county, or charter county government as Commonwealth aid for local purposes.

Section 2. It is proposed that Section 170 of the Constitution of Kentucky be amended to read as follows:

There shall be exempt from taxation public property used for public purposes; places of burial not held for private or corporate profit; real property owned and occupied by, and personal property both tangible and intangible owned by, institutions of religion; institutions of purely public charity, and institutions of education not used or employed for gain by any person or corporation, and the income of which is devoted solely to the cause of education, public libraries, their endowments, and the income of such property as is used exclusively for their maintenance; household goods of a person used in his home; crops grown in the year in which the assessment is made, and in the hands of the producer; and real property maintained as the permanent residence of the owner, who is sixty-five years of age or older, or is classified as totally disabled under a program authorized or administered by an agency of the United States government or by the railroad retirement system, provided the property owner received disability payments pursuant to such disability classification, has maintained such disability classification for the entirety of the particular taxation period, and has filed with the appropriate local assessor by December 31 of the taxation period, on forms provided therefor, a signed statement indicating continuing disability as provided herein made under penalty of perjury, up to the assessed valuation of sixty-five hundred dollars on said residence and contiguous real property, except for assessment for special benefits. The real property may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. The exemptions shall apply only to the value of the real property assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which his interest in the corporation bears to the assessed value of the property. All laws exempting or omitting property from taxation other than the property above mentioned shall be void. ***Any city, county, urban-county, or charter county government organized under general law may***~~[The General Assembly may authorize any incorporated city or town to]~~ exempt manufacturing establishments from~~[municipal]~~ taxation,~~[for a period not exceeding five years,]~~ as an inducement to their location.

Section 3. It is proposed that Section 171 of the Constitution of Kentucky be amended to read as follows:

The General Assembly shall provide by law an annual tax, which, with other resources, shall be sufficient to defray the estimated expenses of the Commonwealth for each fiscal year. Taxes shall be levied and collected ***by general laws*** for public purposes only~~[and shall be uniform upon all property of the same class subject to taxation within the territorial limits of the authority levying the tax; and all taxes shall be levied and collected by general laws]~~.

The General Assembly ***and city, county, urban-county, and charter county governments*** shall have power to divide property into classes ***for purposes of taxation. All taxes shall be uniform upon all property of the same class***[~~and to determine what class or classes of property shall be subject to local taxation~~]. Bonds of the state and of counties, municipalities, taxing and school districts shall not be subject to taxation.

[~~Any law passed or enacted by the General Assembly pursuant to the provisions of or under this amendment, or amended section of the Constitution, classifying property and providing a lower rate of taxation on personal property, tangible or intangible, than upon real estate shall be subject to the referendum power of the people, which is hereby declared to exist to apply only to this section, or amended section. The referendum may be demanded by the people against one or more items, sections, or parts of any act enacted pursuant to or under the power granted by this amendment, or amended section. The referendum petition shall be filed with the Secretary of State not more than four months after the final adjournment of the Legislative Assembly which passed the bill on which the referendum is demanded. The veto power of the Governor shall not extend to measures referred to the people under this section. All elections on measures referred to the people under this act shall be at the regular general election, except when the Legislative Assembly shall order a special election. Any measure referred to the people shall take effect and become a law when approved by the majority of the votes cast thereon, and not otherwise. The whole number of votes cast for the candidates for Governor at the regular election, last preceding the filing of any petition, shall be the basis upon which the legal voters necessary to sign such petition shall be counted. The power of the referendum shall be ordered by the Legislative Assembly at any time any acts or bills are enacted, pursuant to the power granted under this section or amended section, prior to the year of one thousand nine hundred and seventeen. After that time the power of the referendum may be ordered either by the petition signed by five percent of the legal voters or by the Legislative Assembly at the time said acts or bills are enacted. The General Assembly enacting the bill shall provide a way by which the act shall be submitted to the people. The filing of a referendum petition against one or more items, sections or parts of an act, shall not delay the remainder of that act from becoming operative.~~]

Section 4. It is proposed that Section 177 of the Constitution of Kentucky be amended to read as follows:

The credit of the Commonwealth shall not be given, pledged or loaned to any ***city, county, urban-county, or charter county government organized under general law or to any*** individual ***or entity organized for private gain***[~~, company, corporation or association, municipality, or political subdivision of the State~~]; nor shall the Commonwealth become an owner or stockholder in ***any entity organized for private gain***[~~, nor make donation to, any company, association or corporation; nor shall the Commonwealth construct a railroad or other highway~~].

Section 5. It is proposed that Section 178 of the Constitution of Kentucky be amended to read as follows:

All laws authorizing the borrowing of money by and on behalf of the Commonwealth[~~, county or other political subdivision of the State,~~] shall specify the purpose for which the money is to be used, and the money so borrowed shall be used for no other purpose.

Section 6. It is proposed that Section 179 of the Constitution of Kentucky be amended to read as follows:

No city, county, urban-county, or charter county government organized under general law shall[~~The General Assembly shall not authorize any county or subdivision thereof, city, town or incorporated district, to~~] become a stockholder in any ***entity organized for private gain***[~~company, association or corporation~~], or[~~ to~~] obtain or appropriate money for, or to loan its credit to, any ***entity organized for private gain***[~~corporation, association or individual, except for the purpose of constructing or maintaining bridges, turnpike roads, or gravel roads: Provided, If any municipal corporation shall offer to the Commonwealth any property or money for locating or building a Capitol, and the Commonwealth accepts such offer, the corporation may comply with the offer~~].

Section 7. It is proposed that Section 180 of the Constitution of Kentucky be amended to read as follows:

Every act enacted by the General Assembly[~~, and every ordinance and resolution passed by any county, city, town or municipal board or local legislative body,~~] levying a tax, shall specify distinctly the purpose for which said tax is levied, and no tax levied and collected for one purpose shall ever be devoted to another purpose.

Section 8. It is proposed that the present Constitution of Kentucky be amended by repealing the following sections:

Section 157a Credit of Commonwealth may be loaned or given to county for roads -- County may vote to incur indebtedness and levy additional tax for roads.

Section 182 Railroad taxes -- How assessed and collected.

Section 9. If ratified by the voters, the provisions of this proposed amendment shall first apply to tax assessment years beginning after December 31, 1998.

Section 10. This amendment shall be submitted to the voters of the Commonwealth for their ratification or rejection at the time and in the manner provided for under Sections 256 and 257 of the Constitution and under KRS 118.415.

The Committee Substitute to **HB 164** is as follows:

AN ACT proposing an amendment to the Constitution of Kentucky relating to local government finance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. IT IS PROPOSED THAT THE PRESENT CONSTITUTION OF KENTUCKY BE AMENDED BY REPEALING PRESENT SECTION 181 AND ENACTING IN LIEU THEREOF PROVISIONS TO READ AND BE NUMBERED AS FOLLOWS:

Section 181a. Any city, county, urban-county, or charter county government organized under general law may by ordinance exercise any power and perform any function within its boundaries regarding the assessment, levy, and collection of any taxes, the assumption of indebtedness in any amount, and the imposition of any license and franchise fees that are in furtherance of a public purpose of a city, county, urban-county, or charter county government and not in conflict with any provision of this Constitution. Any ordinance establishing administrative procedures to be followed in the assessment and collection of taxes shall not be in conflict with laws enacted by the General Assembly establishing administrative procedures for the assessment and collection of equivalent state taxes. Any ordinance enacted under this section shall state the purpose for which a tax is levied, a debt is assumed, or a fee is imposed, and the funds generated by the tax levy, debt assumption, or fee imposition shall be used for no other purposes. Nothing in this Constitution shall prevent the enactment of general laws directing the payment of funds collected for the Commonwealth to a city, county, urban-county, or charter county government as Commonwealth aid for local purposes.

Section 2. It is proposed that Section 170 of the Constitution of Kentucky be amended to read as follows:

There shall be exempt from taxation public property used for public purposes; places of burial not held for private or corporate profit; real property owned and occupied by, and personal property both tangible and intangible owned by, institutions of religion; institutions of purely public charity, and institutions of education not used or employed for gain by any person or corporation, and the income of which is devoted solely to the cause of education, public libraries, their endowments, and the income of such property as is used exclusively for their maintenance; household goods of a person used in his home; crops grown in the year in which the assessment is made, and in the hands of the producer; and real property maintained as the permanent residence of the owner, who is sixty-five years of age or older, or is classified as totally disabled under a program authorized or administered by an agency of the United States government or by the railroad retirement system, provided the property owner received disability payments pursuant to such disability classification, has maintained such disability classification for the entirety of the particular taxation period, and has filed with the appropriate local assessor by December 31 of the taxation period, on forms provided therefor, a signed statement indicating continuing disability as provided herein made under penalty of perjury, up to the assessed valuation of sixty-five hundred dollars on said residence and contiguous real property, except for assessment for special benefits. The real property may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. The exemptions shall apply only to the value of the real property assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which his interest in the corporation bears to the assessed value of the property. All laws exempting or omitting property from taxation other than the property above mentioned shall be void. ***Any city, county, urban-county, or charter county government organized under general law may***[~~The General Assembly may authorize any incorporated city or town to~~] exempt manufacturing establishments from[~~ municipal~~] taxation,[~~ for a period not exceeding five years,~~] as an inducement to their location.

Section 3. It is proposed that Section 171 of the Constitution of Kentucky be amended to read as follows:

The General Assembly shall provide by law an annual tax, which, with other resources, shall be sufficient to defray the estimated expenses of the Commonwealth for each fiscal year. Taxes shall be levied and collected ***by general laws*** for public purposes only[~~ and shall be uniform upon all property of the same class subject to taxation within the territorial limits of the authority levying the tax; and all taxes shall be levied and collected by general laws~~].

The General Assembly shall have power to divide property into classes ***for purposes of taxation. Each city, county, urban-county, or charter county government shall have the power to determine what class or classes of property shall be subject to taxation and to establish tax rates for each class. All taxes shall be uniform upon all property of the same class***[~~and to determine what class or classes of property shall be subject to local taxation~~]. Bonds of the state and of counties, municipalities, taxing and school districts shall not be subject to taxation.

[~~Any law passed or enacted by the General Assembly pursuant to the provisions of or under this amendment, or amended section of the Constitution, classifying property and providing a lower rate of taxation on personal property, tangible or intangible, than upon real estate shall be subject to the referendum power of the people, which is hereby declared to exist to apply only to this section, or amended section. The referendum may be demanded by the people against one or more items, sections, or parts of any act enacted pursuant to or under the power granted by this amendment, or amended section. The referendum petition shall be filed with the Secretary of State not more than four months after the final adjournment of the Legislative Assembly which passed the bill on which the referendum is demanded. The veto power of the Governor shall not extend to measures referred to the people under this section. All elections on measures referred to the people under this act shall be at the regular general election, except when the Legislative Assembly shall order a special election. Any measure referred to the people shall take effect and become a law when approved by the majority of the votes cast thereon, and not otherwise. The whole number of votes cast for the candidates for Governor at the regular election, last preceding the filing of any petition, shall be the basis upon which the legal voters necessary to sign such petition shall be counted. The power of the referendum shall be~~

~~ordered by the Legislative Assembly at any time any acts or bills are enacted, pursuant to the power granted under this section or amended section, prior to the year of one thousand nine hundred and seventeen. After that time the power of the referendum may be ordered either by the petition signed by five percent of the legal voters or by the Legislative Assembly at the time said acts or bills are enacted. The General Assembly enacting the bill shall provide a way by which the act shall be submitted to the people. The filing of a referendum petition against one or more items, sections or parts of an act, shall not delay the remainder of that act from becoming operative.]~~

Section 4. It is proposed that Section 177 of the Constitution of Kentucky be amended to read as follows:

The credit of the Commonwealth shall not be given, pledged or loaned to any ***city, county, urban-county, or charter county government organized under general law or to any*** individual ***or entity organized for private gain***~~[, company, corporation or association, municipality, or political subdivision of the State]~~; nor shall the Commonwealth become an owner or stockholder in ***any entity organized for private gain***~~[, nor make donation to, any company, association or corporation; nor shall the Commonwealth construct a railroad or other highway]~~.

Section 5. It is proposed that Section 178 of the Constitution of Kentucky be amended to read as follows:

All laws authorizing the borrowing of money by and on behalf of the Commonwealth~~[, county or other political subdivision of the State,]~~ shall specify the purpose for which the money is to be used, and the money so borrowed shall be used for no other purpose.

Section 6. It is proposed that Section 179 of the Constitution of Kentucky be amended to read as follows:

No city, county, urban-county, or charter county government organized under general law shall~~[The General Assembly shall not authorize any county or subdivision thereof, city, town or incorporated district, to]~~ become a stockholder in any ***entity organized for private gain***~~[company, association or corporation]~~, or~~[to]~~ obtain or appropriate money for, or to loan its credit to, any ***entity organized for private gain***~~[corporation, association or individual, except for the purpose of constructing or maintaining bridges, turnpike roads, or gravel roads: Provided, If any municipal corporation shall offer to the Commonwealth any property or money for locating or building a Capitol, and the Commonwealth accepts such offer, the corporation may comply with the offer]~~.

Section 7. It is proposed that Section 180 of the Constitution of Kentucky be amended to read as follows:

Every act enacted by the General Assembly~~[, and every ordinance and resolution passed by any county, city, town or municipal board or local legislative body,]~~ levying a tax, shall specify distinctly the purpose for which said tax is levied, and no tax levied and collected for one purpose shall ever be devoted to another purpose.

Section 8. It is proposed that the present Constitution of Kentucky be amended by repealing the following sections:

Section 157a Credit of Commonwealth may be loaned or given to county for roads -- County may vote to incur indebtedness and levy additional tax for roads.

Section 182 Railroad taxes -- How assessed and collected.

Section 9. If ratified by the voters, the provisions of this proposed amendment shall first apply to tax assessment years beginning after December 31, 1998.

Section 10. This amendment shall be submitted to the voters of the Commonwealth for their ratification or rejection at the time and in the manner provided for under Sections 256 and 257 of the Constitution and under KRS 118.415.

HB 291, AN ACT proposing to amend Section 254 of the Constitution of Kentucky relating to control and support of convicts.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. It is proposed that Section 254 of the Constitution of Kentucky be amended to read as follows:

(1) The Commonwealth shall maintain control of the discipline, and provide for all supplies, and for the sanitary condition of the convicts, and the labor only of convicts may be leased.

(2) The General Assembly shall provide by law for the recovery from inmates who are able to pay all or part of the costs expended by the Commonwealth for supplies used, services provided, food consumed, maintenance of safe and sanitary conditions, and other costs related to the housing and incarceration for inmates confined in penitentiaries, jails, and other correctional facilities. The provisions of this subsection shall not apply to recovery of the costs of construction of penitentiaries and jails.

Section 2. This amendment shall be submitted to the voters of the Commonwealth for their ratification or rejection at the time and in the manner provided for under Sections 256 and 257 of the Constitution and under KRS 118.415.

HB 587, AN ACT relating to absentee voting.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 117.085 is amended to read as follows:

(1) All requests for an application for an absentee ballot may be transmitted by telephone, facsimile machine, by mail, or in person. ***Except as provided in paragraph (b) of this subsection,*** all applications for an absentee ballot shall be transmitted only by mail or in person as specifically provided by this section. Except for qualified voters who apply pursuant to the requirements of KRS 117.075 and 117.077, and those who are incarcerated in jail but have yet to be convicted, no paper absentee ballots shall be mailed to a voter who resides within the county in which he is registered. In the case of ballots returned by mail, the county clerk shall provide an absentee ballot, two (2) official envelopes for returning the ballot, and instructions for voting to a voter who presents a completed application for a paper absentee ballot as provided in this section and who is properly registered as stated in his application.

(a) The following voters may apply to cast their votes by paper absentee ballot at any time not later than the close of business hours seven (7) days before the election:

1. Voters permitted to vote by paper absentee ballot pursuant to KRS 117.075 or KRS 117.077;
2. Residents of Kentucky who are members of the Armed Forces, dependents of members of the Armed Forces, and citizens residing overseas;
3. Students who live outside the county of their residence and other voters who live outside the state but who are still eligible to vote in this state; and
4. Persons who are incarcerated in jail who have been charged with a crime but have not been convicted of the crime.

Any other qualified voter in any county who is not permitted to vote by paper absentee ballot who shall be absent from the county on any election day may, at any time during normal business hours on at least any of the twelve (12) working days before the election, make application in person to the county clerk to vote on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections. A county board of elections may permit absentee voting to be conducted on a voting machine for a period longer than the twelve (12) working days before the election prescribed above. Requests for an application for a paper absentee ballot may be transmitted by telephone, facsimile machine, by mail, or in person. All applications for a paper absentee ballot shall be made in person or by mail, at the option of the voter, except that the county clerk shall hand an application for a paper absentee ballot to a voter permitted to vote by paper absentee ballot who appears in person to request the application, or shall mail the application to a voter permitted to vote by absentee ballot who requests the application by telephone, facsimile machine, or mail. The paper absentee ballot application shall be restricted to use of the voter or the spouse, parents, or children of the voter.

(b) Residents of Kentucky who are members of the Armed Forces, dependents of members of the Armed Forces, and overseas citizens, may apply for a paper absentee ballot by means of the federal post-card application***, which may be transmitted to the county clerk's office by mail or by facsimile machine***. The application may be used to register, reregister, and to apply for a paper absentee ballot. If the federal post-card application is received at any time not less than seven (7) days before the election, the county clerk shall affix his seal to the application form upon receipt.

(c) Any member of the county board of elections, any precinct election officer appointed to serve in a precinct other than that in which he is registered, and any alternate precinct election officer may vote on a voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, up to the close of normal business hours on the day before the election. The application form for those persons shall be prescribed by the State Board of Elections and, in the case of application by precinct election officers, shall contain a verification of appointment signed by a member of the county board of elections. If an alternate precinct election officer or a precinct election officer appointed to serve in a precinct other than that in which he is registered receives his appointment while absentee voting is being conducted in the county, such officer may vote on a voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, up to the close of normal business hours on the day before the election. In case of such voters, the verification of appointment shall also contain the date of appointment. The applications shall be restricted to the use of the voter only.

(d) The members of the county board of elections or their designees who provide equal representation of both political parties may serve as precinct election officers, without compensation, for all absentee voting performed on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections. If the members of the county board of elections or their designees serve as precinct election officers for the absentee voting, they shall perform the same duties and exercise the same authority as precinct election officers who serve on the day of an election. If the members of the county board of elections or their designees do not serve as precinct election officers for the absentee voting, the county clerk or deputy county clerks shall supervise the absentee voting.

(e) Any individual qualified to appoint challengers for the day of an election may also appoint challengers to observe all absentee voting performed at the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, and those challengers may exercise the same privileges as challengers appointed for observing voting on the day of an election at a regular polling place.

(2) The clerk shall type the name of the voter permitted to vote by paper absentee ballot on the application form for that person's use and no other. The paper absentee ballot application form shall be in the form prescribed by the State Board of Elections, shall bear the seal of the county clerk, and shall contain the following information: name, residential address, precinct, party affiliation, statement of the reason the person cannot vote in person on election day, statement of where the voter shall be on election day, statement of compliance with residency requirements for voting in the precinct, and the voter's mailing address for a paper absentee ballot. The form shall be verified and signed by the voter. A notice of the actual penalty provisions in KRS 117.995(2) and (5) shall be printed on the application.

(3) If the county clerk finds that the voter is properly registered as stated in his application and qualifies to receive a paper absentee ballot, he shall mail to the voter a paper absentee ballot, two (2) official envelopes for returning the ballot, and instructions for voting. The county clerk shall complete a postal form for a certificate of mailing for ballots mailed within the fifty (50) states, and it shall be stamped by the postal service when the ballots are mailed. ***An absentee ballot may be transmitted by facsimile machine to a resident of Kentucky who is a member of the Armed Forces, a dependent of a member of the Armed Forces, or a citizen residing overseas.***

(4) Paper absentee ballots which are requested prior to the printing of the ballots shall be mailed by the county clerk to the voter within three (3) days of the receipt of the printed ballots; and paper absentee ballots which are requested subsequent to the receipt of the ballots by the county clerk shall be mailed to the voter within three (3) days of the receipt of the request.

(5) The clerk shall cause ballots to be printed fifty (50) days prior to each primary or general election and ten (10) days prior to each runoff primary.

(6) The outer envelope shall bear the words "Absentee Ballot" and the address and official title of the county clerk and shall provide space for the voter's signature, voting address, and precinct number. A detachable flap on the inner envelope shall provide space for the voter's signature, voting address, precinct number, and notice of penalty provided in KRS 117.995(5). The clerk shall type the voter's address and precinct number in the upper left hand corner of the outer envelope and of the detachable flap on the inner envelope immediately below the blank space for the voter's signature. The inner envelope shall be blank. The clerk shall retain the application and the postal form required by subsection (3) of this section for twenty-two (22) months after the election.

(7) Any person who has received a paper absentee ballot but who knows at least seven (7) days before the date of the election that he will be in the county on election day and who has not voted pursuant to the provisions of KRS 117.086 shall cancel his paper absentee ballot and vote in person. He shall return his paper absentee ballot to the county clerk's office no later than seven (7) days prior to the date of the election. Upon the return of the paper absentee ballot, the clerk shall mark on the outer envelope of the sealed ballot or the unmarked ballot the words "Canceled because voter appeared to vote in person." Sealed envelopes so marked shall not be opened. The clerk shall remove the voter's name from the list of persons who were sent paper absentee ballots, and the voter may vote in the precinct in which he is properly registered.

Section 2. KRS 117.086 is amended to read as follows:

(1) The voter returning his paper absentee ballot by mail shall mark his ballot, seal it in the inner envelope and then in the outer envelope and mail it to the county clerk as shall be provided by this chapter. The voter shall sign the detachable flap and the outer envelope in order to validate the ballot. ***A resident of Kentucky who is a member of the Armed Forces, a dependent of a member of the Armed Forces, or a citizen residing overseas who has received an absentee ballot transmitted by facsimile machine shall transmit the voted ballot to the county clerk by mail only, conforming with ballot security requirements that may be promulgated by the state board by administrative regulation.*** In order to be counted, the paper ballots shall be received by the clerk by at least the time established by the election laws generally for the closing of the polls, which time shall not include the extra hour during which those voters may vote who were waiting in line to vote at the scheduled poll closing time.

(2) Any voter who shall be absent from the county on election day, but who does not qualify to receive a paper absentee ballot by mail under the provisions of KRS 117.085, and all members of county boards of elections and precinct election officers qualified to vote prior to the election under the provisions of KRS 117.085, shall vote at the main office of the county clerk or other place designated by the county board of elections, and approved by the State Board of Elections, prior to the day of election. The clerk may provide for such voting by the voting equipment in general use in the county either at the precinct, the equipment as may be used to tabulate absentee ballots, or any other voting equipment approved by the State Board of Elections for use in Kentucky, except as follows:

(a) Any voter qualifying to vote in the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, who receives assistance to vote shall complete the voter assistance form required by KRS 117.255.

(b) Any voter qualifying to vote in the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, whose qualifications are challenged by any clerk or deputy shall complete an "Oath of Voter" affidavit.

(3) When the clerk uses general voting equipment as provided for in subsection (2) of this section, each voter casting his vote at the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, shall sign an "Absentee Ballot Signature Roster."

(4) The clerk shall designate a location within his office where the ballots shall be cast secretly. The county clerk, with the approval of the State Board of Elections, may establish locations other than his main office in which the voters may execute their ballots. Public notice of the locations shall be given pursuant to KRS Chapter 424 and similar notice by mail shall be given to the county chairmen of the two (2) political parties whose candidates polled the largest number of votes in the county at the last general election.

(5) The State Board of Elections shall promulgate administrative regulations to provide for casting ballots as provided in subsection (2) of this section.

(6) The clerk shall deposit all of the returned paper absentee ballots in a locked ballot box immediately upon receipt without opening the outer envelope. The ballot box shall be locked with three (3) locks. The keys to the box shall be retained by the three (3) members of the central absentee ballot counting board, if one is appointed, or by the members of the board of elections, and the box shall remain locked until the ballots are counted. All voting equipment on which ballots are cast as permitted in subsection (2) of this section shall also remain locked and the keys shall be retained by the three (3) members of the central absentee ballot counting board, if one is appointed, or by the members of the board of elections, and the equipment shall remain locked until the ballots are counted.

(7) The clerk shall keep a list of all persons who return their paper absentee ballots or cast their ballots in the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, and send a copy of that list to the state board after election day. The county clerk and the Secretary of State shall keep a record of the number of votes cast by paper absentee ballots and on the voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, cast in any election as a part of the official returns of the election.

The Committee Substitute to **HB 587** is as follows:

AN ACT relating to absentee voting.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 117.085 is amended to read as follows:

(1) All requests for an application for an absentee ballot may be transmitted by telephone, facsimile machine, by mail, or in person. ***Except as provided in paragraph (b) of this subsection,*** all applications for an absentee ballot shall be transmitted only by mail or in person as specifically provided by this section. Except for qualified voters who apply pursuant to the requirements of KRS 117.075 and 117.077, and those who are incarcerated in jail but have yet to be convicted, no paper absentee ballots shall be mailed to a voter who resides within the county in which he is registered. In the case of ballots returned by mail, the county clerk shall provide an absentee ballot, two (2) official envelopes for returning the ballot, and instructions for voting to a voter who presents a completed application for a paper absentee ballot as provided in this section and who is properly registered as stated in his application.

(a) The following voters may apply to cast their votes by paper absentee ballot at any time not later than the close of business hours seven (7) days before the election:

1. Voters permitted to vote by paper absentee ballot pursuant to KRS 117.075 or KRS 117.077;
2. Residents of Kentucky who are members of the Armed Forces, dependents of members of the Armed Forces, and citizens residing overseas;
3. Students who live outside the county of their residence and other voters who live outside the state but who are still eligible to vote in this state; and
4. Persons who are incarcerated in jail who have been charged with a crime but have not been convicted of the crime.

Any other qualified voter in any county who is not permitted to vote by paper absentee ballot who shall be absent from the county on any election day may, at any time during normal business hours on at least any of the twelve (12) working days before the election, make application in person to the county clerk to vote on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections. A county board of elections may permit absentee voting to be conducted on a voting machine for a period longer than the twelve (12) working days before the election prescribed above. Requests for an application for a paper absentee ballot may be transmitted by telephone, facsimile machine, by mail, or in person.

All applications for a paper absentee ballot shall be made in person or by mail, at the option of the voter, except that the county clerk shall hand an application for a paper absentee ballot to a voter permitted to vote by paper absentee ballot who appears in person to request the application, or shall mail the application to a voter permitted to vote by absentee ballot who requests the application by telephone, facsimile machine, or mail. The paper absentee ballot application shall be restricted to use of the voter or the spouse, parents, or children of the voter.

(b) Residents of Kentucky who are members of the Armed Forces, dependents of members of the Armed Forces, and overseas citizens, may apply for a paper absentee ballot by means of the federal post-card application***, which may be transmitted to the county clerk's office by mail or by facsimile machine***. The application may be used to register, reregister, and to apply for a paper absentee ballot. If the federal post-card application is received at any time not less than seven (7) days before the election, the county clerk shall affix his seal to the application form upon receipt.

(c) Any member of the county board of elections, any precinct election officer appointed to serve in a precinct other than that in which he is registered, and any alternate precinct election officer may vote on a voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, up to the close of normal business hours on the day before the election. The application form for those persons shall be prescribed by the State Board of Elections and, in the case of application by precinct election officers, shall contain a verification of appointment signed by a member of the county board of elections. If an alternate precinct election officer or a precinct election officer appointed to serve in a precinct other than that in which he is registered receives his appointment while absentee voting is being conducted in the county, such officer may vote on a voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, up to the close of normal business hours on the day before the election. In case of such voters, the verification of appointment shall also contain the date of appointment. The applications shall be restricted to the use of the voter only.

(d) The members of the county board of elections or their designees who provide equal representation of both political parties may serve as precinct election officers, without compensation, for all absentee voting performed on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections. If the members of the county board of elections or their designees serve as precinct election officers for the absentee voting, they shall perform the same duties and exercise the same authority as precinct election officers who serve on the day of an election. If the members of the county board of elections or their designees do not serve as precinct election officers for the absentee voting, the county clerk or deputy county clerks shall supervise the absentee voting.

(e) Any individual qualified to appoint challengers for the day of an election may also appoint challengers to observe all absentee voting performed at the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, and those challengers may exercise the same privileges as challengers appointed for observing voting on the day of an election at a regular polling place.

(2) The clerk shall type the name of the voter permitted to vote by paper absentee ballot on the application form for that person's use and no other. The paper absentee ballot application form shall be in the form prescribed by the State Board of Elections, shall bear the seal of the county clerk, and shall contain the following information: name, residential address, precinct, party affiliation, statement of the reason the person cannot vote in person on election day, statement of where the voter shall be on election day, statement of compliance with residency requirements for voting in the precinct, and the voter's mailing address for a paper absentee ballot. The form shall be verified and signed by the voter. A notice of the actual penalty provisions in KRS 117.995(2) and (5) shall be printed on the application.

(3) If the county clerk finds that the voter is properly registered as stated in his application and qualifies to receive a paper absentee ballot, he shall mail to the voter a paper absentee ballot, two (2) official envelopes for returning the ballot, and instructions for voting. The county clerk shall complete a postal form for a certificate of mailing for ballots mailed within the fifty (50) states, and it shall be stamped by the postal service when the ballots are mailed. ***An absentee ballot may be transmitted by facsimile machine to a resident of Kentucky who is a member of the Armed Forces, a dependent of a member of the Armed Forces, or a citizen residing overseas.***

(4) Paper absentee ballots which are requested prior to the printing of the ballots shall be mailed by the county clerk to the voter within three (3) days of the receipt of the printed ballots; and paper absentee ballots which are requested subsequent to the receipt of the ballots by the county clerk shall be mailed to the voter within three (3) days of the receipt of the request.

(5) The clerk shall cause ballots to be printed fifty (50) days prior to each primary or general election and ten (10) days prior to each runoff primary.

(6) The outer envelope shall bear the words "Absentee Ballot" and the address and official title of the county clerk and shall provide space for the voter's signature, voting address, and precinct number. A detachable flap on the inner envelope shall provide space for the voter's signature, voting address, precinct number, and notice of penalty provided in KRS 117.995(5). The clerk shall type the voter's address and precinct number in the upper left hand corner of the outer

envelope and of the detachable flap on the inner envelope immediately below the blank space for the voter's signature. The inner envelope shall be blank. The clerk shall retain the application and the postal form required by subsection (3) of this section for twenty-two (22) months after the election.

(7) Any person who has received a paper absentee ballot but who knows at least seven (7) days before the date of the election that he will be in the county on election day and who has not voted pursuant to the provisions of KRS 117.086 shall cancel his paper absentee ballot and vote in person. He shall return his paper absentee ballot to the county clerk's office no later than seven (7) days prior to the date of the election. Upon the return of the paper absentee ballot, the clerk shall mark on the outer envelope of the sealed ballot or the unmarked ballot the words "Canceled because voter appeared to vote in person." Sealed envelopes so marked shall not be opened. The clerk shall remove the voter's name from the list of persons who were sent paper absentee ballots, and the voter may vote in the precinct in which he is properly registered.

Section 2. KRS 117.086 is amended to read as follows:

(1) The voter returning his paper absentee ballot by mail shall mark his ballot, seal it in the inner envelope and then in the outer envelope and mail it to the county clerk as shall be provided by this chapter. The voter shall sign the detachable flap and the outer envelope in order to validate the ballot. ***A resident of Kentucky who is a member of the Armed Forces, a dependent of a member of the Armed Forces, or a citizen residing overseas who has received an absentee ballot transmitted by facsimile machine shall transmit the voted ballot to the county clerk by mail only, conforming with ballot security requirements that may be promulgated by the state board by administrative regulation.*** In order to be counted, the paper ballots shall be received by the clerk by at least the time established by the election laws generally for the closing of the polls, which time shall not include the extra hour during which those voters may vote who were waiting in line to vote at the scheduled poll closing time.

(2) Any voter who shall be absent from the county on election day, but who does not qualify to receive a paper absentee ballot by mail under the provisions of KRS 117.085, and all members of county boards of elections and precinct election officers qualified to vote prior to the election under the provisions of KRS 117.085, shall vote at the main office of the county clerk or other place designated by the county board of elections, and approved by the State Board of Elections, prior to the day of election. The clerk may provide for such voting by the voting equipment in general use in the county either at the precinct, the equipment as may be used to tabulate absentee ballots, or any other voting equipment approved by the State Board of Elections for use in Kentucky, except as follows:

(a) Any voter qualifying to vote in the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, who receives assistance to vote shall complete the voter assistance form required by KRS 117.255.

(b) Any voter qualifying to vote in the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, whose qualifications are challenged by any clerk or deputy shall complete an "Oath of Voter" affidavit.

(3) When the clerk uses general voting equipment as provided for in subsection (2) of this section, each voter casting his vote at the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, shall sign an "Absentee Ballot Signature Roster."

(4) The clerk shall designate a location within his office where the ballots shall be cast secretly. The county clerk, with the approval of the State Board of Elections, may establish locations other than his main office in which the voters may execute their ballots. Public notice of the locations shall be given pursuant to KRS Chapter 424 and similar notice by mail shall be given to the county chairmen of the two (2) political parties whose candidates polled the largest number of votes in the county at the last general election.

(5) The State Board of Elections shall promulgate administrative regulations to provide for casting ballots as provided in subsection (2) of this section.

(6) The clerk shall deposit all of the returned paper absentee ballots in a locked ballot box immediately upon receipt without opening the outer envelope. The ballot box shall be locked with three (3) locks. The keys to the box shall be retained by the three (3) members of the central absentee ballot counting board, if one is appointed, or by the members of the board of elections, and the box shall remain locked until the ballots are counted. All voting equipment on which ballots are cast as permitted in subsection (2) of this section shall also remain locked and the keys shall be retained by the three (3) members of the central absentee ballot counting board, if one is appointed, or by the members of the board of elections, and the equipment shall remain locked until the ballots are counted.

(7) The clerk shall keep a list of all persons who return their paper absentee ballots or cast their ballots in the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, and send a copy of that list to the state board after election day. The county clerk and the Secretary of State shall keep a record of the number of votes cast by paper absentee ballots and on the voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, cast in any election as a part of the official returns of the election.

Section 3. Whereas the date of the next political party primary precedes the normal effective date for legislation enacted during this regular session, and whereas some Kentucky residents who are serving in the military, their dependents, and other citizens residing overseas may be disenfranchised in that primary without the change in procedures for requesting and receiving an absentee ballot as prescribed in this Act being applied to that primary, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

SB 67, AN ACT relating to the costs of elections.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 117.345 is amended to read as follows:

(1) The cost of all elections held in any county shall be allowed by the fiscal court and paid by the county treasurer, except as otherwise provided by law.

(2) When the cost of any election has been allowed by the fiscal court and paid by the county treasurer, and within sixty (60) days following the date of the election, the county treasurer shall certify a statement of the number of precincts in the county, the date, and kind of election to the State Board of Elections. The certification shall be filed within ninety (90) days after the election. Upon receipt of the certification and upon being satisfied as to the correctness thereof, the State Board of Elections shall issue its warrant upon the State Treasurer in favor of the county treasurer for the amount of ***five hundred dollars ($500)***[~~two hundred fifty-five dollars ($255)~~] for each precinct in the county. However, the State Board of Elections shall not remit to a county payment for election expenses for any precinct containing less than three hundred fifty (350) registered voters unless the county has received prior approval from the state board to establish a precinct containing less than three hundred fifty (350) registered voters.

(3) Payments to any county under the provisions of subsection (2) of this section shall be terminated if and whenever it fails to renew a lease, contract, or lease and option with the State Property and Buildings Commission executed in connection with the acquisition of voting machines by the commission for the use of the county; and payments to any county shall be terminated whenever the county fails to pay any part of the rentals required for any effective period of the lease or if a county board of elections fails to provide training to precinct election officers required by KRS 117.187(2).

The House Committee Substitute to **SB 67** is as follows:

AN ACT relating to the costs of elections.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 117.345 is amended to read as follows:

(1) The cost of all elections held in any county shall be allowed by the fiscal court and paid by the county treasurer, except as otherwise provided by law.

(2) When the cost of any election has been allowed by the fiscal court and paid by the county treasurer, and within sixty (60) days following the date of the election, the county treasurer shall certify a statement of the number of precincts in the county, the date, and kind of election to the State Board of Elections. The certification shall be filed within ninety (90) days after the election. Upon receipt of the certification and upon being satisfied as to the correctness thereof, the State Board of Elections shall issue its warrant upon the State Treasurer in favor of the county treasurer for the amount of ***seven hundred dollars ($700)***[~~two hundred fifty-five dollars ($255)~~] for each precinct in the county. However, the State Board of Elections shall not remit to a county payment for election expenses for any precinct containing less than three hundred fifty (350) registered voters unless the county has received prior approval from the state board to establish a precinct containing less than three hundred fifty (350) registered voters.

(3) Payments to any county under the provisions of subsection (2) of this section shall be terminated if and whenever it fails to renew a lease, contract, or lease and option with the State Property and Buildings Commission executed in connection with the acquisition of voting machines by the commission for the use of the county; and payments to any county shall be terminated whenever the county fails to pay any part of the rentals required for any effective period of the lease or if a county board of elections fails to provide training to precinct election officers required by KRS 117.187(2).

The Committee on Education reported **HB 50,** with Committee Substitute attached thereto, **HB 146,** with Committee Substitute attached thereto, **HB 215,** with Committee Substitute attached thereto, **HB 225,** with Committee Substitute attached thereto, **HB 396,** with Committee Substitute attached thereto, **HB 417, HB 418,** and **HB 424** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 50, AN ACT relating to school personnel.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 161.185 is amended to read as follows:

(1) Except as provided in subsection (2), boards of education shall require a member of the school faculty or a member of the administrative staff to accompany students on all school-sponsored or school-endorsed trips.

(2) Boards of education may permit a nonfaculty coach or nonfaculty assistant, as defined by administrative regulation promulgated by the Kentucky Board of Education under KRS 156.070(2), to accompany students on all school-sponsored or school-endorsed athletic trips.

The Committee Substitute to **HB 50** is as follows:

AN ACT relating to school personnel.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 161.185 is amended to read as follows:

(1) Except as provided in subsection (2), boards of education shall require a member of the school faculty or a member of the administrative staff to accompany students on all school-sponsored or school-endorsed trips.

(2) Boards of education may permit a nonfaculty coach or nonfaculty assistant, as defined by administrative regulation promulgated by the Kentucky Board of Education under KRS 156.070(2), to accompany students on all school-sponsored or school-endorsed athletic trips. A nonfaculty coach or nonfaculty assistant shall be at least twenty-one (21) years of age, shall not be a violent offender or convicted of a sex crime as defined by KRS 17.165 which is classified as a felony, and shall submit to a criminal record check under KRS 160.380.

(3) Prior to assuming his or her duties, a nonfaculty coach or nonfaculty assistant shall successfully complete training provided by the local school district. The training shall include, but not be limited to, information on the physical and emotional development of students of the age with whom the nonfaculty coach and nonfaculty assistant will be working, the district's and school's discipline policies, procedures for dealing with discipline problems, and safety and first aid training. Follow-up training shall be provided annually.

Section 2. KRS 160.380 is amended to read as follows:

(1) As used in this section:

(a) "Relative" shall mean father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law.

(b) "Vacancy" shall mean any certified position opening created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member of a local school district, or a new position created in a local school district for which certification is required. However, if an employer-employee bargained contract contains procedures for filling certified position openings created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member, or creation of a new position for which certification is required, a vacancy shall not exist, unless certified positions remain open after compliance with those procedures.

(2) (a) All appointments, promotions, and transfers of principals, supervisors, teachers, and other public school employees shall be made only by the superintendent of schools, who shall notify the board of the action taken. All employees of the local district shall have the qualifications prescribed by law and by the administrative regulations of the Kentucky Board of Education and of the employing board. Supervisors, principals, teachers, and other employees may be appointed by the superintendent for any school year at any time after February 1 preceding the beginning of the school year. No superintendent of schools shall appoint or transfer himself to another position within the school district.

(b) When a vacancy occurs in a local school district, the superintendent shall notify the chief state school officer thirty (30) days before the position shall be filled. The chief state school officer shall keep a registry of local district vacancies which shall be made available to the public. The local school district shall post position openings in the local board office for public viewing.

(c) When a vacancy needs to be filled in less than thirty (30) days' time to prevent disruption of necessary instructional or support services of the school district, the superintendent may seek a waiver from the chief state school officer. If the waiver is approved, the appointment shall not be made until the person recommended for the position has been approved by the chief state school officer. The chief state school officer shall respond to a district's request for waiver or for approval of an appointment within two (2) working days.

(d) When a vacancy occurs in a local district, the superintendent shall conduct a search to locate minority teachers to be considered for the position. The superintendent shall, pursuant to administrative regulations of the Kentucky Board of Education, report annually the district's recruitment process and the activities used to increase the percentage of minority teachers in the district.

(e) No relative of a superintendent of schools shall be an employee of the school district. However, this shall not apply to a relative who is an employee of the school district for at least thirty-six (36) months prior to the superintendent assuming office and who is certified for the position he holds, and it shall not apply to a superintendent's spouse who has at least twenty (20) years of service in school systems. A superintendent's spouse who is employed under this provision shall not hold a position in which the spouse supervises certified or classified employees. A superintendent's spouse may supervise teacher aides and student teachers. However, the superintendent shall not promote his relative who continues employment under an exception of this subsection.

(f) No superintendent shall employ a relative of a school board member of the district, unless on July 13, 1990, the board member's relative is an employee of the district, the board member is holding office, and the relative was not initially hired by the district during the tenure of the board member. A relative employed in 1989-90 and initially hired during the tenure of a board member serving on July 13, 1990, may continue to be employed during the remainder of the board member's term. However, the superintendent shall not promote any relative of a school board member who continues employment under the exception of this subsection.

(g) No principal's relative shall be employed in the principal's school, except a relative who is not the principal's spouse and who was employed in the principal's school during the 1989-90 school year. No spouse of a principal shall be employed in the principal's school, except a principal's spouse who was employed in the principal's school during the 1989-90 school year for whom there is no position for which the spouse is certified to fill in another school operated in the district. The provisions of KRS 161.760 shall not apply to any transfer made in order to comply with the provisions of this paragraph.

(3) No superintendent shall employ in a position which involves supervisory or disciplinary power over a minor, any person who is a violent offender or has been convicted of a sex crime as defined by KRS 17.165 which is classified as a felony. The superintendent may employ, at his discretion, persons convicted of sex crimes classified as a misdemeanor. Each superintendent shall request all conviction information for any applicant for initial employment from the Justice Cabinet prior to employing the applicant.

(4) (a) If a school term has begun and a position remains unfilled or if a vacancy occurs during a school term, a superintendent may employ an individual, who will have supervisory or disciplinary authority over minors, on probationary status pending receipt of the required records. Application for the criminal record of a probationary employee shall be made no later than the date probationary employment begins.

(b) Employment shall be contingent on the receipt of records documenting that the probationary employee has no record of a sex crime nor as a violent offender as defined in KRS 17.165.

(c) Notwithstanding KRS 161.720 to 161.800 or any other statute to the contrary, probationary employment under this section shall terminate on receipt by the district of a record documenting a criminal act as defined above and no further procedures shall be required.

(5) Each application or renewal form, provided by the employer to the applicant, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."

(6) Any request for records under subsection (3) of this section shall be on a form approved by the Justice Cabinet, and the cabinet may charge a fee to be paid by the applicant in an amount no greater than the actual cost of processing the request.

(7) The provisions of this section shall apply to all applicants for initial employment in a position which involves supervisory or disciplinary power over a minor after July 15, 1988. Initial employment shall include first time applicants and applicants who were former employees of the district but have not been employed by the district for six (6) months.

(8) The provisions of subsections (4), (5), (6), and (7) shall apply to a nonfaculty coach or nonfaculty assistant as defined under Section 1 of this Act.

HB 146, AN ACT relating to deaf and hard of hearing students.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO READ AS FOLLOWS:

(1) The General Assembly declares on behalf of the deaf and hard of hearing students the following goals to be achieved by the year 2005:

(a) All teachers of the deaf and hard of hearing students whose primary mode of communication is American Sign Language shall demonstrate competency in sign language on a standardized assessment;

(b) All teachers of the deaf and hard of hearing students shall be knowledgeable of the unique educational needs of students with hearing loss;

(c) All deaf and hard of hearing graduates in the year 2005 and beyond shall perform on a par with their hearing peers; and

(d) The rate of deaf and hard of hearing graduates in the year 2005 and beyond who successfully make the transition to adult life shall equal that of their hearing peers.

(2) As used in Sections 1 to 2 of this Act, unless the context requires otherwise:

(a) "American Sign Language" means a visual-manual system of communication that has its own syntax, rhetoric, and grammar and is recognized, accepted, and used by many deaf Americans. It is a native language that is representative of concepts rather than words;

(b) "Cued speech" means a system of eight (8) handshapes representing consonant cues placed at four (4) positions representing vowel cues around the face to form a sound-based visual communications system;

(c) "Deaf" means having the hearing impairment that adversely affects educational performance and is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, and communication and learning are primarily by visual methods. When capitalized in usage, "Deaf" means a person who has a cultural identification with members of the Deaf community and uses American Sign Language as the primary communication method;

(d) "Deaf community" means a community of parents and teachers of deaf children, professionals working with deaf and hard of hearing individuals, and people with hearing loss who work and interact on common goals;

(e) "Deaf culture" means a set of learned behaviors and perceptions based on shared or common experiences that shape the values and norms of deaf people;

(f) "Hard of hearing" means having a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance, but which is not included under the definition of "deaf" in this section. Persons who are hard of hearing rely on English as their primary language; are not affiliated with the Deaf community; and function primarily in the "hearing world";

(g) "Least restrictive environment" means the educational setting in which the child or youth with a disability can learn effectively, based upon unique needs and capabilities, and interact with similar age peers who are not disabled;

(h) "Oral deaf person" means a person who uses speech, speechreading, and residual hearing as the primary mode of communications;

(i) "Preferred mode of communication" means the method of communication that the deaf or hard of hearing individual is most comfortable using. This may be American Sign Language, a manual form of English, oral, cued speech, writing, or any other mode of communication; and

(j) "Speechreading" means the ability to understand a speaker's thoughts by watching the movements of the face and body and by using information provided by the situation and the language.

(3) (a) The Kentucky Department of Education shall develop a database on deaf and hard of hearing students, not later than July 1, 2000, which will enable the agency to measure the educational progress of deaf and hard of hearing students in comparison to the educational achievement of their hearing peers.

(b) The department shall use the 2000-2001 school year to test deaf and hard of hearing students' academic levels in reading, writing, and computation to establish a baseline that can be used to measure improvements. In subsequent years, the department shall test deaf and hard of hearing students and publish summary data relating to gains or losses in student achievement.

(c) The department shall provide transition data on deaf and hard of hearing students who graduate from high school to determine their rate of success as compared to their hearing peers.

(4) (a) In the placement of a student who is deaf or hard of hearing in elementary and secondary programs and in designing individual education plans, the admissions and release committee shall consider language and communication needs, opportunities for direct communication with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode.

(b) A deaf or hard of hearing student shall be provided classroom instruction in the least restrictive environment by qualified teachers, interpreters, and resource personnel who communicate effectively in the student's mode of communication.

SECTION 2. A NEW SECTION OF KRS CHAPTER 161 IS CREATED TO READ AS FOLLOWS:

(1) Teachers certified to teach deaf students on July 1, 2000, or after shall demonstrate competency consistent with the requirements of an existing validated system of American Sign Language at a level established by the Education Professional Standards Board by administrative regulation. The Education Professional Standards Board shall consult with the Kentucky Commission on the Deaf and Hard of Hearing in developing the administrative regulations.

(2) Any teacher who was employed prior to July 1, 2000, and has deaf students who use American Sign Language as their principal mode of communication shall successfully demonstrate competency by July 1, 2005, in American Sign Language as defined in subsection (1) of this section in order to be eligible to continue to teach deaf students. The local school district may provide release time, tuition assistance, and extended time to assist the teacher in meeting the requirement described in this subsection.

(3) All staff employed in a school where there are deaf students shall be trained in the cultural and linguistic needs of students who are deaf; specific educational needs of students who are hard of hearing; and the rights of children who are deaf and hard of hearing. The training shall be arranged and paid for by the local school district and shall be provided at times other than on one (1) of the four (4) days provided in the school calendar for professional development as described in KRS 158.070.

The Committee Substitute to **HB 146** is as follows:

AN ACT relating to deaf and hard of hearing students.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO READ AS FOLLOWS:

(1) The General Assembly declares on behalf of the deaf and hard of hearing students the following goals to be achieved by the year 2005:

(a) Teachers of the deaf and hard of hearing students shall be knowledgeable of the unique educational needs of students with hearing loss;

(b) Deaf and hard of hearing graduates in the year 2005 and beyond shall perform at a higher level of performance, comparable to their hearing peers;

(c) The rate of deaf and hard of hearing graduates in the year 2005 and beyond who successfully make the transition to adult life shall be comparable to their hearing peers; and

(d) Teachers who are certified to teach deaf and hard of hearing students shall demonstrate competency in sign language on a standardized assessment.

(2) As used in Sections 1 to 2 of this Act, unless the context requires otherwise:

(a) "American Sign Language" means a visual-manual system of communication that has its own syntax, rhetoric, and grammar and is recognized and accepted as a language used by many deaf Americans;

(b) "Comparable" means equivalent or equal;

(c) "Cued speech" means a system of eight (8) handshapes representing consonant cues placed at four (4) positions representing vowel cues around the face to form a sound-based visual communications system;

(d) "Deaf" means having a hearing loss that adversely affects educational performance and is so severe or profound that the individual is impaired in processing linguistic information through hearing, with or without amplification. Communication and learning are primarily by visual means.

(e) "Deaf community" means a community of deaf individuals, parents and teachers of deaf children, professionals working with deaf and hard of hearing individuals, and people with hearing loss who interact on common goals;

(f) "Deaf culture" means a set of learned behaviors and perceptions based on shared or common experiences that shape the values and norms of deaf people;

(g) "Hard of hearing" means having a hearing loss ranging from mild to severe, whether permanent or fluctuating, which is not included under the definition of "deaf" in this section;

(h) "Least restrictive environment" means the educational setting in which the child or youth with a disability can learn effectively, based upon unique needs and capabilities, and interact with similar age peers;

(i) "Oral" means utilizes speech, speechreading, and residual hearing as the primary mode of communication;

(j) "Preferred language and communication mode" means the language and communication mode that the deaf or hard of hearing individual prefers or is most comfortable using. This may be American Sign Language, a manual form of English, oral, cued speech, writing, or any other mode of communication; and

(k) "Speechreading" means the ability to understand a speaker by watching the movements of the mouth, face, and body and by using information provided by the situation and the language used.

(3) (a) The Kentucky Department of Education shall develop a method of assessment and establish a database on deaf and hard of hearing students, not later than July 1, 2000, which will measure the educational progress of deaf and hard of hearing students in comparison to the educational achievement of their hearing peers.

The assessment shall measure reading comprehension, writing, and mathematics computation. In subsequent years, the department shall test deaf and hard of hearing students and publish summary data relating to gains or losses in student achievement.

(b) The department shall provide transition data on deaf and hard of hearing students who graduate from high school to determine their rate of success as compared to their hearing peers.

(4) (a) In the placement of a student who is deaf or hard of hearing in preschool, elementary and secondary programs and in designing individual education plans, the admissions and release committee shall consider language and communication needs, opportunities for direct communication with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode.

(b) A deaf or hard of hearing student shall be provided an appropriate educational program in the least restrictive environment by qualified teachers, staff, interpreters, and resource support personnel who communicate effectively in the student's language and communication mode.

SECTION 2. A NEW SECTION OF KRS CHAPTER 161 IS CREATED TO READ AS FOLLOWS:

(1) Teachers certified to teach deaf students whose primary language and communication mode is American Sign Language on July 1, 2000, or after shall demonstrate competency consistent with the requirements of an existing standardized assessment of American Sign Language at a level established by the Education Professional Standards Board by administrative regulation. The Education Professional Standards Board shall consult with the Kentucky Commission on the Deaf and Hard of Hearing and the Kentucky School for the Deaf in developing the administrative regulations.

(2) Any teacher who is certified to teach deaf and hard of hearing students and was employed prior to July 1, 2000, and has deaf students who use American Sign Language as their primary language and communication mode shall successfully demonstrate competency by July 1, 2005, in American Sign Language as defined in subsection (1) of this section in order to be eligible to continue to teach deaf students. The local school district may provide release time, tuition assistance, and extended time to assist the teacher in meeting the requirement described in this subsection.

(3) All staff employed in a school where there are deaf students shall be trained in the unique needs of students who are deaf and hard of hearing; and the rights of children who are deaf and hard of hearing. The Kentucky Department of Education shall develop appropriate levels of training for classified and certified staff. The training shall be arranged and paid for by the local school district.

(4) Teachers of American Sign Language as a foreign language in a public school system on July 1, 2000, or after, shall demonstrate competency in teaching American Sign Language consistent with the recommendations of existing national and state professional organizations of teachers of American Sign Language. The Education Professional Standards Board shall promulgate administrative regulations to carry out this subsection after consulting with the Kentucky Commission on the Deaf and Hard of Hearing, the Kentucky School for the Deaf, and existing state and professional organizations of teachers of American Sign Language.

HB 215, AN ACT relating to school athletics.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 156.070 is amended to read as follows:

(1) The Kentucky Board of Education shall have the management and control of the common schools and all programs operated in these schools, including interscholastic athletics, the Kentucky School for the Deaf, the Kentucky School for the Blind, and community education programs and services.

(2) The Kentucky Board of Education may designate an organization or agency to manage interscholastic athletics in the common schools, provided that the rules, regulations, and bylaws of any organization or agency so designated shall be approved by the board, and provided further that any administrative hearing conducted by the designated managing organization or agency shall be conducted in accordance with KRS Chapter 13B[~~, with final orders subject to review by the board~~].

(a) The state board or its designated agency shall assure through promulgation of administrative regulations that if a secondary school sponsors or intends to sponsor an athletic activity or sport that is similar to a sport for which National Collegiate Athletic Association members offer an athletic scholarship, the school shall sponsor the athletic activity or sport for which a scholarship is offered. The administrative regulations shall specify which athletic activities are similar to sports for which National Collegiate Athletic Association members offer scholarships.

(b) The state board or any agency designated by the state board to manage interscholastic athletics shall not promulgate rules, administrative regulations, or bylaws which prohibit pupils in grades seven (7) to eight (8) from participating in any high school sports except for high school varsity wrestling, soccer, and football, or from participating on more than one (1) school-sponsored team at the same time in the same sport. The Kentucky Board of Education, or an agency designated by the board to manage interscholastic athletics, may promulgate administrative regulations restricting, limiting, or prohibiting participation in high school varsity wrestling, soccer, and football for students who have not successfully completed the eighth grade.

(c) Any student who turns nineteen (19) years of age prior to August 1 shall not be eligible for high school athletics in Kentucky. Any student who turns nineteen (19) years of age on or after August 1 shall remain eligible for that school year only.

(3) (a) The Kentucky Board of Education is hereby authorized to lease from the State Property and Buildings Commission, or others, whether public or private, any lands, buildings, structures, installations, and facilities suitable for use in establishing and furthering television and related facilities as an aid or supplement to classroom instruction, throughout the Commonwealth, and for incidental use in any other proper public functions. The lease may be for any initial term commencing with the date of the lease and ending with the next ensuing June 30, which is the close of the then-current fiscal biennium of the Commonwealth, with exclusive options in favor of the board to renew the same for successive ensuing bienniums, July 1 in each even year to June 30 in the next ensuing even year; and the rentals may be fixed at the sums in each biennium, if renewed, sufficient to enable the State Property and Buildings Commission to pay therefrom the maturing principal of and interest on, and provide reserves for, any revenue bonds which the State Property and Buildings Commission may determine to be necessary and sufficient, in agreement with the board, to provide the cost of acquiring the television and related facilities, with appurtenances, and costs as may be incident to the issuance of the bonds.

(b) Each option of the Kentucky Board of Education to renew the lease for a succeeding biennial term may be exercised at any time after the adjournment of the session of the General Assembly at which appropriations shall have been made for the operation of the state government for such succeeding biennial term, by notifying the State Property and Buildings Commission in writing, signed by the chief state school officer, and delivered to the secretary of the Finance and Administration Cabinet as a member of the commission. The option shall be deemed automatically exercised, and the lease automatically renewed for the succeeding biennium, effective on the first day thereof, unless a written notice of the board's election not to renew shall have been delivered in the office of the secretary of the Finance and Administration Cabinet before the close of business on the last working day in April immediately preceding the beginning of the succeeding biennium.

(c) The Kentucky Board of Education shall not itself operate leased television facilities, or undertake the preparation of the educational presentations or films to be transmitted thereby, but may enter into one (1) or more contracts to provide therefor, with any public agency and instrumentality of the Commonwealth having, or able to provide, a staff with proper technical qualifications, upon which agency and instrumentality the board, through the chief state school officer and the Department of Education, is represented in such manner as to coordinate matters of curriculum with the curricula prescribed for the public schools of the Commonwealth. Any contract for the operation of the leased television or related facilities may permit limited and special uses of the television or related facilities for other programs in the public interest, subject to the reasonable terms and conditions as the board and the operating agency and instrumentality may agree upon; but any contract shall affirmatively forbid the use of the television or related facilities, at any time or in any manner, in the dissemination of political propaganda or in furtherance of the interest of any political party or candidate for public office, or for commercial advertising. No lease between the board and the State Property and Buildings Commission shall bind the board to pay rentals for more than one (1) fiscal biennium at a time, subject to the aforesaid renewal options. The board may receive and may apply to rental payments under any lease and to the cost of providing for the operation of the television or related facilities not only appropriations which may be made to it from state funds, from time to time, but also contributions, gifts, matching funds, devises, and bequests from any source, whether federal or state, and whether public or private, so long as the same are not conditioned upon any improper use of the television or related facilities in a manner inconsistent with the provisions of this subsection.

(4) The state board may, on the recommendation and with the advice of the chief state school officer, prescribe, print, publish, and distribute at public expense such administrative regulations, courses of study, curriculums, bulletins, programs, outlines, reports, and placards as each deems necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction. All administrative regulations published or distributed by the board shall be inclosed in a booklet or binder on which the words "informational copy" shall be clearly stamped or printed.

(5) Upon the recommendation of the chief state school officer or his designee, the state board shall establish policy or act on all matters relating to programs, services, publications, capital construction and facility renovation, equipment, litigation, contracts, budgets, and all other matters which are the administrative responsibility of the Department of Education.

The Committee Substitute to **HB 215** is as follows:

AN ACT relating to school athletics.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 156.070 is amended to read as follows:

(1) The Kentucky Board of Education shall have the management and control of the common schools and all programs operated in these schools, including interscholastic athletics, the Kentucky School for the Deaf, the Kentucky School for the Blind, and community education programs and services.

(2) The Kentucky Board of Education may designate an organization or agency to manage interscholastic athletics in the common schools, provided that the rules, regulations, and bylaws of any organization or agency so designated shall be approved by the board, and provided further that any administrative hearing conducted by the designated managing organization or agency shall be conducted in accordance with KRS Chapter 13B[~~, with final orders subject to review by the board~~].

(a) The state board or its designated agency shall assure through promulgation of administrative regulations that if a secondary school sponsors or intends to sponsor an athletic activity or sport that is similar to a sport for which National Collegiate Athletic Association members offer an athletic scholarship, the school shall sponsor the athletic activity or sport for which a scholarship is offered. The administrative regulations shall specify which athletic activities are similar to sports for which National Collegiate Athletic Association members offer scholarships.

(b) The state board or any agency designated by the state board to manage interscholastic athletics shall not promulgate rules, administrative regulations, or bylaws which prohibit pupils in grades seven (7) to eight (8) from participating in any high school sports except for high school varsity wrestling, soccer, and football, or from participating on more than one (1) school-sponsored team at the same time in the same sport. The Kentucky Board of Education, or an agency designated by the board to manage interscholastic athletics, may promulgate administrative regulations restricting, limiting, or prohibiting participation in high school varsity wrestling, soccer, and football for students who have not successfully completed the eighth grade.

(c) Any student who turns nineteen (19) years of age prior to August 1 shall not be eligible for high school athletics in Kentucky. Any student who turns nineteen (19) years of age on or after August 1 shall remain eligible for that school year only.

(3) (a) The Kentucky Board of Education is hereby authorized to lease from the State Property and Buildings Commission, or others, whether public or private, any lands, buildings, structures, installations, and facilities suitable for use in establishing and furthering television and related facilities as an aid or supplement to classroom instruction, throughout the Commonwealth, and for incidental use in any other proper public functions. The lease may be for any initial term commencing with the date of the lease and ending with the next ensuing June 30, which is the close of the then-current fiscal biennium of the Commonwealth, with exclusive options in favor of the board to renew the same for successive ensuing bienniums, July 1 in each even year to June 30 in the next ensuing even year; and the rentals may be fixed at the sums in each biennium, if renewed, sufficient to enable the State Property and Buildings Commission to pay therefrom the maturing principal of and interest on, and provide reserves for, any revenue bonds which the State Property and Buildings Commission may determine to be necessary and sufficient, in agreement with the board, to provide the cost of acquiring the television and related facilities, with appurtenances, and costs as may be incident to the issuance of the bonds.

(b) Each option of the Kentucky Board of Education to renew the lease for a succeeding biennial term may be exercised at any time after the adjournment of the session of the General Assembly at which appropriations shall have been made for the operation of the state government for such succeeding biennial term, by notifying the State Property and Buildings Commission in writing, signed by the chief state school officer, and delivered to the secretary of the Finance and Administration Cabinet as a member of the commission. The option shall be deemed automatically exercised, and the lease automatically renewed for the succeeding biennium, effective on the first day thereof, unless a written notice of the board's election not to renew shall have been delivered in the office of the secretary of the Finance and Administration Cabinet before the close of business on the last working day in April immediately preceding the beginning of the succeeding biennium.

(c) The Kentucky Board of Education shall not itself operate leased television facilities, or undertake the preparation of the educational presentations or films to be transmitted thereby, but may enter into one (1) or more contracts to provide therefor, with any public agency and instrumentality of the Commonwealth having, or able to provide, a staff with proper technical qualifications, upon which agency and instrumentality the board, through the chief state school officer and the Department of Education, is represented in such manner as to coordinate matters of curriculum with the curricula prescribed for the public schools of the Commonwealth. Any contract for the operation of the leased television or related facilities may permit limited and special uses of the television or related facilities for other programs in the public interest, subject to the reasonable terms and conditions as the board and the operating agency and instrumentality may agree upon; but any contract shall affirmatively forbid the use of the television or related facilities, at any time or in any manner, in the dissemination of political propaganda or in furtherance of the interest of any political party or candidate for public office, or for commercial advertising. No lease between the board and the State Property and Buildings Commission shall bind the board to pay rentals for more than one (1) fiscal biennium at a time, subject to the aforesaid renewal options. The board may receive and may apply to rental payments under any lease and to the cost of providing for the operation of the television or related facilities not only appropriations which may be made to it from state funds, from time to time, but also contributions, gifts, matching funds, devises, and bequests from any source, whether federal or state, and whether public or private, so long as the same are not conditioned upon any improper use of the television or related facilities in a manner inconsistent with the provisions of this subsection.

(4) The state board may, on the recommendation and with the advice of the chief state school officer, prescribe, print, publish, and distribute at public expense such administrative regulations, courses of study, curriculums, bulletins, programs, outlines, reports, and placards as each deems necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction. All administrative regulations published or distributed by the board shall be inclosed in a booklet or binder on which the words "informational copy" shall be clearly stamped or printed.

(5) Upon the recommendation of the chief state school officer or his designee, the state board shall establish policy or act on all matters relating to programs, services, publications, capital construction and facility renovation, equipment, litigation, contracts, budgets, and all other matters which are the administrative responsibility of the Department of Education.

HB 225, AN ACT relating to the primary school program.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 157.320 is amended to read as follows:

As used in KRS 157.310 to 157.440, unless the context otherwise requires:

(1) "Average daily attendance" means the aggregate days attended by pupils in a public school, ***including the primary program through grade twelve (12),*** divided by the actual number of days the school is in session;

(2) "Base funding level" means a guaranteed amount of revenue per pupil to be provided for each school district, to be used for regular operating and capital expenditures;

(3) "Board" means the board of education of any county or independent school district;

(4) "District" means any school district as defined by law;

(5) "Elementary school" means a school consisting of the primary school program through grade eight (8) as defined in KRS 158.030, or any appropriate combination of grades within this range, as determined by the plan of organization for schools authorized by the district board;

(6) "Support Education Excellence in Kentucky" means the level of educational services and facilities which is to be provided in each district from the public school fund;

(7) "Kindergarten[~~ full time equivalent pupil in average daily attendance"~~] means[~~ each kindergarten pupil counted no more than one half (1/2) day in the aggregate days attended by kindergarten pupils in a public school divided by the actual number of days school is in session. Kindergarten is~~] the entry level of the primary program***. It***[~~ and~~] shall ***operate in accordance with the school calendar set for the elementary and secondary schools in the local school district***[~~be provided no less than the equivalent of one half (1/2) day, five (5) days a week for a full school year for each kindergarten pupil~~];

(8) "Public school fund" means the fund created by KRS 157.330 for use in financing education in public elementary and secondary schools;

(9) "Administrative regulations of the Kentucky Board of Education" means those regulations which the Kentucky Board of Education may adopt upon the recommendation and with the advice of the chief state school officer. The chief state school officer shall recommend administrative regulations necessary for carrying out the purposes of KRS 157.310 to 157.440;

(10) "Experience" means employment as a teacher, other than as a substitute or nursery school teacher, for a minimum of one hundred and forty (140) days during a school year in a public or nonpublic elementary or secondary school or college or university that is approved by the public accrediting authority in the state in which the teaching duties were performed. A teacher who is employed by a board for at least one hundred forty (140) days of a school year and who performs teaching duties for the equivalent of at least seventy (70) full school days during that school year, regardless of the schedule on which those duties were performed, shall be credited with one (1) year of experience. A teacher who is employed by a board for at least one hundred forty (140) days during each of two (2) school years and who performs teaching duties for the equivalent of at least seventy (70) full school days during those years shall be credited with one (1) year of experience. No more than one (1) year of experience shall be credited for the performance of teaching duties during a

single school year[~~.~~]***;***

(11) "Salary schedule summary" means the summary of all salaries paid teachers by the board from the single salary schedule. Teachers shall be grouped by training and experience and by source of funds;

(12) "Secondary school" means a school consisting of grades seven (7) through twelve (12), or any appropriate combination of grades within this range as determined by the plan of organization for schools authorized by the district board. When grades seven (7) through nine (9) or ten (10) are organized separately as a junior high school, or grades ten (10) through twelve (12) are organized separately as a senior high school and are conducted in separate school plant facilities, each shall be considered a separate secondary school for the purposes of KRS 157.310 to 157.440;

(13) "Single salary schedule" means a schedule adopted by a local board from which all teachers are paid for one hundred eighty-five (185) days and is based on training, experience, and such other factors as the Kentucky Board of Education may approve and which does not discriminate between salaries paid elementary and secondary teachers. If the budget bill contains a minimum statewide salary schedule, no teacher shall be paid less than the amount specified in the biennial budget salary schedule for the individual teacher's educational qualifications and experience;

(14) "Teacher" means any regular or special teacher, principal, supervisor, superintendent, assistant superintendent, librarian, director of pupil personnel, or other member of the teaching or professional staff engaged in the service of the public elementary and secondary school for whom certification is required as a condition of employment;

(15) "Percentage of attendance" means the aggregate days attended by pupils in a public school for the school year divided by the aggregate days' membership of pupils in a public school for the school year[~~.~~]***;***

(16) "Middle school" means a school consisting of grades five (5) through eight (8) or any appropriate combination of grades as determined by the plan of organization for schools authorized by the district board.

Section 2. KRS 158.060 is amended to read as follows:

(1) Twenty (20) school days, or days in which teachers are actually employed in the schoolroom, shall constitute a school month in the common schools. School shall be closed on the day of a regular election. The legal holiday designated by the Kentucky Board of Education to be observed may include the first Tuesday after the first Monday in November of each year and shall be counted as a school day.

(2) Each full-time teacher shall be provided with a duty-free lunch period each day during the regularly scheduled student lunch period. The duty-free lunch period shall be not less than the length of the lunch period specified in the school calendar approved by the chief state school officer. A full-time teacher may be assigned to lunch room duty during the regularly scheduled student lunch period only for an amount of time equal to the noninstructional time in excess of fifty-five (55) minutes included in the teacher's daily schedule. The calculation of noninstructional time shall not include the teacher's duty-free lunch period, the time teachers are required to be at school prior to the start of the student's instructional day, or the time teachers are required to remain at school after the students are dismissed.

(3) Except for children with disabilities[~~ and children attending the primary school program~~] who may attend a program of less than six (6) hours per day under policy adopted by the local school district board of education and approved by the commissioner of education and children attending a school district where the local board has approved a schedule that provides at least the equivalent of six (6) hours of daily instruction during the school year, a minimum of six (6) hours of actual school work shall constitute a school day.[~~ Kindergarten programs may be operated for less than six (6) hours without state board approval~~]. The Kentucky Board of Education, upon recommendation of the chief state school officer, shall develop and approve regulations governing make up by school districts of whole days missed due to emergencies, or partial days missed as a result of shortening regularly scheduled school days due to emergencies.

(4) Teachers shall be provided additional time for nonteaching activities. The nonteaching time shall be used to provide teachers opportunities for professional development activities as provided in KRS 156.095, instructional planning, school-based decision making as provided in KRS 160.345, curriculum development, and outreach activities involving their students' families and the community.

The Committee Substitute to **HB 225** is as follows:

AN ACT relating to the primary school program.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 157.320 is amended to read as follows:

As used in KRS 157.310 to 157.440, unless the context otherwise requires:

(1) "Average daily attendance" means the aggregate days attended by pupils in a public school, ***including the primary program through grade twelve (12),*** divided by the actual number of days the school is in session;

(2) "Base funding level" means a guaranteed amount of revenue per pupil to be provided for each school district, to be used for regular operating and capital expenditures;

(3) "Board" means the board of education of any county or independent school district;

(4) "District" means any school district as defined by law;

(5) "Elementary school" means a school consisting of the primary school program through grade eight (8) as defined in KRS 158.030, or any appropriate combination of grades within this range, as determined by the plan of organization for schools authorized by the district board;

(6) "Support Education Excellence in Kentucky" means the level of educational services and facilities which is to be provided in each district from the public school fund;

(7) "Kindergarten[~~ full-time equivalent pupil in average daily attendance"~~] means[~~ each kindergarten pupil counted no more than one-half (1/2) day in the aggregate days attended by kindergarten pupils in a public school divided by the actual number of days school is in session. Kindergarten is~~] the entry level of the primary program***. It***[~~ and~~] shall ***operate in accordance with the school calendar set for the elementary and secondary schools in the local school district***[~~be provided no less than the equivalent of one-half (1/2) day, five (5) days a week for a full school year for each kindergarten pupil~~];

(8) "Public school fund" means the fund created by KRS 157.330 for use in financing education in public elementary and secondary schools;

(9) "Administrative regulations of the Kentucky Board of Education" means those regulations which the Kentucky Board of Education may adopt upon the recommendation and with the advice of the chief state school officer. The chief state school officer shall recommend administrative regulations necessary for carrying out the purposes of KRS 157.310 to 157.440;

(10) "Experience" means employment as a teacher, other than as a substitute or nursery school teacher, for a minimum of one hundred and forty (140) days during a school year in a public or nonpublic elementary or secondary school or college or university that is approved by the public accrediting authority in the state in which the teaching duties were performed. A teacher who is employed by a board for at least one hundred forty (140) days of a school year and who performs teaching duties for the equivalent of at least seventy (70) full school days during that school year, regardless of the schedule on which those duties were performed, shall be credited with one (1) year of experience. A teacher who is employed by a board for at least one hundred forty (140) days during each of two (2) school years and who performs teaching duties for the equivalent of at least seventy (70) full school days during those years shall be credited with one (1) year of experience. No more than one (1) year of experience shall be credited for the performance of teaching duties during a single school year[~~.~~]***;***

(11) "Salary schedule summary" means the summary of all salaries paid teachers by the board from the single salary schedule. Teachers shall be grouped by training and experience and by source of funds;

(12) "Secondary school" means a school consisting of grades seven (7) through twelve (12), or any appropriate combination of grades within this range as determined by the plan of organization for schools authorized by the district board. When grades seven (7) through nine (9) or ten (10) are organized separately as a junior high school, or grades ten (10) through twelve (12) are organized separately as a senior high school and are conducted in separate school plant facilities, each shall be considered a separate secondary school for the purposes of KRS 157.310 to 157.440;

(13) "Single salary schedule" means a schedule adopted by a local board from which all teachers are paid for one hundred eighty-five (185) days and is based on training, experience, and such other factors as the Kentucky Board of Education may approve and which does not discriminate between salaries paid elementary and secondary teachers. If the budget bill contains a minimum statewide salary schedule, no teacher shall be paid less than the amount specified in the biennial budget salary schedule for the individual teacher's educational qualifications and experience;

(14) "Teacher" means any regular or special teacher, principal, supervisor, superintendent, assistant superintendent, librarian, director of pupil personnel, or other member of the teaching or professional staff engaged in the service of the public elementary and secondary school for whom certification is required as a condition of employment;

(15) "Percentage of attendance" means the aggregate days attended by pupils in a public school for the school year divided by the aggregate days' membership of pupils in a public school for the school year[~~.~~]***;***

(16) "Middle school" means a school consisting of grades five (5) through eight (8) or any appropriate combination of grades as determined by the plan of organization for schools authorized by the district board.

HB 396, AN ACT relating to the evaluation of certified employees.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 156.101 is amended to read as follows:

(1) The purpose of this section is to encourage and require the maintenance and development of effective instructional leadership in the public schools of the Commonwealth and to recognize that principals with the assistance of assistant principals, supervisors of instruction, guidance counselors, and directors of special education have the primary

responsibility for instructional leadership in the schools to which they are assigned.

(2) For the purpose of this section, instructional leader shall be defined as an employee of the public schools of the Commonwealth holding a valid certificate as a principal, assistant principal, supervisor of instruction, guidance counselor, or director of special education.

(3) In order to carry out the purpose of this section, the Kentucky Board of Education shall establish a statewide program to improve and maintain the quality and effectiveness of instructional leadership in the public schools of the Commonwealth.

(4) The instructional leader improvement program shall contain the following provisions:

(a) Each instructional leader employed by the public schools of the Commonwealth shall participate in a continuing intensive training program designed especially for instructional leaders;

(b) Every two (2) years each instructional leader shall complete an intensive training program approved by the Kentucky Board of Education to include no less than forty-two (42) participant hours of instruction;

(c) The Kentucky Board of Education shall prescribe specific criteria for the training program and may contract for the training with qualified agencies or institutions; and

(d) Completion of the required participant hours shall be reported to the State Department of Education and to the local school district. If an instructional leader fails to complete the required hours of training, he shall be placed on probation for one (1) year and, if the training is not completed during the probationary period, his certificate shall be revoked.

(5) As a means of improving the educational productivity of Kentucky's public schools, of providing a method by which the citizens of the Commonwealth can be assured of measures of accountability of the performance of certified school employees, and of providing encouragement and incentives for certified school employees to improve their performance, the Kentucky Board of Education shall establish a statewide program for improving the performance of all certified school personnel, including instructional leaders.

(6) The certified employee evaluation programs shall contain the following provisions:

(a) Each certified school employee, including the superintendent, shall be evaluated by a system developed by the local school district and approved by the Kentucky Board of Education;

(b) The local school district shall review the evaluation plan to insure compliance with this section. Upon adoption, revisions to the evaluation plan shall be submitted for approval by the Kentucky Board of Education; and

(c) The Kentucky Board of Education shall notify local school districts of their responsibilities under this subsection, develop written guidelines for local school districts to follow in developing and implementing an evaluation system and shall require the following:

1. All evaluations of certified employees below the level of the district superintendent shall be in writing on evaluation forms and under evaluation procedures developed by a committee composed of an equal number of teachers and administrators;

2. The immediate supervisor of the certified school employee shall be designated as the primary evaluator;

3. All monitoring or observation of performance of a certified school employee shall be conducted openly and with full knowledge of the employee;

4. Evaluation shall include a conference between the evaluator and the person evaluated;

5. Evaluators shall be trained, tested, and certified in accordance with regulations adopted by the Kentucky Board of Education in the proper techniques for effectively evaluating certified school employees and in the use of the school district evaluation system;

6. The evaluation system shall include a plan whereby the person evaluated is given assistance for becoming more proficient as a teacher or administrator; and

7. The training requirement for evaluators contained in subsection (6)(c)5. of this section shall not apply to district board of education members.

(7) ***A local district may request from the Kentucky Board of Education a waiver from the guidelines and administrative regulations promulgated by the state board as required in subsection (6) of this section in order to implement an alternative certified evaluation plan for employees on continuing contracts. The board shall grant a waiver if the alternative plan provides for a three (3) phase certified employee evaluation plan that includes:***

(a) Phase One (1): Evaluation for Professional Growth.

1. Evaluation is based on a wide array of relevant sources and directed toward general and specific recommendations for improvement; and

2. Evaluation does not include documentation that might adversely affect employment status.

(b) Phase Two (2): Transition.

1. Evaluation is for the purpose of intensive scrutiny of job performance;

2. Evaluation includes documentation that may lead to adverse employment decisions;

3. Assistance and support for improvement shall be provided by the school district; and

4. Placement of an individual in the transition phase is not subject to appeal, but the employee must be notified of the decision in writing.

(c) Phase Three (3): Evaluation for Deficiency.

1. Written notice of potential termination, reduction of direct classroom responsibility, or other adverse actions and conditions for job retention are given the employee;

2. A clear time frame for proposed actions is provided the employee; and

3. Any action in this phase that leads to termination is subject to appeal.

An alternative plan for the evaluation of certified personnel shall be proposed to the state board if the local district evaluation committee is in support of the plan. Training necessary to implement the alternative plan shall be provided to the principals, supervisory personnel, and the employees to be evaluated. The local district shall provide support to implement the plan. The Kentucky Department of Education shall provide technical assistance to districts wishing to develop alternative evaluation plans.

(8) The State Department of Education shall visit school districts within the Commonwealth as needed to review and insure implementation of the evaluation system by the local school district. The department shall establish an appeals procedure for certified school employees who feel that the local school district failed to properly implement the approved evaluation system. The appeals procedure shall not involve requests from individual certified school employees for review of the judgmental conclusions of their personal evaluations.

(9)[~~(8)~~] The State Department of Education shall select and train evaluators from outside each local school district to conduct evaluations as needed of a sample of certified school employees within each district in order to validate the effectiveness and accuracy of the local school districts' evaluators.

(10)[~~(9)~~] Local school districts with an enrollment of sixty-five thousand (65,000) or more students shall be exempt from the requirements of this section except for subsection (10) of this section provided they meet the standards established by the Kentucky Board of Education for local school district evaluation systems.

(11)[~~(10)~~] The local board of education shall establish an evaluation appeals panel for certified personnel which shall consist of two (2) members elected by the certified employees of the district and one (1) member appointed by the board of education who is a certified employee of the board. Certified employees who think they were not fairly evaluated may submit an appeal to the panel for a timely review of their evaluation.

(12)[~~(11)~~] This section shall be known as the "Effective Instructional Leadership Act."

The Committee Substitute to **HB 396** is as follows:

AN ACT relating to the evaluation of certified employees.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 156.101 is amended to read as follows:

(1) The purpose of this section is to encourage and require the maintenance and development of effective instructional leadership in the public schools of the Commonwealth and to recognize that principals with the assistance of assistant principals, supervisors of instruction, guidance counselors, and directors of special education have the primary responsibility for instructional leadership in the schools to which they are assigned.

(2) For the purpose of this section, instructional leader shall be defined as an employee of the public schools of the Commonwealth holding a valid certificate as a principal, assistant principal, supervisor of instruction, guidance counselor, or director of special education.

(3) In order to carry out the purpose of this section, the Kentucky Board of Education shall establish a statewide program to improve and maintain the quality and effectiveness of instructional leadership in the public schools of the Commonwealth.

(4) The instructional leader improvement program shall contain the following provisions:

(a) Each instructional leader employed by the public schools of the Commonwealth shall participate in a continuing intensive training program designed especially for instructional leaders;

(b) Every two (2) years each instructional leader shall complete an intensive training program approved by the Kentucky Board of Education to include no less than forty-two (42) participant hours of instruction;

(c) The Kentucky Board of Education shall prescribe specific criteria for the training program and may contract for the training with qualified agencies or institutions; and

(d) Completion of the required participant hours shall be reported to the State Department of Education and to the local school district. If an instructional leader fails to complete the required hours of training, he shall be placed on probation for one (1) year and, if the training is not completed during the probationary period, his certificate shall be revoked.

(5) As a means of improving the educational productivity of Kentucky's public schools, of providing a method by which the citizens of the Commonwealth can be assured of measures of accountability of the performance of certified school employees, and of providing encouragement and incentives for certified school employees to improve their performance, the Kentucky Board of Education shall establish a statewide program for improving the performance of all certified school personnel, including instructional leaders.

(6) The certified employee evaluation programs shall contain the following provisions:

(a) Each certified school employee, including the superintendent, shall be evaluated by a system developed by the local school district and approved by the Kentucky Board of Education;

(b) The local school district shall review the evaluation plan to insure compliance with this section. Upon adoption, revisions to the evaluation plan shall be submitted for approval by the Kentucky Board of Education; and

(c) The Kentucky Board of Education shall notify local school districts of their responsibilities under this subsection, develop written guidelines for local school districts to follow in developing and implementing an evaluation system and shall require the following:

1. All evaluations of certified employees below the level of the district superintendent shall be in writing on evaluation forms and under evaluation procedures developed by a committee composed of an equal number of teachers and administrators;
2. The immediate supervisor of the certified school employee shall be designated as the primary evaluator;
3. All monitoring or observation of performance of a certified school employee shall be conducted openly and with full knowledge of the employee;
4. Evaluation shall include a conference between the evaluator and the person evaluated;
5. Evaluators shall be trained, tested, and certified in accordance with regulations adopted by the Kentucky Board of Education in the proper techniques for effectively evaluating certified school employees and in the use of the school district evaluation system;
6. The evaluation system shall include a plan whereby the person evaluated is given assistance for becoming more proficient as a teacher or administrator; and
7. The training requirement for evaluators contained in subsection (6)(c)5. of this section shall not apply to district board of education members.

(7) ***A local district may request from the Kentucky Board of Education a waiver from the guidelines and administrative regulations promulgated by the state board as required in subsection (6) of this section in order to implement an alternative certified evaluation plan for employees on continuing contracts. The board shall grant a waiver if the alternative plan provides for a three (3) phase certified employee evaluation plan that includes:***

(a) Phase One (1): Evaluation for Professional Growth.

1. Evaluation is based on a wide array of relevant sources and directed toward general and specific recommendations for improvement; and

2. Evaluation does not include documentation that might adversely affect employment status.

(b) Phase Two (2): Transition.

1. Evaluation is for the purpose of intensive scrutiny of job performance;

2. Evaluation includes documentation that may lead to adverse employment decisions;

3. Assistance and support for improvement shall be provided by the school district; and

4. Placement of an individual in the transition phase is not subject to appeal, but the employee must be notified of the decision in writing.

(c) Phase Three (3): Evaluation for Deficiency.

1. Notwithstanding KRS 161.760, written notice of potential termination, reduction of direct classroom responsibility, or other adverse actions and conditions for job retention are given the employee;

2. A clear time frame for proposed actions is provided the employee; and

3. The summative evaluation is subject to appeal.

An alternative plan for the evaluation of certified personnel shall be proposed to the state board if the local district evaluation committee is in support of the plan. Training necessary to implement the alternative plan shall be provided to the principals, supervisory personnel, and the employees to be evaluated. The local district shall provide support to implement the plan. The Kentucky Department of Education shall provide technical assistance to districts wishing to develop alternative evaluation plans.

(8) The State Department of Education shall visit school districts within the Commonwealth as needed to review and insure implementation of the evaluation system by the local school district. The department shall establish an appeals procedure for certified school employees who feel that the local school district failed to properly implement the approved evaluation system. The appeals procedure shall not involve requests from individual certified school employees for review of the judgmental conclusions of their personal evaluations.

(9)[~~(8)~~] The State Department of Education shall select and train evaluators from outside each local school district to conduct evaluations as needed of a sample of certified school employees within each district in order to validate the effectiveness and accuracy of the local school districts' evaluators.

(10)[~~(9)~~] Local school districts with an enrollment of sixty-five thousand (65,000) or more students shall be exempt from the requirements of this section except for subsection (10) of this section provided they meet the standards established by the Kentucky Board of Education for local school district evaluation systems.

(11)[~~(10)~~] The local board of education shall establish an evaluation appeals panel for certified personnel which shall consist of two (2) members elected by the certified employees of the district and one (1) member appointed by the board of education who is a certified employee of the board. Certified employees who think they were not fairly evaluated may submit an appeal to the panel for a timely review of their evaluation. ***In districts that have adopted an alternative evaluation plan under subsection (7) of this section, the appeal shall only apply to the summative evaluation of Phase Three (3).***

(12)[~~(11)~~] This section shall be known as the "Effective Instructional Leadership Act."

HB 417, AN ACT relating to Kentucky Board of Education administrative regulations.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 156.160 is amended to read as follows:

(1) With the advice of the Local Superintendents Advisory Council, the Kentucky Board of Education shall promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. These regulations shall comply with the expected outcomes for students and schools set forth in KRS 158.6451. Administrative regulations shall be promulgated for the following:

(a) Courses of study for the different grades and kinds of common schools, subject to the following conditions:

1. a. Procedures for developing an ungraded primary program as defined in KRS 158.030 which shall be implemented by the beginning of the 1992-93 school year, and the program, in its entirety, shall be fully implemented for all students who have not entered the fourth grade in every elementary school in every district by the beginning of the 1993-1994 school year, except as provided in subparagraph 1.b. of this paragraph. The primary program shall include the following critical attributes: developmentally appropriate educational practices, multiage and multiability classrooms; continuous progress; authentic assessment; qualitative reporting methods; professional teamwork; and positive parent involvement. The implementation of the primary program may take into consideration the necessary arrangements required for students attending part-time and will allow for grouping of students attending their first year of school when determined to be developmentally appropriate.

b. A school council established pursuant to KRS 160.345 or if none exists, a school may determine, based on individual student needs, that implementing multiage and multiability classrooms need not apply for every grouping of students for every activity throughout the entire day. The school council or school shall revise the action plan to reflect any changes in the primary program's design.

2. The courses of study for students shall include American sign language which shall be accepted as meeting the foreign language requirements in common schools notwithstanding other provisions of law;

(b) The acquisition and use of educational equipment for the schools as recommended by the Council for Education Technology;

(c) The minimum requirements for high school graduation. Prior to the beginning of the 1994-95 school year, the State Board for Elementary and Secondary Education shall review graduation requirements in light of the expected outcomes for students and schools set forth in KRS 158.6451;

(d) Taking, and keeping a school census, and the forms, blanks, and software to be used in taking and keeping the census and in compiling the required reports. The board shall create a statewide student identification numbering system based on students' Social Security numbers. The system shall provide a student identification number similar to, but distinct from, the Social Security number, for each student who does not have a Social Security number or whose parents or guardians choose not to disclose the Social Security number for the student;

(e) Sanitary and protective construction of public school buildings, toilets, physical equipment of school grounds, school buildings, and classrooms. With respect to physical standards of sanitary and protective construction for school buildings, the Kentucky Board of Education shall adopt the Uniform State Building Code;

(f) Medical inspection, physical and health education and recreation, and other regulations necessary or advisable for the protection of the physical welfare and safety of the public school children. The administrative regulations shall set requirements for student health standards to be met by all students in grades four (4), eight (8), and twelve (12) pursuant to the outcomes described in KRS 158.6451. The administrative regulations shall permit a student who received a physical examination no more than six (6) months prior to his initial admission to Head Start to substitute that physical examination for the physical examination required by the Kentucky Board of Education of all students upon initial admission to the public schools, if the physical examination given in the Head Start program meets all the requirements of the physical examinations prescribed by the Kentucky Board of Education;

(g) The transportation of children to and from school;

(h) The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine;

(i) The preparation of budgets and salary schedules for the several school districts under the management and control of the Kentucky Board of Education;

(j) A uniform series of forms and blanks, educational and financial, including forms of contracts, for use in the several school districts; and

(k) The disposal of real and personal property owned by local boards of education.

(2) (a) At the request of a local board of education or a school council, a local school district superintendent shall request that the Kentucky Board of Education waive any administrative regulation promulgated by that board. Beginning in the 1996-97 school year, a request for waiver of any administrative regulation shall be submitted to the Kentucky Board of Education in writing with appropriate justification for the waiver. The Kentucky Board of Education may approve the request when the school district or school has demonstrated circumstances that may include, but are not limited to, the following:

1. An alternative approach will achieve the same result required by the administrative regulation;
2. Implementation of the administrative regulation will cause a hardship on the school district or school or jeopardize the continuation or development of programs; or
3. There is a finding of good cause for the waiver.

(b) ***The following shall not be subject to waiver:***

1. Administrative regulations relating to health and safety;
2. Administrative regulations relating to civil rights;
3. Administrative regulations required by federal law; and
4. Administrative regulations promulgated in accordance with KRS 158.6451, 158.6453, 158.6455, 158.685, and this section, relating to measurement of performance outcomes and determination of successful districts or schools, except upon issues relating to the grade configuration of schools.[~~Regulations relating to health and safety, civil rights, any state regulation required by a federal law, and regulations promulgated pursuant to KRS 158.6451, 158.6453, 158.6455, 158.685, and this section, relating to measurement of performance outcomes and determination of successful districts or schools shall not be subject to waiver.~~]

(c) Any waiver granted under this subsection shall be subject to revocation upon a determination by the Kentucky Board of Education that the school district or school holding the waiver has subsequently failed to meet the intent of the waiver.

(3) Any private, parochial, or church school may voluntarily comply with curriculum, certification, and textbook standards established by the Kentucky Board of Education and be certified upon application to the board by such schools.

HB 418, AN ACT relating to school employees.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 160.380 is amended to read as follows:

(1) As used in this section:

(a) "Relative" shall mean father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law.

(b) "Vacancy" shall mean any certified position opening created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member of a local school district, or a new position created in a local school district for which certification is required. However, if an employer-employee bargained contract contains procedures for filling certified position openings created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member, or creation of a new position for which certification is required, a vacancy shall not exist, unless certified positions remain open after compliance with those procedures.

(2) (a) All appointments, promotions, and transfers of principals, supervisors, teachers, and other public school employees shall be made only by the superintendent of schools, who shall notify the board of the action taken. All employees of the local district shall have the qualifications prescribed by law and by the administrative regulations of the Kentucky Board of Education and of the employing board. Supervisors, principals, teachers, and other employees may be appointed by the superintendent for any school year at any time after February 1 preceding the beginning of the school year. No superintendent of schools shall appoint or transfer himself to another position within the school district.

(b) When a vacancy occurs in a local school district, the superintendent shall notify the chief state school officer thirty (30) days before the position shall be filled. The chief state school officer shall keep a registry of local district vacancies which shall be made available to the public. The local school district shall post position openings in the local board office for public viewing.

(c) When a vacancy needs to be filled in less than thirty (30) days' time to prevent disruption of necessary instructional or support services of the school district, the superintendent may seek a waiver from the chief state school officer. If the waiver is approved, the appointment shall not be made until the person recommended for the position has been approved by the chief state school officer. The chief state school officer shall respond to a district's request for waiver or for approval of an appointment within two (2) working days.

(d) When a vacancy occurs in a local district, the superintendent shall conduct a search to locate minority teachers to be considered for the position. The superintendent shall, pursuant to administrative regulations of the Kentucky Board of Education, report annually the district's recruitment process and the activities used to increase the percentage of minority teachers in the district.

(e) No relative of a superintendent of schools shall be an employee of the school district. However, this shall not apply to a relative who is ***a classified or certified***[~~an~~] employee of the school district for at least thirty-six (36) months prior to the superintendent assuming office and who is ***qualified***[~~certified~~] for the position ***the employee***[~~he~~] holds, and it shall not apply to a superintendent's spouse who has at least twenty (20) years of service in school systems. A superintendent's spouse who is employed under this provision shall not hold a position in which the spouse supervises certified or classified employees. A superintendent's spouse may supervise teacher aides and student teachers. However, the superintendent shall not promote ***a***[~~his~~] relative who continues employment under an exception of this subsection.

(f) No superintendent shall employ a relative of a school board member of the district, unless on July 13, 1990, the board member's relative is an employee of the district, the board member is holding office, and the relative was not initially hired by the district during the tenure of the board member. A relative employed in 1989-90 and initially hired during the tenure of a board member serving on July 13, 1990, may continue to be employed during the remainder of the board member's term. However, the superintendent shall not promote any relative of a school board member who continues employment under the exception of this subsection.

(g) No principal's relative shall be employed in the principal's school, except a relative who is not the principal's spouse and who was employed in the principal's school during the 1989-90 school year. No spouse of a principal shall be employed in the principal's school, except a principal's spouse who was employed in the principal's school during the 1989-90 school year for whom there is no position for which the spouse is certified to fill in another school operated in the district. The provisions of KRS 161.760 shall not apply to any transfer made in order to comply with the provisions of this paragraph.

(3) No superintendent shall employ in a position which involves supervisory or disciplinary power over a minor, any person who is a violent offender or has been convicted of a sex crime as defined by KRS 17.165 which is classified as a felony. The superintendent may employ, at his discretion, persons convicted of sex crimes classified as a misdemeanor. Each superintendent shall request all conviction information for any applicant for initial employment from the Justice Cabinet prior to employing the applicant.

(4) (a) If a school term has begun and a position remains unfilled or if a vacancy occurs during a school term, a superintendent may employ an individual, who will have supervisory or disciplinary authority over minors, on

probationary status pending receipt of the required records. Application for the criminal record of a probationary employee shall be made no later than the date probationary employment begins.

(b) Employment shall be contingent on the receipt of records documenting that the probationary employee has no record of a sex crime nor as a violent offender as defined in KRS 17.165.

(c) Notwithstanding KRS 161.720 to 161.800 or any other statute to the contrary, probationary employment under this section shall terminate on receipt by the district of a record documenting a criminal act as defined above and no further procedures shall be required.

(5) Each application or renewal form, provided by the employer to the applicant, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."

(6) Any request for records under subsection (3) of this section shall be on a form approved by the Justice Cabinet, and the cabinet may charge a fee to be paid by the applicant in an amount no greater than the actual cost of processing the request.

(7) The provisions of this section shall apply to all applicants for initial employment in a position which involves supervisory or disciplinary power over a minor after July 15, 1988. Initial employment shall include first time applicants and applicants who were former employees of the district but have not been employed by the district for six (6) months.

HB 424, AN ACT relating to recycling in school districts.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

Each local board of education shall adopt a plan and procedures for recycling white paper and cardboard in all board-owned and operated facilities. The board may delegate to each school or school council the responsibility for designing its own procedures; however, the superintendent or the superintendent's designee shall periodically review the operating procedures to assure that recycling is being carried out.

The Committee on Licensing and Occupations reported **HB 564** and **SB 169** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 564, AN ACT relating to real estate.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 324 IS CREATED TO READ AS FOLLOWS:

A principal broker shall return an associate's license to the commission upon request. A principal broker that fails to return a license to the commission upon request shall be in violation of KRS 324.160(1)(r).

Section 2. KRS 324.010 is amended to read as follows:

(1) As used in this chapter, unless the context requires otherwise:

(a) ***"Real estate brokerage" means a single, multiple, or continuing act of selling or offering for sale, buying or offering to buy, negotiating the purchase, sale, or exchange of real estate, engaging in property management, leasing or offering to lease, renting or offering for rent, or referring or offering to refer for the purpose of securing prospects, any real estate or the improvements thereon for others for a fee, commission, compensation, or other valuable consideration***[~~"Broker" means any person who for a fee, commission, compensation, or other valuable consideration sells or offers for sale, buys or offers to buy, deals in time shares or options, negotiates the purchase, sale, or exchange of real estate, engages in property management, leases or offers to lease, rents or offers for rent, or refers or offers to refer for the purpose of securing prospects, any real estate or the improvements thereon for others, but shall not apply to a person whose only compensation for negotiating the purchase, sale, or lease of an interest or interests in mineral rights consists of an interest in the rights that are the subject of the purchase, sale, or lease~~];

(b) "Commission" means the Kentucky Real Estate Commission;

(c) "Net listing" means a listing agreement that provides for a stipulated net price to the owner and the excess over the stipulated net price to be received by the licensee as the commission;

(d) "Principal broker" means a ***person licensed as a*** broker ***under KRS 324.046***[~~as defined in paragraph (a) of this subsection~~] who, in addition to performing acts ***of real estate brokerage*** or transactions comprehended by that definition, is the single broker responsible for the operation of the ***company with which he or she is associated***[~~office or offices~~];

(e) "Real estate" means real estate in its ordinary meaning and includes ***timeshares, options,*** leaseholds***,*** and other interests less than leaseholds;

(f) "Sales associate" means any person associated with a Kentucky-licensed principal broker ***who is licensed under KRS 324.046(2) and performs acts of real estate brokerage under the direction and control of the principal broker***[~~for performing acts or transactions comprehended by the definition of "broker" as defined in paragraph (a) of this subsection and licensed under this chapter~~];

(g) "Approved real estate school" means:

1. A school that has been given a certificate of approval by the State Board for Proprietary Education ***and***[~~in addition to a certificate of approval by~~] the Kentucky Real Estate Commission. The school shall also be currently in good standing with both the State Board for Proprietary Education and the commission; or

2. A National Association of Realtors recognized program which has been reviewed by the Kentucky Real Estate Commission and deemed an approved real estate school;

(h) "Accredited real estate school" means a college or university accredited by appropriately recognized educational associations or chartered and licensed in Kentucky that grants credits toward an associate degree or a baccalaureate degree to those students successfully completing a course in real estate;[~~ and~~]

(i) "Property management" means the[~~ marketing, leasing, or~~] overall management of real property for others for a fee, commission, compensation, or other valuable consideration***, and may include the marketing of property, the leasing of property, collecting rental payments on the property, payment of notes, mortgages, and other debts on the property, coordinating maintenance for the property, remitting funds and accounting statements to the owner, and other activities that the commission may determine by administrative regulation; and***

(j) "Broker" means any person who is licensed under KRS 324.046(1) and performs acts of real estate brokerage.

(2) One act for a fee, commission, compensation, or other valuable consideration of buying or selling real estate of or for another; offering for another to buy, sell, or exchange real estate; leasing, renting, or offering to rent real estate; referring or offering to refer real estate for the purpose of securing prospects; or dealing in options or time sharing shall constitute the person performing, offering, or attempting to perform the act as a broker or sales associate.

Section 3. KRS 324.020 is amended to read as follows:

(1) It shall be unlawful for any person to act as a broker or real estate sales associate or to advertise or assume to act as a broker or sales associate within the Commonwealth of Kentucky, without a license issued by the Kentucky Real Estate Commission.

(2) A licensee who is an owner or a builder-developer shall comply with the provisions of this chapter and the administrative regulations applying to real estate brokers and sales associates.

(3) No broker shall split fees with or compensate any person who is not licensed to perform any of the acts regulated by this chapter, except that a broker may pay a commission to or split fees with a broker licensed outside of Kentucky who represents an out-of-state client.

(4) No sales associate licensed in Kentucky shall supervise another licensed sales associate or manage an office, except by permission of the commission and when acting on the death of the principal broker.

(5) The Kentucky Real Estate Commission may seek and obtain injunctive relief against any unlicensed individual acting in violation of this chapter by filing a civil action in the Circuit Court where ***the commission is located or where*** the unlawful activity took place.

Section 4. KRS 324.045 is amended to read as follows:

(1) Licenses shall be granted only to persons who are trustworthy and competent to transact the business of a broker or sales associate in a manner to safeguard the interest of the public, and only after satisfactory proof of qualifications has been presented to the commission.

(2) In addition to proof of honesty, truthfulness, and good reputation of any applicant for a license, each applicant shall pass a written examination conducted by the commission, or its authorized representative. The examination shall be of the scope and wording sufficient in the judgment of the commission to establish the competency[~~ and trustworthiness~~] of the applicant to act as a broker or sales associate in a manner to protect the interests of the public. However, ***an***[~~no~~] examination shall ***not*** be required for the renewal of any present or future license, unless the license has been revoked, suspended, or is allowed to expire without renewal for a period of more than one (1) year.

(3) The commission shall hold examinations at ***the*** times and places it determines, and an examination fee shall be collected from each applicant to defray the expenses of holding the examinations.

Section 5. KRS 324.046 is amended to read as follows:

(1) Every applicant for initial licensure as a broker shall have successfully completed not less than twenty-one (21) academic credit hours or the equivalent with at least twelve (12) hours in real estate courses from an accredited or approved real

estate school and shall have been engaged in the real estate business as a sales associate averaging at least twenty (20) hours per week for a period of twenty-four (24) months prior to application.

(2) Every applicant for initial licensure as a sales associate shall have successfully completed six (6) academic credit hours or ***their*** equivalent in real estate courses from an accredited or approved real estate school.

(3) Proof of the academic credit hours shall be an official transcript from the attended university and a sworn notarized affidavit signed by both the applicant and his ***or her*** principal broker or other documentation satisfactory to the commission. The applicant may file a complaint with the commission if the principal broker unjustly refuses to sign the affidavit.

(4) The commission may reduce the two (2) year experience requirement for applicants for a broker's license to one (1) year, if the applicant has an associate degree in real estate or a baccalaureate degree with a major in real estate.

(5) Any person licensed under the real estate laws of this state prior to June 19, 1976, ***that has been continuously and actively licensed since that date*** shall not be subject to any educational changes in this chapter or subject to any continuing education requirements.

Section 6. KRS 324.090 is amended to read as follows:

(1) Licenses shall expire on the thirty-first day of March of each year. The commission shall ***renew***[~~issue~~] a[~~ new~~] license for each ensuing year, in the absence of any reason or condition which might warrant the refusal of the granting of the license, upon receipt of the written request of the applicant and payment of the annual fees required. ***A new license***[~~No applicant for renewal~~] shall ***be mailed only if the licensee's name, address, status, or***[~~change broker~~] affiliation ***changes***[~~between March 1 through March 31~~].

(2) A fine not to exceed two hundred dollars ($200) shall be assessed for failure to renew on time before a new license is issued. Failure to receive a renewal form shall not constitute an adequate excuse for failure to renew on time nor shall failure of the mail.

(3) Any license not renewed at the end of the renewal year as prescribed by the commission shall automatically revert to expired status. The license may be reactivated before a lapse of one (1) year, if delinquent fees are paid by the licensee.

Section 7. KRS 324.115 is amended to read as follows:

Every broker licensed under KRS 324.045 shall[~~ have and~~] maintain a definite place of business in this state***, except a***[~~. Provided, however, that if the~~] broker ***who*** is a nonresident ***shall***[~~, it is~~] not ***be required***[~~mandatory~~] to maintain an active place of business in this state if ***he or she maintains*** a business place[~~ is maintained~~] in the state of original licensure***, unless this provision conflicts with the commission's agreement of reciprocity with the state of original licensure***.

Section 8. KRS 324.117 is amended to read as follows:

(1) Real estate advertising shall not be false, misleading, or deceptive. All real estate advertising shall specify the names of the real estate company ***listed on the licensee's real estate license*** or the name of the principal broker and a designation indicating that ***the licensee***[~~he~~] is engaged in the real estate business. The commission shall promulgate administrative regulations to define false, misleading, or deceptive advertising.

(2) The name of a deceased broker may remain a part of the firm name.

(3) No[~~ sales~~] associate[~~ or nonlicensed individual~~] may have his ***or her*** name in the firm name.

(4) Any sales associate or broker affiliated ***with***[~~under~~] a principal broker shall advertise in the[~~ firm~~] name ***of the real estate company listed on the associate's or broker's real estate license*** or the name of the principal broker, unless he or she is selling, renting, leasing, or otherwise dealing in his or her own property.

Section 9. KRS 324.160 is amended to read as follows:

(1) The commission may suspend or revoke any license or levy fines not to exceed five hundred dollars ($500), or both, and place any licensee on probation for a period of up to twelve (12) months or require successful completion of academic credit hours in real estate courses from an accredited or approved real estate school or issue a formal reprimand or order a licensee to pay restitution in an amount to be determined by the commission after a hearing, as a condition of continued licensure, for any of the following causes:

(a) Obtaining a license through false or fraudulent representation;

(b) Making any substantial misrepresentation or failing to disclose known defects which substantially affect the value of the property;

(c) Making any false promises of a character likely to influence, persuade***,*** or induce;

(d) Pursuing a continued and flagrant course of misrepresentation or making false promises through agents or advertising or otherwise;

(e) Acting for more than one (1) party in a transaction without the knowledge of all parties for whom the licensee acts;

1. A real estate licensee shall not directly or indirectly buy property listed with him ***or her*** nor acquire an interest therein without making his ***or her*** true position clearly known in writing on the sales contract or offer to purchase;

2. Before a real estate licensee buys, sells, or receives compensation for property in which the licensee owns an interest, the licensee shall disclose any interest in the property to all parties to the transaction; ***and***

3. A licensee who advertises his or her own property for sale or lease by the owner shall disclose his or her licensee status in all advertising.

(f) Accepting valuable consideration for the performance of any of the acts specified in this chapter, from any person, except from his ***or her*** principal broker at the time the ***brokerage agreement***[~~listing~~] was obtained. When acting as an agent in the management of property, a real estate licensee shall not accept any commission, rebate, or profit on expenditures made for a client without the full knowledge and consent of the client;

(g) Representing or attempting to represent a broker other than a principal broker, without the express knowledge and consent of that principal broker;

(h) Failing to account for or remit, within a reasonable time, any money belonging to others that comes into ***the licensee's***[~~his~~] possession. When acting as a property manager, the licensee shall render an accounting and remit all moneys to his ***or her*** client strictly in accordance with the contract of employment;

(i) Paying valuable consideration to any person for services performed in violation of this chapter;

(j) Entering a plea of guilty or an "Alford" plea to, or having been found guilty of, or having been convicted of, a felony and the time for appeal has lapsed or the judgment or conviction has been affirmed on appeal, irrespective of an order granting probation following the conviction, suspending the imposition of sentence***, or failing to report a felony conviction, or plea of guilty to a felony, or an "Alford" plea to a felony to the commission***; or soliciting, selling, or offering for sale real property under a scheme or program that constitutes a lottery, contest, or deceptive practice, or offering prizes for the purpose of influencing a purchaser or prospective purchaser of real estate, or acting in the dual capacity of broker and undisclosed principal in the transaction;

(k) Guaranteeing, authorizing, or permitting a person to guarantee that future profits shall result from a resale of real property;

(l) Negotiating or attempting to negotiate the sale, exchange, lease, or rental of real property***, or attempting to obtain a brokerage agreement*** with an owner or lessor knowing that the owner or lessor had a written outstanding contract granting exclusive agency in connection with the property to another real estate broker;

(m) Publishing or circulating an unjustified or unwarranted threat of legal proceedings or other action;

(n) Failing or refusing on demand to furnish copies of a document pertaining to a transaction dealing with real estate to a person whose signature is affixed to the document;

(o) Failing, within a reasonable time, to provide information requested by the commission as a result of a formal or informal complaint to the commission which may indicate a violation of this chapter;

(p) Paying valuable consideration to any person for the name of potential sellers or buyers, except as otherwise provided in KRS 324.020(3);

(q) Violating any of the provisions in this chapter or any lawful order, rule, or administrative regulation made or issued under the provisions of this chapter;

(r) Any other conduct that constitutes improper, fraudulent, or dishonest dealing; or

(s) Gross negligence.

(2) Any conduct constituting an act of discrimination regarding a person's race, color, creed, sex, or national origin, including use of scare tactics or blockbusting, shall be considered improper conduct as referred to in subsection (1)(r) of this section.

(3) No unlawful act or violation of any provision of this chapter by any ***affiliated licensee***[~~associate~~] of the principal broker ***shall***[~~may~~] be cause for holding the principal broker primarily liable, unless the broker has knowledge of the unlawful violation ***and did not prevent it. The principal broker and his or her designated manager, if any, shall exercise adequate supervision over the activities of licensed affiliates and all company employees to ensure that violations of this chapter do not occur. A principal broker's failure to exercise adequate supervision of the licensed affiliates shall constitute a violation of this chapter***.[~~ The commission through means of a formal hearing may fine, suspend, or revoke the license of the principal broker for failing to exercise adequate supervision over the activities of licensed affiliates.~~]

(4) The practice of obtaining, negotiating, or attempting to negotiate "net listings" shall be considered improper dealing.

Section 10. KRS 324.287 is amended to read as follows:

The commission shall charge and collect the following fees:

(1) Examination fee, not to exceed ***one hundred dollars ($100)***[~~seventy-five dollars ($75)~~].

(2) Broker's and sales associate's original license fee, not to exceed thirty dollars ($30).

(3) Broker's and sales associate's renewal fee, not to exceed thirty dollars ($30).

(4) Transfer from one (1) principal broker to another, not to exceed ten dollars ($10).

(5) Certification of status with the commission, ten dollars ($10).

(6) Request for any change, not to exceed ten dollars ($10).

(7) Recovery fund, not to exceed thirty dollars ($30).

Section 11. KRS 324.410 is amended to read as follows:

The purposes of the real estate education, research, and recovery fund shall be as follows:

(1) If a licensee, acting in the capacity of a licensee, has been duly found guilty of fraud in the violation of one (1) or more of the provisions of KRS 324.160, and upon the conclusion of a final order entered by the commission, or by the courts, if appealed, the commission may pay to the aggrieved person or persons an aggregate amount not to exceed twenty thousand dollars ($20,000) ***per claimant with combined payments to all claimants*** against any one (1) licensee ***not to exceed fifty thousand dollars ($50,000)***, if the licensee has refused to pay the claim within a period of twenty (20) days of entry of a final order and if the amount or amounts of money in question are certain and liquidated.

(2) The commission shall maintain a minimum level of four hundred thousand dollars ($400,000) for recovery and guaranty purposes. These funds may be invested and reinvested in the same manner as funds of the state employees' retirement system and the interest from the investments shall be deposited to the credit of the real estate education, research, and recovery fund. Sufficient liquidity shall be maintained so that there shall be money available to satisfy any and all claims which may be processed through the commission through the means of formal administrative hearing as outlined in this chapter.

(3) The commission, in its discretion, may use any and all funds in excess of the four hundred thousand dollars ($400,000) level, regardless of whether it is from the real estate education, research, and recovery fund fees or accrued interest thereon, for the following purposes:

  (a) To carry out the advancement of education and research in the field of real estate for the benefit of those licensed under the provisions of this chapter and the improvement and making more efficient the real estate industry;

  (b) To underwrite educational seminars, caravans, and other forms of educational projects for the use and benefit generally of real estate licensees;

  (c) To establish a real estate chair or courses at Kentucky state institutions of higher learning for the purpose of making the courses available to licensees and the general public who may seek them on a college or university level;

  (d) To contract for a particular research project in the field of real estate for the Commonwealth of Kentucky;

  (e) To sponsor, contract for, and to underwrite other educational and research projects of a similar nature having to do with the advancement of the real estate field in Kentucky; and

  (f) To receive recommendations and to cooperate and work with the Kentucky Association of Realtors and other real estate groups for the enlightenment and advancement of the real estate licensees of Kentucky.

(4) Within sixty (60) days after the end of each fiscal year, the commission shall mail to each licensee a statement of income and expenses of the real estate education, research, and recovery fund, the details of which have been approved by the secretary of the Finance and Administration Cabinet.

SB 169, AN ACT relating to souvenir retail liquor sales.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 243.0305 is amended to read as follows:

(1) A souvenir retail liquor license may be issued to any licensed Kentucky distiller that has a gift shop or other retail outlet on its premises, if the distillery is located in wet territory. The application shall be made on forms provided by the board.

(2) A wholesaler registered to distribute the brands of any distiller holding a souvenir retail license may permit the distiller to deliver a souvenir package directly from the distillery proper to the portion of the distillery premises operated by the licensee for the sale of souvenir packages. However, all direct shipments shall be invoiced from the distiller to the wholesaler and from the wholesaler to the souvenir package licensee, and all products directly shipped shall be included in the wholesaler's inventory and depletions for purposes of tax collections imposed pursuant to KRS 243.710 to 243.895 and 243.990.

(3) A distiller who has obtained a souvenir retail license may sell souvenir packages at retail to distillery visitors of legal drinking age, in quantities not to exceed an aggregate of ***three (3) liters***[~~one (1) liter~~] per visitor per day. These sales

shall be permitted only through the gift shop or other retail outlet on the distiller's premises.

(4) Hours of sale for a souvenir retail liquor licensee shall be 9 a.m. until ***8***[~~6~~] p.m. prevailing time Monday through Saturday. The licensed premises may remain open if they have a separate department pursuant to KRS 244.290(1).

(5) Except as provided in this section, souvenir retail liquor licenses shall be governed by all the statutes and administrative regulations governing the retail sale of distilled spirits by the package.

(6) No wholesaler may restrict the sale of souvenir packages to the souvenir retail liquor licensee exclusively, but shall make souvenir packages available to any Kentucky retail licensee licensed for the sale of distilled spirits by the package.

The Committee on Counties and Special Districts reported **HB 84,** with Committee Substitute attached thereto, and **HB 127,** with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 84, AN ACT to fiscal court reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 67.050 is amended to read as follows:

(1) Any county may have a fiscal court consisting of the county judge/executive and three (3) commissioners elected from the county at large. To ascertain whether the county desires to have county commissioners, the county judge/executive, upon an application by written petition signed by ***a number of persons equal to twenty-five (25%) percent of the total number of persons voting in the county in the last presidential election***[~~one hundred (100) legal voters of the county~~], shall enter an order on his order book calling an election to submit to the legal voters of the county the following question: "Are you for or against having a fiscal court composed of three (3) commissioners and the county judge/executive?" The order shall be entered at the next regular term after the petition is filed, and shall direct the election to be held at the next regular election to be held in the county if the order is filed with the county clerk not later than the second Tuesday in August preceding the day of the regular election. The county clerk shall give to the sheriff or other officer appointed to hold the election a certified copy of the order within five (5) days after the order is made, and the sheriff or other officer shall have the order published pursuant to KRS Chapter 424 and in addition advertise it by printed handbills posted at one (1) or more conspicuous places in each precinct in the county for the length of time that publication is required, stating when the election will be held and the purpose thereof.

(2) All such elections shall be held under the general election laws. No such election shall be held in any county more often than once in four (4) years.

(3) Any county that has voted in favor of having county commissioners may return to its prior form of government by following the same procedures as provided in subsections (1) and (2) of this section, by which it chose to have county commissioners. A petition for an election on a return to a fiscal court composed of justices of the peace and the county judge/executive shall state a proposed number of justices of the peace. The question to be submitted to the voters shall be in the following form: "Are you in favor of a return to a fiscal court composed of the county judge/executive and (insert the proposed number of justices) justices of the peace who shall represent specific districts within the county?"

(4) If a majority of the votes cast at an election held under subsection (3) of this section are in favor of a return to a fiscal court composed of justices of the peace and the county judge/executive, the fiscal court shall, if necessary, initiate proceedings to reapportion the justices districts, and such reapportionment shall conform to the requirements of KRS 67.045. The change in the composition of the fiscal court shall become effective upon the assumption of office of justices of the peace elected at the next regular election for that office.

The Committee Substitute to **HB 84** is as follows:

AN ACT to fiscal court reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 67.050 is amended to read as follows:

(1) Any county may have a fiscal court consisting of the county judge/executive and three (3) commissioners elected from the county at large. To ascertain whether the county desires to have county commissioners, the county judge/executive, upon an application by written petition signed by ***a number of persons equal to fifteen percent (15%) of the total number of persons voting in the county in the last presidential election, or one thousand two hundred (1,200) signatures, whichever is less***[~~one hundred (100) legal voters of the county~~], shall enter an order on his order book calling an election to submit to the legal voters of the county the following question: "Are you for or against having a fiscal court composed of three (3) commissioners and the county judge/executive?" The order shall be entered at the next regular term after the petition is filed, and shall direct the election to be held at the next regular election to be held in the county if the order is filed with the county clerk not later than the second Tuesday in August preceding the day of the regular election. The

county clerk shall give to the sheriff or other officer appointed to hold the election a certified copy of the order within five (5) days after the order is made, and the sheriff or other officer shall have the order published pursuant to KRS Chapter 424 and in addition advertise it by printed handbills posted at one (1) or more conspicuous places in each precinct in the county for the length of time that publication is required, stating when the election will be held and the purpose thereof.

(2) All such elections shall be held under the general election laws. No such election shall be held in any county more often than once in four (4) years.

(3) Any county that has voted in favor of having county commissioners may return to its prior form of government by following the same procedures as provided in subsections (1) and (2) of this section, by which it chose to have county commissioners. A petition for an election on a return to a fiscal court composed of justices of the peace and the county judge/executive shall state a proposed number of justices of the peace. The question to be submitted to the voters shall be in the following form: "Are you in favor of a return to a fiscal court composed of the county judge/executive and (insert the proposed number of justices) justices of the peace who shall represent specific districts within the county?"

(4) If a majority of the votes cast at an election held under subsection (3) of this section are in favor of a return to a fiscal court composed of justices of the peace and the county judge/executive, the fiscal court shall, if necessary, initiate proceedings to reapportion the justices districts, and such reapportionment shall conform to the requirements of KRS 67.045. The change in the composition of the fiscal court shall become effective upon the assumption of office of justices of the peace elected at the next regular election for that office.

HB 127, AN ACT relating to special districts.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 65.003 is amended to read as follows:

(1) The governing body of each city and county, including urban-counties and charter counties, shall adopt, by ordinance, a code of ethics which shall apply to all elected officials of the city or county, ***those officials of special districts as determined by the fiscal court***, and to appointed officials and employees of the city or county government as specified in the code of ethics. The[~~ elected~~] officials of a city, ***special district,*** or county to which a code of ethics shall apply include the mayor, county judge/executive, members of the governing body, county clerk, county attorney, sheriff, jailer, coroner, surveyor,[~~ and~~] constable, ***and those officials of special districts as determined by the fiscal court,*** but do not include members of any school board. Candidates for the city and county elective offices specified in this subsection shall comply with the annual financial disclosure statement filing requirements contained in the code of ethics.

(2) Any city or county may enter into an agreement with one (1) or more other cities or counties, ***in accordance with***[~~pursuant to~~] the provisions of the Interlocal Cooperation Act, KRS 65.210 to 65.300, for joint adoption of a code of ethics which shall apply to all elected officials of the cities or counties, and to appointed officials and employees as specified by each of the cities or counties which enters into the agreement. Candidates for the city and county elective offices specified in this subsection shall comply with the annual financial disclosure statement filing requirements contained in the code of ethics.

(3) Each code of ethics adopted ***in accordance with***[~~pursuant to~~] subsection (1) or (2) of this section, or amended ***in accordance with***[~~pursuant to~~] subsection (4) of this section, shall include, but not be limited to, provisions which set forth:

(a) Standards of conduct for elected and appointed officials and employees;

(b) Requirements for creation of financial disclosure statements, which shall be filed annually by all candidates for the city and county elective offices specified in subsection (1) of this section, elected officials of each city and county government, and other officials or employees of the city or county government, as specified in the code of ethics, and which shall be filed with the person or group responsible for enforcement of the code of ethics;

(c) A policy on the employment of members of the families of officials or employees of the city, ***special district,*** or county government, as specified in the code of ethics; ***and***

(d) The designation of a person or group who shall be responsible for enforcement of the code of ethics, including maintenance of financial disclosure statements, all of which shall be available for public inspection, receipt of complaints alleging possible violations of the code of ethics, issuance of opinions in response to inquiries relating to the code of ethics, investigation of possible violations of the code of ethics, and imposition of penalties provided in the code of ethics.

(4) The code of ethics ordinance adopted by a city or county may be amended but shall not be repealed.

(5) (a) Within twenty-one (21) days of the adoption of the code of ethics required by this section, each city and county shall deliver a copy of the ordinance by which the code was adopted and proof of publication ***in accordance with*** [~~pursuant to~~]KRS Chapter 424 to the Department of Local Government. The department shall maintain the

ordinances as public records and shall maintain a list of city and county governments which have adopted a code of ethics and a list of those which have not adopted a code of ethics.

(b) Within twenty-one (21) days of the amendment of a code of ethics required by this section, each city or county shall deliver a copy of the ordinance by which the code was amended and proof of publication ***in accordance with***[~~pursuant to~~] KRS Chapter 424 to the Department of Local Government, which shall maintain the amendment with the ordinance by which the code was adopted.

(c) For ordinances adopting or amending a code of ethics under this section, cities of the first class shall comply with the publication requirements of KRS 83A.060(9), notwithstanding the exception contained in that statute.

(6) If a city or county government fails to comply with the requirements of this section, the Department of Local Government shall notify all state agencies, including area development districts, which deliver services or payments of money from the Commonwealth to the city or county government. Those agencies shall suspend delivery of all services or payments to the city or county government which fails to comply with the requirements of this section. The Department of Local Government shall immediately notify those same agencies when the city or county government is in compliance with the requirements of this section, and those agencies shall reinstate the delivery of services or payments to the city or county government.

Section 2. KRS 65.065 is amended to read as follows:

(1) The governing body of each district shall annually prepare a budget, and, as appropriate, shall classify budget units in the same fashion as county budgets are classified ***in accordance with***[~~pursuant to~~] KRS 68.240(2) to (5). The state local finance officer shall prepare standard budget forms for district use, and shall furnish them to county clerks for distribution to district officers. ***No moneys shall be expended from any funds or any sources, except in accordance with the budget received by the fiscal court. No budget of a district shall become effective until submitted for review to the fiscal court of the county in which the district is located. For those districts with multicounty jurisdictions, the district shall submit a copy to each of the fiscal courts within the jurisdiction of the district for their review. If the budget is not received by the fiscal court by June 1 of each year, the fiscal court shall immediately notify the county attorney. The county attorney shall then notify the governing board of the special district of the noncompliance and then proceed with any steps necessary to prevent the expenditure of funds by the special district until the district is in compliance.***

(2) The governing body of each district which for the year in question receives from all sources or expends for all purposes less than ***two hundred***[~~fifty~~] thousand dollars ***($200,000)***[~~($50,000)~~] shall annually prepare a financial statement, except that once every four (4) years the district's governing body shall provide for the performance of an audit as provided in subsection ***(4)***[~~(5)~~] of this section.

(3)[~~The governing body of each district which for the year in question receives from all sources or expends for all purposes fifty thousand dollars ($50,000) or more but less than five hundred thousand dollars ($500,000) shall annually prepare a financial statement and shall employ an independent certified public accountant or contract with the Auditor of Public Accounts to perform a review of the financial statement, except that once every four (4) years, the district's governing body shall provide for the performance of an audit as provided in subsection (5) of this section.~~

~~(4)~~] The governing body of each district which for the year in question receives from all sources or expends for all purposes ***two***[~~five~~] hundred thousand dollars ***($200,000)***[~~($500,000)~~] or more shall provide for the performance of an annual audit as provided in subsection ***(4)***[~~(5)~~] of this section.

(4)[~~(5)~~] To provide for the performance of an audit, the governing body of a district shall employ an independent certified public accountant, or contract with the Auditor of Public Accounts to perform an audit of the funds in the district budget. The audit shall conform to:

(a) Generally-accepted governmental auditing standards, which means those standards for audits of governmental organizations, programs, activities, and functions issued by the Comptroller General of the United States; and

(b) Additional procedures and reporting requirements as may be required by the Auditor of Public Accounts. A unit of government furnishing funds directly to a district may require additional audits at its own expense. ***Upon request, the State Auditor of Public Accounts may review the final report and all related work papers and documents of the independent certified public accountant relating to the audit.*** If a district is required by law to audit its funds more often than is required by this section, it shall perform those audits and may submit them in lieu of the requirements of this section, if the audits meet the requirements of this subsection.

(5)[~~(6)~~] The provisions of ***subsection***[~~subsections~~] (2)[~~and (3)~~] of this section shall not apply to any district that is required by law to annually submit a financial report to an agency of state government. The districts shall annually submit a copy of their financial report to the county judge/executive and to the state local finance officer and once every four (4) years provide for the performance of an audit as provided in subsection ***(4)***[~~(5)~~] of this section.

(6)[~~(7)~~] Any resident of the district may bring an action in the Circuit Court to enforce the provisions of this section. The Circuit Court shall hear the action and, on a finding that the governing body of the district has violated the provisions of this section, shall order the district to comply with ***the***[~~such~~] provisions. The Circuit Court, in its discretion, may allow the prevailing party, other than the district, a reasonable attorney's fee and court costs, to be paid from the district's treasury.

Section 3. KRS 65.070 is amended to read as follows:

(1) By the first day of ***July***[~~May~~] of each year, ***before a district budget takes effect, and*** ***after the uniform financial information report required by KRS 65.900 to 65.920 is submitted to the Department of Local Government***[~~when the uniform financial information report is required by KRS 65.900 to 65.920 to be submitted to the Department of Local Government~~], a district shall:

(a) File with the county clerk of each county with territory in the district a certification showing any of the following information that has changed since the last filing by the district:

1. The name of the district;

2. A map or general description of its service area;

3. The statutory authority under which it was created; and

4. The names, addresses, and the date of expiration of the terms of office of the members of its governing body and chief executive officer;

(b) ***Submit for review***[~~File~~] a copy of the district budget, financial statement if prepared, and audit when performed, with the ***fiscal court***[~~county judge/executive~~] of each county with territory in the district; and

(c) Publish, in lieu of the provisions of KRS 424.220, but in compliance with other applicable provisions of KRS Chapter 424, the names and addresses of the members of its governing body and chief executive officer, and either a summary financial statement which includes the location of supporting documents, or the location of district financial records which may be examined by the public.

(2) The Department of Local Government shall prepare and furnish to county clerks standard reporting forms which districts may use to comply with the provisions of this section.

(3) Any resident of the district may bring an action in the Circuit Court to enforce the provisions of this section. The Circuit Court shall hear the action and, on a finding that the governing body of the district has violated the provisions of this section, shall order the district to comply with its provisions. The Circuit Court, in its discretion, may allow the prevailing party, other than the district, a reasonable attorney's fee and court costs, to be paid from the district's treasury.

The Committee Substitute to **HB 127** is as follows:

AN ACT relating to special districts.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 65.003 is amended to read as follows:

(1) The governing body of each city and county, including urban-counties and charter counties, shall adopt, by ordinance, a code of ethics which shall apply to all elected officials of the city or county***, those officials of special districts as determined by the governing body of the county***, and to appointed officials and employees of the city or county government as specified in the code of ethics. The[~~ elected~~] officials of a city***, special district,*** or county to which a code of ethics shall apply include the mayor, county judge/executive, members of the governing body, county clerk, county attorney, sheriff, jailer, coroner, surveyor,[~~ and~~] constable***, and those officials of special districts as determined by the governing body of the county,*** but do not include members of any school board. Candidates for the city and county elective offices specified in this subsection shall comply with the annual financial disclosure statement filing requirements contained in the code of ethics.

(2) Any city or county may enter into an agreement with one (1) or more other cities or counties, ***in accordance with***[~~pursuant to~~] the provisions of the Interlocal Cooperation Act, KRS 65.210 to 65.300, for joint adoption of a code of ethics which shall apply to all elected officials of the cities or counties, and to appointed officials and employees as specified by each of the cities or counties which enters into the agreement. Candidates for the city and county elective offices specified in this subsection shall comply with the annual financial disclosure statement filing requirements contained in the code of ethics.

(3) Each code of ethics adopted ***in accordance with***[~~pursuant to~~] subsection (1) or (2) of this section, or amended ***in accordance with***[~~pursuant to~~] subsection (4) of this section, shall include, but not be limited to, provisions which set forth:

(a) Standards of conduct for elected and appointed officials and employees;

(b) Requirements for creation of financial disclosure statements, which shall be filed annually by all candidates for the city and county elective offices specified in subsection (1) of this section, elected officials of each city and county government, and other officials or employees of the city or county government, as specified in the code of ethics, and which shall be filed with the person or group responsible for enforcement of the code of ethics;

(c) A policy on the employment of members of the families of officials or employees of the city***, special district,*** or county government, as specified in the code of ethics; ***and***

(d) The designation of a person or group who shall be responsible for enforcement of the code of ethics, including maintenance of financial disclosure statements, all of which shall be available for public inspection, receipt of complaints alleging possible violations of the code of ethics, issuance of opinions in response to inquiries relating to the code of ethics, investigation of possible violations of the code of ethics, and imposition of penalties provided in the code of ethics.

(4) The code of ethics ordinance adopted by a city or county may be amended but shall not be repealed.

(5) (a) Within twenty-one (21) days of the adoption of the code of ethics required by this section, each city and county shall deliver a copy of the ordinance by which the code was adopted and proof of publication ***in accordance with*** [~~pursuant to~~]KRS Chapter 424 to the Department of Local Government. The department shall maintain the ordinances as public records and shall maintain a list of city and county governments which have adopted a code of ethics and a list of those which have not adopted a code of ethics.

(b) Within twenty-one (21) days of the amendment of a code of ethics required by this section, each city or county shall deliver a copy of the ordinance by which the code was amended and proof of publication ***in accordance with***[~~pursuant to~~] KRS Chapter 424 to the Department of Local Government, which shall maintain the amendment with the ordinance by which the code was adopted.

(c) For ordinances adopting or amending a code of ethics under this section, cities of the first class shall comply with the publication requirements of KRS 83A.060(9), notwithstanding the exception contained in that statute.

(6) If a city or county government fails to comply with the requirements of this section, the Department of Local Government shall notify all state agencies, including area development districts, which deliver services or payments of money from the Commonwealth to the city or county government. Those agencies shall suspend delivery of all services or payments to the city or county government which fails to comply with the requirements of this section. The Department of Local Government shall immediately notify those same agencies when the city or county government is in compliance with the requirements of this section, and those agencies shall reinstate the delivery of services or payments to the city or county government.

Section 2. KRS 65.065 is amended to read as follows:

(1) The governing body of each district shall annually prepare a budget, and, as appropriate, shall classify budget units in the same fashion as county budgets are classified ***in accordance with***[~~pursuant to~~] KRS 68.240(2) to (5). The state local finance officer shall prepare standard budget forms for district use, and shall furnish them to county clerks for distribution to district officers. ***No moneys shall be expended from any funds or any sources, except in accordance with the budget which has been filed with the fiscal court to be available for public inspection. No budget of a district shall become effective until filed with the fiscal court of the county in which the district is located for submission to the Department for Local Government. For those districts with multicounty jurisdictions, the district shall file a copy with each of the fiscal courts within the jurisdiction of the district for their review. If the budget is not filed with the fiscal court by June 1 of each year, the fiscal court shall immediately notify the county attorney. The county attorney shall then notify the governing board of the special district of the noncompliance and then proceed with any steps necessary to prevent the expenditure of funds by the special district until the district is in compliance.***

(2) The governing body of each district which for the year in question receives from all sources or expends for all purposes less than ***two hundred***[~~fifty~~] thousand dollars ***($200,000)***[~~($50,000)~~] shall annually prepare a financial statement, except that once every four (4) years the district's governing body shall provide for the performance of an audit as provided in subsection ***(4)***[~~(5)~~] of this section.

(3)[~~The governing body of each district which for the year in question receives from all sources or expends for all purposes fifty thousand dollars ($50,000) or more but less than five hundred thousand dollars ($500,000) shall annually prepare a financial statement and shall employ an independent certified public accountant or contract with the Auditor of Public Accounts to perform a review of the financial statement, except that once every four (4) years, the district's governing body shall provide for the performance of an audit as provided in subsection (5) of this section.~~

~~(4)~~] The governing body of each district which for the year in question receives from all sources or expends for all purposes ***two***[~~five~~] hundred thousand dollars ***($200,000)***[~~($500,000)~~] or more shall provide for the performance of an annual audit as provided in subsection ***(4)***[~~(5)~~] of this section.

(4)[~~(5)~~] To provide for the performance of an audit, the governing body of a district shall employ an independent certified public accountant, or contract with the Auditor of Public Accounts to perform an audit of the funds in the district budget. The audit shall conform to:

(a) Generally-accepted governmental auditing standards, which means those standards for audits of governmental organizations, programs, activities, and functions issued by the Comptroller General of the United States; and

(b) Additional procedures and reporting requirements as may be required by the Auditor of Public Accounts. A unit of government furnishing funds directly to a district may require additional audits at its own expense. ***Upon request, the State Auditor of Public Accounts may review the final report and all related work papers and documents of the independent certified public accountant relating to the audit.*** If a district is required by law to audit its funds more often than is required by this section, it shall perform those audits and may submit them in lieu of the requirements of this section, if the audits meet the requirements of this subsection.

(5)[~~(6)~~] The provisions of ***subsection***[~~subsections~~] (2)[~~ and (3)~~] of this section shall not apply to any district that is required by law to annually submit a financial report to an agency of state government. The districts shall annually submit a copy of their financial report to the county judge/executive and to the state local finance officer and once every four (4) years provide for the performance of an audit as provided in subsection ***(4)***[~~(5)~~] of this section.

(6)[~~(7)~~] Any resident of the district may bring an action in the Circuit Court to enforce the provisions of this section. The Circuit Court shall hear the action and, on a finding that the governing body of the district has violated the provisions of this section, shall order the district to comply with ***the***[~~such~~] provisions. The Circuit Court, in its discretion, may allow the prevailing party, other than the district, a reasonable attorney's fee and court costs, to be paid from the district's treasury.

Section 3. KRS 65.070 is amended to read as follows:

(1) By the first day of ***July***[~~May~~] of each year, ***before a district budget takes effect, and after the uniform financial information report required by KRS 65.900 to 65.920 is submitted to the Department of Local Government***[~~when the uniform financial information report is required by KRS 65.900 to 65.920 to be submitted to the Department of Local Government~~], a district shall:

(a) File with the county clerk of each county with territory in the district a certification showing any of the following information that has changed since the last filing by the district:

1. The name of the district;
2. A map or general description of its service area;
3. The statutory authority under which it was created; and
4. The names, addresses, and the date of expiration of the terms of office of the members of its governing body and chief executive officer;

(b) ***Submit for review***[~~File~~] a copy of the district budget, financial statement if prepared, and audit when performed, with the ***fiscal court***[~~county judge/executive~~] of each county with territory in the district; and

(c) Publish, in lieu of the provisions of KRS 424.220, but in compliance with other applicable provisions of KRS Chapter 424, the names and addresses of the members of its governing body and chief executive officer, and either a summary financial statement which includes the location of supporting documents, or the location of district financial records which may be examined by the public.

(2) The Department of Local Government shall prepare and furnish to county clerks standard reporting forms which districts may use to comply with the provisions of this section.

(3) Any resident of the district may bring an action in the Circuit Court to enforce the provisions of this section. The Circuit Court shall hear the action and, on a finding that the governing body of the district has violated the provisions of this section, shall order the district to comply with its provisions. The Circuit Court, in its discretion, may allow the prevailing party, other than the district, a reasonable attorney's fee and court costs, to be paid from the district's treasury.

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Judiciary: **HB 454, HB 96, HB 144, HB 556, HB 115**

Floor Amendments (Continued)

Floor Amendment No. 1 to **HB 369**, by Representative Barrows:

On page 1, at the end of the final "WHEREAS" clause, by adding the word "and"; and

On page 1, between the final "WHEREAS" clause and the line containing the words "NOW, THEREFORE,", by inserting the following:

"WHEREAS, the Switzer Covered Bridge in Franklin County, with its beautiful sawtooth edging, carvings, and time-worn timbers, has been painted and photographed more than any other covered bridge in Kentucky, and no other covered bridge in the state has more tradition and is more nostalgic; and

WHEREAS, the Hillsboro Covered Bridge is actually located in closer proximity to Grange City than to Hillsboro in Fleming County;"; and

On page 2, line 3, by inserting "***(1)***" in front of "***Fleming***"; and

On page 2, after line 4, by adding the following:

"***(2) The Switzer Covered Bridge in Franklin County is named and designated as the official covered bridge of Kentucky.***

SECTION 2. A NEW SECTION OF KRS CHAPTER 176 IS CREATED TO READ AS FOLLOWS:

The Hillsboro Covered Bridge in Fleming County is renamed and designated the "Grange City Covered Bridge." ".

Floor Amendment No. 2 Title to **HB 369**, by Representative Barrows:

by changing the title to "AN ACT relating to state designations."

Calendar

HB 126, HB 352, HB 355, HB 359, HB 361, HB 363, HB 366, HB 375, HB 391, HB 393, HB 438, HB 445, HB 486, SB 172, HB 32, HB 394, and **HB 419** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Floor Amendments (Continued)

Floor Amendment No. 1 to **HB 318**, by Representative Riner:

On page 2, line 3, after "having", by inserting "***a conviction***" and by bracketing and striking through "two (2) or more convictions".

Representative Siler moved that the rules be suspended to grant floor privileges and to act upon a Legislative Citation. Agreed. Representative Siler moved the adoption of the following **Legislative Citation No. 87**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes and honors the members of the Williamsburg High School Choir for demonstrating an exemplary interest in the democratic process and in the daily actions of our Kentucky legislature. These talented young citizens have endeavored to broaden their understanding of democracy and government and are commended for their efforts to do so. The members of the Kentucky House of Representatives are pleased to join with Representative Charles Siler in applauding the initiative of the Williamsburg High School Choir and in extending a welcoming hand to them as they entertain the members of the Kentucky House of Representatives with a rendition of "My Old Kentucky Home." **Legislative Citation No. 87** was adopted without objection.

Report On Enrolled Bills

The Committee on Enrollment reported that **SB 22** and **SCR 3** have been examined and found correctly enrolled. Said Bill and Resolution were read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -2:50 p.m.)

Floor Amendments (Continued)

Floor Amendment No. 12 to the Committee Substitute No. 2 to **HB 142**, by Representative Vincent:

On page 31, between lines 14 and 15, by inserting

"Section 19. KRS 620.050 is amended to read as follows:

(1) Anyone acting upon reasonable cause in the making of a report or acting under KRS 620.030 to 620.050 in good faith shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report or action. ***However, any person who knowingly makes a false report and does so with malice shall be guilty of a Class A misdemeanor.***

(2) Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent

privilege, shall be a ground for refusing to report under this section or for excluding evidence regarding a dependent, neglected, or abused child or the cause thereof, in any judicial proceedings resulting from a report pursuant to this section. This subsection shall also apply in any criminal proceeding in District or Circuit Court regarding a dependent, neglected, or abused child.

(3) Upon receipt of a report of an abused, neglected, or dependent child pursuant to this chapter, the cabinet as the designated agency or its delegated representative shall initiate a prompt investigation, take necessary action, and shall offer protective services toward safeguarding the welfare of the child. The cabinet shall work toward preventing further dependency, neglect, or abuse of the child or any other child under the same care, and preserve and strengthen family life, where possible, by enhancing parental capacity for adequate child care.

(4) All information obtained by the cabinet or its delegated representative, as a result of an investigation made pursuant to this chapter, shall not be divulged to anyone except:

(a) Persons suspected of causing dependency, neglect, or abuse, provided that in such cases names of informants shall be withheld unless ordered by the court;

(b) The custodial parent or legal guardian of the child alleged to be dependent, neglected, or abused;

(c) Persons within the cabinet with a legitimate interest or responsibility related to the case;

(d) Other medical, psychological, educational, or social service agencies, corrections personnel, or law enforcement agencies, including the county attorney's office, the coroner, and the local child fatality response team, that have a legitimate interest in the case;

(e) A noncustodial parent when the dependency, neglect, or abuse is substantiated;

(f) Members of multidisciplinary teams as defined by KRS 620.020 and which operate pursuant to KRS 431.600; or

(g) Those persons so authorized by court order.

(5) As a result of any report of suspected child abuse or neglect, photographs and X-rays or other appropriate medical diagnostic procedures may be taken or caused to be taken, without the consent of the parent or other person exercising custodial control or supervision of the child, as a part of the medical evaluation or investigation of such reports. Such photographs and X-rays or results of other medical diagnostic procedures may be introduced into evidence in any subsequent judicial proceedings. The person performing the diagnostic procedures or taking such photographs or X-rays shall be immune from criminal or civil liability for having performed the act. Nothing herein shall limit liability for negligence." and

On page 31, line 15, by deleting "19" and inserting in lieu thereof "20".

Floor Amendment No. 1 to the Committee Substitute to **HB 121**, by Representative Barrows:

On page 2, after line 7 to insert the following:

"*(7) The provisions of this section shall not apply to the settlement of estates.*".

Orders of the Day

HB 517, with Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Brown moved the adoption of Floor Amendment No. 1 to **HB 517**. Agreed.

Representative Brown moved that **HB 517**, as amended, be passed.

On the roll call the vote was: Yeas 92, Nays 0 (See February 18, 1998 roll call on **HB 517** - Appendix.) **HB 517**, as amended, was passed and the title agreed to. Representative Brown moved that the vote by which **HB 517**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 458 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Riggs moved that **HB 458** be passed.

On the roll call the vote was: Yeas 91, Nays 0 (See February 18, 1998 roll call on **HB 458** - Appendix.) **HB 458** was passed and the title agreed to. Representative Riggs moved that the vote by which **HB 458** was passed be reconsidered and said motion be placed on the table. Agreed.

HCR 59 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Weaver moved that **HCR 59** be adopted.

On the roll call the vote was: Yeas 95, Nays 0 (See February 18, 1998 roll call on **HCR 59** - Appendix.) **HCR 59** was adopted. Representative Weaver moved that the vote by which **HCR 59** was adopted be reconsidered and said motion be placed on the table. Agreed.

HB 330, with Committee Amendments and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Moberly moved the adoption of Committee Amendment No. 1 to **HB 330**. Agreed.

Representative Siler moved the adoption of Committee Amendment No. 2 to **HB 330**. Agreed.

Representative Moberly moved the adoption of Floor Amendment No. 1 to **HB 330**. Agreed.

Representative Moberly moved that **HB 330**, as amended, be passed.

On the roll call the vote was: Yeas 93, Nays 0 (See February 18, 1998 roll call on **HB 330** - Appendix.) **HB 330**, as amended, was passed and the title agreed to. Representative Moberly moved that the vote by which **HB 330**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 1 to **HB 325**, by Representative Lindsay:

On page 2, line 26, after the word "canteen." to insert the following language:

"***Assets and profits from the operation of private canteens shall be accounted for separately and utilized exclusively for the benefit of inmates in private prisons.***"

Orders of the Day (Continued)

HB 459 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Palumbo moved that **HB 459** be passed.

On the roll call the vote was: Yeas 80, Nays 4 (See February 18, 1998 roll call on **HB 459** - Appendix.) **HB 459** was passed and the title agreed to. Representative Palumbo moved that the vote by which **HB 459** was passed be reconsidered and said motion be placed on the table. Agreed.

SB 148 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **SB 148** be passed.

On the roll call the vote was: Yeas 93, Nays 0 (See February 18, 1998 roll call on **SB 148** - Appendix.) **SB 148** was passed and the title agreed to. Representative Stumbo moved that the vote by which **SB 148** was passed be reconsidered and said motion be placed on the table. Agreed.

SB 154 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **SB 154** be passed.

On the roll call the vote was: Yeas 92, Nays 0 (See February 18, 1998 roll call on **SB 154** - Appendix.) **SB 154** was passed and the title agreed to. Representative Stumbo moved that the vote by which **SB 154** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 75, with Committee Substitute and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Yonts moved the adoption of the Committee Substitute to **HB 75**. Agreed.

Representative Yonts moved that **HB 75**, by way of Committee Substitute, be passed.

Representative Weaver moved the adoption of Floor Amendment No. 1 to the Committee Substitute to **HB 75**. Floor Amendment No. 1 to the Committee Substitute to **HB 75** was adopted. (See February 18, 1998 roll call on Floor Amendment No. 1 to the Committee Substitute to **HB 75**-- Appendix.)

Representative Yonts moved that **HB 75**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 88, Nays 7 (See February 18, 1998 roll call on **HB 75** - Appendix.) **HB 75**, by way of Committee Substitute as amended, was passed and the title agreed to. Representative Yonts moved that the vote by which **HB 75**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 2 to the Committee Substitute to **HB 121**, by Representative Barrows:

On page 2, after line 7 to insert the following:

"***(7) The provisions of this section shall not apply when a lienholder is deceased and the estate of the lienholder has not been settled.***".

Orders of the Day (Continued)

HB 229 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Moberly moved that **HB 229** be passed.

On the roll call the vote was: Yeas 96, Nays 0 (See February 18, 1998 roll call on **HB 229** - Appendix.) **HB 229** was passed and the title agreed to. Representative Moberly moved that the vote by which **HB 229** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 308 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Mason moved that **HB 308** be passed.

On the roll call the vote was: Yeas 94, Nays 0 (See February 18, 1998 roll call on **HB 308** - Appendix.) **HB 308** was passed and the title agreed to. Representative Mason moved that the vote by which **HB 308** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 17, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Murgatroyd moved the adoption of the Committee Substitute to **HB 17**. Agreed.

Representative Murgatroyd moved that **HB 17**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 90, Nays 5 (See February 18, 1998 roll call on **HB 17** - Appendix.) **HB 17**, by way of Committee Substitute, was passed and the title agreed to. Representative Murgatroyd moved that the vote by which **HB 17**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 81 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative DeWeese moved that **HB 81** be passed.

On the roll call the vote was: Yeas 89, Nays 1 (See February 18, 1998 roll call on **HB 81** - Appendix.) **HB 81** was passed and the title agreed to. Representative DeWeese moved that the vote by which **HB 81** was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 13 to the Committee Substitute No. 2 to **HB 142**, by Representative Barrows:

On page 16, line 18 , by deleting "***Any***", and by deleting "***are***" and inserting "***if***" in lieu thereof, and after "***relevant***" by deleting "***factors that***".

On page 23, line 8, after "termination" by deleting "***or***" and by inserting "***whose presence is not required if represented by***".

On page 23, line 9 by deleting "***petition***" and inserting "***court***" in lieu thereof.

Orders of the Day (Continued)

HB 99, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Vincent moved the adoption of the Committee Substitute to **HB 99**. Agreed.

Representative Vincent moved that **HB 99**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 96, Nays 0 (See February 18, 1998 roll call on **HB 99** - Appendix.) **HB 99**, by way of Committee Substitute, was passed and the title agreed to. Representative Vincent moved that the vote by which **HB 99**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 318 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Damron moved that **HB 318** be passed.

On the roll call the vote was: Yeas 88, Nays 7 (See February 18, 1998 roll call on **HB 318** - Appendix.) **HB 318** was passed and the title agreed to. Representative Damron moved that the vote by which **HB 318** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 415, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Riggs moved the adoption of Committee Amendment No. 1 to **HB 415**. Agreed.

Representative Riggs moved that **HB 415**, as amended, be passed.

On the roll call the vote was: Yeas 83, Nays 11 (See February 18, 1998 roll call on **HB 415** - Appendix.) **HB 415**, as amended, was passed and the title agreed to. Representative Riggs moved that the vote by which **HB 415**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HJR 53, with Committee Substitute and Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved the adoption of the Committee Substitute to **HJR 53**. Agreed.

Representative Stumbo moved that **HJR 53**, by way of Committee Substitute, be adopted.

On the roll call the vote was: Yeas 94, Nays 0 (See February 18, 1998 roll call on **HJR 53** - Appendix.) **HJR 53**, by way of Committee Substitute, was adopted. Representative Stumbo moved the adoption of Committee Amendment No. 1 Title to the Committee Substitute to **HJR 53**. Agreed; and the title was agreed to.

Representative Stumbo moved that the vote by which **HJR 53**, by way of Committee Substitute as amended, was adopted be reconsidered and said motion be placed on the table. Agreed.

HJR 58 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Collins moved that **HJR 58** be adopted.

On the roll call the vote was: Yeas 85, Nays 2 (See February 18, 1998 roll call on **HJR 58** - Appendix.) **HJR 58** was adopted. Representative Collins moved that the vote by which **HJR 58** was adopted be reconsidered and said motion be placed on the table. Agreed.

HJR 63 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative D. Graham moved that **HJR 63** be adopted.

On the roll call the vote was: Yeas 94, Nays 0 (See February 18, 1998 roll call on **HJR 63** - Appendix.) **HJR 63** was adopted. Representative D. Graham moved that the vote by which **HJR 63** was adopted be reconsidered and said motion be placed on the table. Agreed.

HB 234, with Committee Substitute and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved the adoption of the Committee Substitute to **HB 234**. Agreed.

Representative Jenkins moved the adoption of Floor Amendment No. 2 to the Committee Substitute to **HB 234**. Agreed.

Representative Long moved that **HB 234**, by way of Committee Substitute as amended, be passed.

Representative Damron moved the adoption of Floor Amendment No. 3 to the Committee Substitute to **HB 234**. Floor Amendment No. 3 to the Committee Substitute to **HB 234** was adopted. (See February 18, 1998 roll call on Floor Amendment No. 3 to the Committee Substitute to **HB 234** - Appendix.)

Representative Long moved that **HB 234**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 93, Nays 0 (See February 18, 1998 roll call on **HB 234** - Appendix.) **HB 234**, by way of Committee Substitute as amended, was passed and the title agreed to. Representative Long moved that the vote by which **HB 234**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions, Report of Committees and Posting of Bills and Resolutions for Consideration. Agreed.

Introduction of Bills and Resolutions

HB 635, by Representatives Weaver, Colter, Miller, Zimmerman, Scott, Lee, Sims, and Haydon: AN ACT relating to license plates.

HB 636, by Representatives Brown, Haydon, G. Graham, Yonts, Lee, Crall, Nunn, Clarke, Richards, and Thomas: AN ACT relating to waste tires.

HB 637, by Representative Marzian: AN ACT relating to the practice of nursing.

HB 638, by Representative Cave: AN ACT relating to bankruptcy.

HB 639, by Representatives Riggs and L. Clark: AN ACT relating to financing of energy savings projects.

HB 640, by Representative J. Adams: AN ACT relating to the financing of water systems.

HB 641, by Representatives Colter, D. Butler, Jenkins, Curd, Rader, Walton, Cox, Pope, Gray, Ford, Scott, Wilkey, Kerr, Deskins, Siler, Vincent, Hoover, L. Clark, Mason, D. D. Butler, Weaver, Miller, and Long: AN ACT relating to teachers.

HB 642, by Representative Stein: AN ACT relating to instructional materials.

HB 643, by Representative Barrows: AN ACT relating to the scenic and recreational trails.

HB 644, by Representative Barrows: AN ACT relating to a purchase of development rights program in urban-counties.

HR 80, by Representatives Bratcher and Weaver: A RESOLUTION adjourning the House of Representatives in honor of the United States Armed Forces representing freedom and democracy and in support of our Commander-in-Chief, President Bill Clinton.

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills and Resolutions have been posted for Committee consideration:

Health and Welfare: **HB 561, HB 449, HB 603, HB 591**

Education: **HCR 8, HCR 12, HCR 21, HCR 22, HCR 23, HCR 24, HCR 25, HCR 26, HB 627, HCR 27, HCR 28, HCR 29, HCR 30, HCR 41**

Motions, Petitions and Communications (Continued)

Representative Stumbo moved that the rules be suspended to grant floor privileges and to act upon a Legislative Citation. Agreed. Representative Stumbo moved the adoption of the following **Legislative Citation No. 76**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby honors and congratulates the recipients of the 1997 Governor's Awards in the Arts. These extraordinary Kentucky citizens have received prestigious recognition as our state's foremost advocates in support of all mediums of art in the Commonwealth of Kentucky. The efforts of these tireless individuals to ensure the survival and success of the arts are this day celebrated as they are presented with this Commonwealth's highest accolade in the arts. Governor Paul E. Patton and the Kentucky Arts Council do this day present the National Award to Rosemary Clooney; the Milner Award to Marilyn Moosnick; the Artist Award to Minnie Adkins and Dr. David Livingston; the Business Award to Charlie Johnson; the Community Arts Award to the Cumberland County Arts Council and the Living Arts and Science Center; the Education Award to Judy Sizemore; the Media Award to the Public Radio Service of Western Kentucky University; and the Government Award to Senator Wendell Ford. The members of the House of Representatives of the Commonwealth of Kentucky are honored to join with Representative Greg Stumbo in paying tribute to these artists and citizens who have worked so ardently on behalf of the arts in Kentucky and in offering most sincere congratulations for this prestigious recognition. **Legislative Citation No. 76** was adopted without objection.

Representative Thomas moved the adoption of the following **Legislative Citation No. 79**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes and honors the Public Radio Service of Western Kentucky University, Bowling Green comprised of four stations, WKYU in Bowling Green, WDCL in Somerset, WKPB in Henderson/Owensboro and WKUE in Elizabethtown, upon being named the recipient of the Media Award as part of the 1997 Governor's Awards in the Arts presented by Governor Paul E. Patton and the Kentucky Arts Council. These diverse and exceptional radio stations have served citizens throughout this Commonwealth and this nation, providing local and national broadcasts of jazz, folk and classical music, coverage of local and regional arts events, public service announcements and a weekly arts calendar called "Arts Beat." They have put forth an exemplary effort to promote various arts organizations, serving as media sponsor to the Horse Cave Theatre and the Capitol Arts Alliance and producing an annual series of broadcast concerts by the Owensboro Symphony. Inasmuch as it has been said that "the arts community is stronger because of WPR's presence in Kentucky," this esteemed public service organization is applauded for its significant involvement in the promotion of the arts in Kentucky. The members of this distinguished body are pleased to join with Speaker Jody Richards in congratulating the Public Radio Service of Western Kentucky University and in extending to them best wishes for continued success in the future. **Legislative Citation No. 79** was adopted without objection.

Representative Thomas moved the adoption of the following **Legislative Citation No. 80**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby pays tribute to Dr. David Livingston upon being named the recipient of the Artist Award for his extraordinary career in the musical arts as part of the 1997 Governor's Awards in the Arts presented by Governor Paul E. Patton and the Kentucky Arts Council. Born in Corbin, Kentucky, this exceptional musician currently plays professionally in local and regional ensembles and performs as a member of the Lost River Cave Band in Bowling Green. As a young man, Dr. Livingston served in the United States Air Force as a member of the 4th Air Force Band. He served as Band Director for Harlan, Lee and Simpson Counties and was later named Director of Bands at Western Kentucky University. During his twenty-five year tenure at the university he was co-founder of one of the first all-female collegiate concert bands in the country, "Gemini," and also served as the band's musical director and manager. The phenomenal works of Doc Livingston have been performed by such distinguished symphonies as the Ohio State Symphonic Band, the Kentucky Youth Symphony, the Ohio All-State Band, the Detroit Symphony and the Oklahoma Symphony, among others. He has played professionally with such notable musicians as Doc Severinson, Dave Brubeck, Edgar Haze and Paul Desmond and has toured overseas twice with the Billy Vaughn Orchestra. The members of this august body are pleased to join with Speaker Jody Richards in applauding the significant accomplishments of David Livingston and in extending to him best wishes for continued success in all future musical endeavors. **Legislative Citation No. 80** was adopted without objection.

Representative Adkins moved the adoption of the following **Legislative Citation No. 86**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes and honors Minnie Adkins upon being named the recipient of the Artist Award as part of the 1997 Governor's Awards in the Arts presented by Governor Paul E. Patton and the Kentucky Arts Council. A wood-carving artist from a very young age, Minnie Adkins is well-known for her carvings of roosters and other larger animals, as well as her smaller, humorous self-portraits. Her work has appeared in many local, regional and national exhibits and her carvings are part of the permanent collections in museums in Los Angeles, Washington, D.C. and Milwaukee. Private collectors of her work include such notable public figures as Rosemary Clooney, Ross Perot and President and Mrs. Reagan. This unique and talented artist is hereby celebrated this day in honor of her outstanding success which has served as encouragement to so many other regional folk artists. The members of this distinguished body are indeed pleased to join with Representative Rocky Adkins in applauding the artistry of Minnie Adkins and in commending her for her unwavering support of the arts in the Commonwealth of Kentucky. **Legislative Citation No. 86** was adopted without objection.

Representative Worthington moved the adoption of the following **Legislative Citation No. 84**. Agreed.

It is the intention of the House of Representatives of the Commonwealth of Kentucky to hereby adjourn this legislative day in honor of the legendary Rosemary Clooney whose phenomenal, standard-setting singing career has long been cherished by the citizens of her home state, the Commonwealth of Kentucky. A native of Maysville, she started her career at WLW Radio in Cincinnati where she sang duets with her sister, Betty. "The Clooney Sisters" performed with the Tony Pastor Band for several years prior to Rosemary striking out on her own and beginning a fifty-year career of professional singing. As the host of "The Rosemary Clooney Show" and a guest star of many television specials, she is a familiar and welcome face to national audiences. This treasure of the Commonwealth was presented today with the National Award in the 1997 Governor's Awards in the Arts by Governor Paul E. Patton and the Kentucky Arts Council. Therefore, it is with delight and certain pride that the members of this honorable body join Representative Pete Worthington in recognizing Rosemary Clooney on this day and in applauding her majestic career and her magnificent contributions to the arts. **Legislative Citation No. 84** was adopted without objection.

Representative Brandstetter moved the adoption of the following **Legislative Citation No. 78**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes and honors Marilyn Moosnick upon being named the recipient of the prestigious Milner Award as part of the 1997 Governor's Awards in the Arts presented by Governor Paul E. Patton and the Kentucky Arts Council. Attributing her willingness to serve to, "a basic love for and interest in the arts as a part of our cultural tradition in Kentucky," Ms. Moosnick has served for the past twenty-five years as an appointed member of the Kentucky Arts Council, the last five of which were as chair of the board. She has been very active on the boards of both emerging and established arts organizations including the Kentucky Center for the Arts, the Central Youth Orchestra, the Lexington Ballet and the Lexington Arts and Cultural Council. She has also served on National Endowment for the Arts panels, the board of the Southern Arts Federation and the board of the National Assembly of State Arts Agencies. Marilyn Moosnick has made tremendous efforts to ensure the development of the arts in Kentucky and she is hereby congratulated for her well-deserved recognition. The members of this august body are pleased to join with Representative Larry Brandstetter in paying tribute to this esteemed Kentucky citizen for the support she has lent the arts community and in extending to her best wishes for continued success as she embarks on her most recent commitment to the arts in this Commonwealth as chair of the initiative to ensure that a Kentucky Foundation of the Arts becomes a reality in 1998. **Legislative Citation No. 78** was adopted without objection.

Representative Stein moved the adoption of the following **Legislative Citation No. 82**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby honors and commends the Living Arts and Science Center upon being named the recipient of the Community Arts Award as part of the 1997 Governor's Awards in the Arts presented by Governor Paul E. Patton and the Kentucky Arts Council. This extraordinary organization, which will celebrate its 30th Anniversary this year, has made outstanding efforts to provide art classes as well as a wide variety of other art activities to the citizens of Lexington, Kentucky, and surrounding areas, serving especially their own inner-city neighborhood. The center also maintains an art gallery, free and open to the public, which displays the work of established and emerging artists, sponsors art events, such as outdoor film festivals and celebrations of diverse cultures, and provides outreach programs for the Family Care Center, Central Kentucky Re-Ed, the Child Development Center, ACE Academy and many others. Inasmuch as the efforts of this remarkable organization have made such a significant difference in the lives of all those who have been touched by the beauty of the art it promotes, it is with great honor that the members of this distinguished body join with Representative Kathy Stein in applauding the staff and administration of the Living Arts and Science Center and in extending to them best wishes as they continue to serve the community of Lexington and the Commonwealth of Kentucky. **Legislative Citation No. 82** was adopted without objection.

Representative Crall moved the adoption of the following **Legislative Citation No. 77**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby pays tribute to Senator Wendell Ford upon being named the well-deserving recipient of the Government Award as part of the 1997 Governor's Awards in the Arts presented by Governor Paul E. Patton and the Kentucky Arts Council. Former Governor of Kentucky and Kentucky State Senator, this distinguished servant of the Commonwealth has been a most faithful and diligent supporter of the arts in Kentucky for many years. He has consistently and without fail cast his vote, when needed, in support of the National Endowment of the Arts and has pushed forward the arts agenda on both state and national levels. He has also been a strong supporter of Kentucky Educational Television, a station devoted to making various mediums of art more visible and accessible to the citizens of Kentucky. Senator Ford has demonstrated himself to be a true visionary by his notable recognition of the tremendous value of the arts in our communities, state and nation and he is hereby applauded for his efforts on behalf of the arts community. The members of the Kentucky House of Representatives are pleased to join with Representative Brian Crall in honoring Senator Wendell Ford for his stellar representation of the Commonwealth of Kentucky in the United States Senate and in extending to him sincere gratitude for his continuing support of the arts in Kentucky. **Legislative Citation No. 77** was adopted without objection.

Representative Rader moved the adoption of the following **Legislative Citation No. 85**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes and honors Judy Sizemore upon being named the recipient of the Education Award as part of the 1997 Governor's Awards in the Arts presented by Governor Paul E. Patton and the Kentucky Arts Council. This exceptional teacher, with very little resources, has made impressive strides to bring all mediums of art into her classroom. She has assisted numerous schools and resource centers throughout Clay and Jackson Counties in writing grants to secure funds to bring in dancers, writers, storytellers, singers, musicians and visual artists in order to broaden the minds of all the students in her community and the surrounding areas. She has graciously worked with Forward in the Fifth to organize training for teachers in the areas of Appalachian culture, parent involvement and the multiple intelligences theory. This extraordinary teacher, who has worked with such great dedication to provide her students with a well-rounded education, is applauded for her effort and initiative. The members of this august body are indeed pleased to join Representative Marie Rader in congratulating Judy Sizemore on her accomplishments and in extending to her the best of luck as she continues to promote the arts in her community and in the Commonwealth of Kentucky. **Legislative Citation No. 85** was adopted without objection.

Representative Jordan moved the adoption of the following **Legislative Citation No. 83**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby honors and commends Charlie Johnson head of Active Transportation, a Kentucky trucking company operating out of Louisville, upon being named the recipient of the Business Award as part of the 1997 Governor's Awards in the Arts presented by Governor Paul E. Patton and the Kentucky Arts Council. Through the interest and support of his firm, numerous youth-oriented projects throughout Louisville have included a strong arts component. The primary sponsor of the Louisville Black Achievers Program, Charlie Johnson and Active Transportation have partnered with both the Kentucky Center for the Arts and the Louisville Fund for the Arts to aid African American youth in taking advantage of performances, programs and other services. They have been a contributor and supporter of the Kentucky Center's Cultural Diversity Program and have sponsored the annual College Fund/United Negro College Fund musical gala featuring African American performing artists. This distinguished gentleman has made extraordinary efforts on behalf of the African American youth of his community to foster both a knowledge and appreciation of the arts and he is hereby applauded for his success. It is with great honor that the members of this august body join with Representative Eleanor Jordan in commending Charlie Johnson for his outstanding service to his community and in extending to him best wishes as he continues to promote the arts in his community and in the Commonwealth of Kentucky. **Legislative Citation No. 83** was adopted without objection.

Representative Polston moved the adoption of the following **Legislative Citation No. 81**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes and honors the Cumberland County Arts Council upon being named the recipient of the Community Arts Award as part of the 1997 Governor's Awards in the Arts presented by Governor Paul E. Patton and the Kentucky Arts Council. The members of this remarkable organization are hereby applauded for the tremendous effort they have put forth to provide a wide variety of arts programs and activities to one of Kentucky's smallest counties. They have worked diligently and with great dedication to coordinate programs throughout the community in different areas, including schools, nursing homes, the public library, the courthouse and the city park, and to keep the community informed of art events through a weekly column in the local newspaper called, "Artbeat." The Cumberland County Arts Council is to be commended for its outstanding efforts and especially for its strong partnership with the Cumberland County School Board which has resulted in workshops, performances and residencies. The members of this august body are pleased to join Representative Billy Polston in paying tribute to the Cumberland County Arts Council for their significant contributions to the arts community and to the citizens of Cumberland County and the Commonwealth of Kentucky. **Legislative Citation No. 81** was adopted without objection.

Representative Ford moved the adoption of the following **HR 78**:

HR 78, A RESOLUTION adjourning the House of Representatives in loving memory and honor of Ruby Hopkins Napier.

With deepest respect and admiration, we pay homage and tribute to Ruby Hopkins Napier, and we pause in silent reverence for her soul.

WHEREAS, Ruby Hopkins Napier was born on February 26, 1922, a native of Lincoln County, Kentucky, and traversed these earthly bounds on February 16, 1998; and

WHEREAS, Ruby Hopkins Napier was the loving daughter of Ewell Hopkins and Ellen Saylor Hopkins, who preceded her in death; and

WHEREAS, Ruby Hopkins Napier was the devoted wife of the late John Napier; she was the adored mother of a daughter, Janice Napier Fain, and three sons, Representative Lonnie Napier, Wayne Napier, and Gary Dean Napier; and she was the proud grandmother of fourteen grandchildren and fourteen great-grandchildren; and

WHEREAS, Ruby Hopkins Napier was a longtime devoted member of Harmons Lick Baptist Church in Garrard County, and more recently, the White Lick Baptist Church in Cartersville; and

WHEREAS, the passing of Ruby Hopkins Napier has left a void that will be difficult to fill, and she is mourned across the length and breadth of the Commonwealth;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. This honorable body does hereby express its profound sense of sorrow upon the passing of Ruby Hopkins Napier, and does extend to her family and wide circle of friends, its most heartfelt sympathy.

Section 2. When the House of Representatives adjourns this day, it does so in loving memory and honor of Ruby Hopkins Napier.

Section 3. The Clerk of the House of Representatives is hereby directed to transmit a copy of this Resolution to the Honorable Lonnie Napier, 302 Danville Street, Lancaster, Kentucky 40444.

There being no objection **HR 78** was adopted.

Representative Stumbo moved that **HB 260** be reassigned to Labor and Industry. Agreed. Representative Stumbo moved that the three day posting requirement be waived on **HB 625**. Agreed. Representative Long moved that **HB 326** be withdrawn. Agreed.

Representative P. Clark moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative P. Clark moved that he be recorded as voting "yea" on **HB 412, HB 428, HB 430, HB 433, HB 452, HB 476, HB 258, HB 374, HB 402, HB 407, HB 422, HR 74, SB 1, SB 37, SB 22, SCR 3, HB 257, HB 317, HB 347, HB 348, HB 351, HB 360, HB 370,** and **HB 390**. Agreed.

Representative Deskins moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Deskins moved that he be recorded as voting "yea" on **SB 1, SB 37** and **SCR 3**. Agreed. Representative Deskins moved that he be recorded as voting "yea" on **HB 250, HB 306, HB 305, HB 226, HB 175, HB 336, HB 432, HB 187, HB 282, HB 159, HB 309, HB 392, HB 92, HB 193, HB 218, HB 399, HB 405, HB 101, HB 286, HB 346, HB 409, HB 422, HB 374, HB 258, HB 402, HB 407, HB 257, HB 317, HB 347, HB 476, HB 348, HB 351, HB 360, HB 370, HB 390, HB 412, HB 428, HB 430, HB 433,** and **HB 452**. Agreed.

Representative Callahan moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Callahan moved that he be recorded as voting "yea" on **HB 517**. Agreed.

Representative Crenshaw moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Crenshaw moved that he be recorded as voting "yea" on **HB 459** and **SB 148**. Agreed.

Representative Barrows moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Barrows moved that he be recorded as voting "yea" on **HB 517** and **HB 458**. Agreed.

Representative Lindsay moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Lindsay moved that he be recorded as voting "yea" on **HB 330**. Agreed.

Representative Pope moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Pope moved that he be recorded as voting "yea" on **HB 428, HB 433, HB 452,** and **HB 476**. Agreed.

Representative Johns moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Johns moved that her vote be changed from "nay" to "yea" on **SB 22**. Agreed.

Representative Ratliff moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Ratliff moved that his vote be changed from "nay" to "yea" on **HB 459**. Agreed.

Representative Colter moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Colter moved that she be recorded as voting "yea" on **HJR 58**. Agreed.

Representative G. Graham moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative G. Graham moved that he be recorded as voting "yea" on Floor Amendment No. 3 to the Committee Substitute to **HB 234**. Agreed.

Representative Sims moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Sims moved that she be recorded as voting "yea" on **HB 234**. Agreed.

The following members filed requests to have their names added as co-sponsors of Bills under rules previously suspended: **HB 36**, Representative Hogancamp; **HB 85**, Representative Bratcher; **HB 229**, Representative Kerr; **HB 532**, Representative Rader; **HB 556**, Representative Cave; **HB 595**, Representative Damron; **HCR 59**, Representatives P. Clark, Colter.

Announcement

The following meetings were announced:

Labor and Industry, February 19, 1998, Room 125, 9:00 a.m.

Health and Welfare, February 19, 1998, upon adjournment.

Subcommittee on General Government, Room 125, 10:00 a.m., February 19, 1998.

Judiciary, Room 131, upon adjournment.

Budget Review Subcommittee on Human Resources, Room 129, upon adjournment.

Budget Review Subcommittee on Economic Development, 12 Noon, February 19, 1998.

Agriculture and Small Business, Room 129, 12 Noon.

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., February 19, 1998.

On the roll call the vote was **Yeas 71**--J. Adams, R. Adams, Allen, A. Arnold, J. Arnold, Ballard, Baugh, Bowling, Brandstetter, Bratcher, Brown, Burch, D. D. Butler, Callahan, Cave, L. Clark, Coleman, Collins, Crenshaw, Crimm, Curd, Damron, DeWeese, Gee, Geveden, D. Graham, G. Graham, Hatcher, Haydon, Heleringer, Hoffman, Horlander, Jenkins, Johns, Jordan, Kerr, Lee, Lindsay, Mason, McKee, Miller, Moberly, Murgatroyd, Nesler, Newsome, Nunn, Palumbo, Polston, Pope, Rasche, Reinhardt, Richards, Riggs, Riner, Scott, Siler, Simpson, Sims, Stein, Stine, Stumbo, Thomas, Treesh, Turner, Vincent, Wayne, Weaver, Wilkey, Worthington, Yonts, Zimmerman. **Nays 2**--Crall, Stewart.

The motion to adjourn was adopted.

THURSDAY, FEBRUARY 19, 1998

TWENTY-NINTH LEGISLATIVE DAY

The House was called to order by Speaker Richards.

Prayer by Reverend Curry Davis, Round Pond Presbyterian Church, Franklin.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Deskins, Gooch, Lovell, Napier, and Stacy.

Representative Ballard moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative Ballard moved that the reading of the Journal of February 18, 1998, be dispensed with and the same approved. Agreed.

Representative Ballard moved that the Rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Ballard moved that all properly filed co-sponsor requests be approved. Agreed.

Senate Message

Announcing passage of **SB 31, SB 58, SB 74, SB 106, SB 122, SB 130, SB 208, SB 224, SB 253, SB 259, HB 137, HB 248, HB 265,** and **HJR 33**. (Time: 2:08 p.m.)

Introduction of Bills

HB 645, by Representatives Jenkins, Stein, Jordan, Marzian, L. Clark, Johns, Palumbo, Gray, and Colter: AN ACT relating to identification cards.

HB 646, by Representatives Horlander, Geveden, Wilkey, Callahan, Stacy, Weaver, P. Clark, Ballard, L. Clark, D. D. Butler, Wayne, Jenkins, Lee, Zimmerman, Bruce, and Barrows: AN ACT relating to retirement.

HB 647, by Representatives Murgatroyd, Kerr, Long, Gooch, Marcotte, Brandstetter, and Zimmerman: AN ACT relating to compensatory time.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolutions:

Counties and Special Districts: **HB 624, HB 630**

Education: **HB 641, HB 642**

Health and Welfare: **HB 637, HCR 79**

Judiciary: **HB 638**

Labor and Industry: **SB 177**

Licensing and Occupations: **HB 632, HB 634**

Natural Resources and Environment: **HB 636**

State Government: **HB 633, HB 639, HCR 76, HB 640, SB 190**

Tourism Development and Energy: **HB 631, HB 643, HB 644, HCR 77**

Transportation: **HB 635**

The Clerk reported that the Committee on Committees has referred the following Resolution:

House Floor: **HR 80**

Report of Committees

The Committee on Judiciary reported **HB 327,** with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 327, AN ACT relating to crimes and punishments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 189A.005 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Alcohol concentration" means either grams of alcohol per ***one hundred (100)***[~~100~~] milliliters of blood or grams of alcohol per ***two hundred ten (210)***[~~210~~] liters of breath***, or grams of alcohol per sixty-seven (67) milliliters of urine, as measured within a reasonable time of operation or physical control. Two (2) hours shall be considered a reasonable time after operation or physical control and the court shall have discretion to determine if a longer period is reasonable***;

(2) "Refusal" means declining to submit to any test or tests pursuant to KRS 189A.103. Declining may be either by word or by the act of refusal. If the breath testing instrument ***measures***[~~for any reason shows~~] an insufficient breath sample ***not due to the defendant's failure to blow sufficiently into the instrument*** and the alcohol concentration cannot be measured by the breath testing instrument, the law enforcement officer shall then request the defendant to take a blood or urine test in lieu of the breath test. If the defendant***, without medical cause therefor, fails to blow sufficiently into the instrument or declines, by any word or act, to take a blood, breath, or urine test, the defendant***[~~then declines either by word or by the act of refusal, he~~] shall then be deemed to have refused***. A refusal, to be valid for purposes of this chapter, must occur either at a detention facility or at the site at which any alcohol concentration test is to be administered***;[~~ and~~]

(3) When age is a factor, it shall mean age at the time of the commission of the offense***;***

(4) "Cabinet" means the Transportation Cabinet;

(5) "License" means any drivers or operators license or any other license or permit to operate a motor vehicle issued under, or granted by the laws of this state including:

(a) Any temporary license or instruction permit;

(b) The privilege of any person to drive a motor vehicle whether or not the person holds a valid license;

(c) Any nonresident's operating privilege as defined in KRS Chapters 186 or 189.

(6) "Vehicle" means every device in, upon or by which any person or property is or may be transported excepting devices moved by human power and animal power or used exclusively upon stationary rails, or tracks, boat, or aircraft.

(7) "Blood," in addition to the ordinary meaning, shall also include all component parts of blood from which an alcohol concentration can be measured.

(8) "Officer," for the purpose of this chapter, includes a jailer or deputy jailer, if that person is the person who administers a breath test, using an instrument supplied by the state.

(9) "Physical injury" shall have the same meaning as defined in KRS 500.080.

Section 2. KRS 189A.010 is amended to read as follows:

(1) A person***, if twenty-one (21) years of age or older at the time of the commission of the offense,*** shall not operate or be in physical control of a[~~ motor~~] vehicle anywhere in this state:

(a) While the alcohol concentration in his blood***,***[~~or~~] breath***, or urine*** is ***0.08***[~~0.10~~] or more based on the definition of alcohol concentration in KRS 189A.005 ***as determined at the time of testing***;

(b) While under the influence of alcohol;

(c) While under the influence of any other substance or combination of substances which impairs one's driving ability;

(d) While under the combined influence of alcohol and any other substance which impairs one's driving ability; or

(e) While ***having any measurable quantity***[~~the alcohol concentration~~] in his blood ***of a Schedule I or II substance as set forth in KRS 218A.050, it is a defense to this subsection that the driver consumed the controlled substance from Schedule II under a valid prescription or order of a practitioner as authorized by KRS Chapter 218A who acted in the course of the practitioner's professional practice and which amount of controlled substance did not exceed prescribed therapeutic doses and which did not impair the defendant's driving ability***[~~or breath is 0.02 or more based on the definition of alcohol concentration in KRS 189A.005 if the person is under the age of twenty-one (21)~~].

(2) ***(a)*** In any prosecution for a violation of subsection (1)(b) or (d) of this section in which the defendant is charged with having operated or been in physical control of a[~~ motor~~] vehicle while under the influence of alcohol, the alcohol concentration in the defendant's blood as determined at the time of making analysis of his blood,[~~ or~~] breath***, or urine*** shall give rise to the following presumptions:

1.[~~(a)~~] If there was an alcohol concentration of less than 0.05 based upon the definition of alcohol concentration in KRS 189A.005, it shall be presumed that the defendant was not under the influence of alcohol; and

2.[~~(b)~~] If there was an alcohol concentration of 0.05 or greater but less than ***0.08***[~~0.10~~] based upon the definition of alcohol concentration in KRS 189A.005, that fact shall not constitute a presumption that the defendant either was or was not under the influence of alcohol, but that fact may be considered, together with other competent evidence, in determining the guilt or innocence of the defendant.

(b) The provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the questions of whether the defendant was under the influence of alcohol or other substances, in any prosecution for a violation of subsection (1)(b) or (d) of this section.

(c)[~~(3)~~]***Except as provided in subsection (1)(e) of this section,*** the fact that any person charged with violation of subsection (1) of this section is legally entitled to use any substance, including alcohol, shall not constitute a defense against any charge of violation of subsection (1) of this section.

(3)[~~(4)~~] Any person who violates the provisions of paragraphs (a), (b), (c)***,*** or (d) of subsection (1) of this section shall:

(a) For the first offense within a five (5) year period, be fined not less than two hundred dollars ($200) nor more than five hundred dollars ($500) or be imprisoned in the county jail for not less than forty-eight (48) hours nor more than thirty (30) days or both. Following sentencing, the defendant may apply to the judge for permission to enter a community labor program for not less than forty-eight (48) hours nor more than thirty (30) days in lieu of fine or imprisonment, or both.

(b) For the second offense within a five (5) year period, be fined not less than three hundred fifty dollars ($350) nor more than five hundred dollars ($500) and shall be imprisoned in the county jail for not less than seven (7) days nor more than six (6) months and, in addition to fine and imprisonment, may be sentenced to community labor for not less than ten (10) days nor more than six (6) months.

(c) For a third offense within a five (5) year period, be fined not less than five hundred dollars ($500) nor more than one thousand ($1,000) and shall be imprisoned in the county jail for not less than thirty (30) days nor more than twelve (12) months and may, in addition to fine and imprisonment, be sentenced to community labor for not less than ten (10) days nor more than twelve (12) months.

(d) For a fourth or subsequent offense within a five (5) year period, be guilty of a Class D felony.

(e) For purposes of this ***chapter***[~~subsection~~], prior offenses shall include all convictions in this state, and any other state, or jurisdiction for operating or being in control of a motor vehicle while under the influence of alcohol or other substances that impair one's driving ability, or any combination of alcohol and such substances, or while having an unlawful alcohol concentration, ***or any measurable quantity of a Schedule I or II controlled substance*** or ***operating a vehicle***[~~driving~~] while intoxicated[~~, but shall not include convictions for violating subsection (1)(e) of this section. A court shall receive as proof of a prior conviction a copy of that conviction, certified by the court ordering the conviction.~~

~~(5) Any person who violates the provisions of subsection (1)(e) of this section shall have his driving privilege or operator's license suspended by the court for a period of no less than thirty (30) days but no longer than six (6) months, and the person shall be fined no less than one hundred dollars ($100) and no more than five hundred dollars ($500), or sentenced to twenty (20) hours of community service in lieu of a fine. A person subject to the penalties of this paragraph shall not be subject to the penalties established in subsection (4) of this section or any other penalty established pursuant to KRS Chapter 189A.~~

~~(6) If the person is under the age of twenty one (21) and there was an alcohol concentration of 0.10 or greater based on the definition of alcohol concentration in KRS 189A.005, the person shall be subject to the penalties established pursuant to subsection (4) of this section~~].

(4)[~~(7)~~] For a second or third offense within a five (5) year period, the minimum sentence of imprisonment or community labor shall not be suspended, probated, or subject to conditional discharge or other form of early release. For a fourth or subsequent offense under this section, the minimum term of imprisonment shall be one hundred twenty (120) days, and this term shall not be suspended, probated, or subject to conditional discharge or other form of early release. For a second or subsequent offense, at least forty-eight (48) hours of the mandatory sentence shall be served consecutively.

(5)[~~(8)~~] When sentencing persons under subsection (4)(a) of this section at least one (1) of the penalties shall be assessed and that penalty shall not be suspended, probated, or subject to conditional discharge or other form of early release.

(6)[~~(9)~~] In determining the five (5) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.

SECTION 3. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

(1) A person, less than twenty-one (21) years of age, shall not operate or be in control of a vehicle anywhere in this state:

(a) While the alcohol concentration in his blood, breath, or urine is 0.08 or more based on the definition of alcohol concentration in Section 1 of this Act as determined at the time of testing;

(b) While under the influence of alcohol;

(c) While under the influence of any other substance or combination of substances which impairs one's driving ability;

(d) While under the combined influence of alcohol and any other substance which impairs one's driving ability; or

(e) While having any measurable quantity in his blood of a Schedule I or II substance as set forth in KRS 218A.050 or 218A.070. It is a defense to this subsection that the driver consumed the controlled substance from Schedule II under a valid prescription or order of a practitioner as authorized by KRS Chapter 218A who acted in the course of the practitioner's professional practice and which amount of controlled substance did not exceed prescribed therapeutic doses and which did not impair the defendant's driving ability.

(f) While the alcohol concentration in his blood, breath, or urine is at least 0.02, but less than 0.08 based on the definition of alcohol concentration in Section 1 of this Act as determined at the time of testing.

(2) In any prosecution for a violation of subsection (1)(b) of this section in which the defendant is charged with having operated or been in physical control of a vehicle while under the influence of alcohol, the alcohol concentration in the defendant's blood as determined at the time of making analysis of his blood, breath, or urine shall give rise to the following presumption's:

(a) If there was an alcohol concentration of less than 0.02 based upon the definition of alcohol concentration in Section 1 of this Act, it shall be presumed that the defendant was not under the influence of alcohol; and

(b) The provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the questions of whether the defendant was under the influence of alcohol or other substances, in any prosecution for a violation of subsection (1)(b), (c), or (d) of this section.

(3) Any person who violates the provisions of paragraphs (a), (b), (c), (d), or (e) of subsection (1) of this section shall:

(a) For the first offense within a five (5) year period, be fined not less than two hundred dollars ($200) nor more than five hundred dollars ($500) or be imprisoned in the county jail for not less than forty-eight (48) hours nor more than thirty (30) days or both. Following sentencing, the defendant may apply to the judge for permission to enter a community labor program for not less than forty-eight (48) hours nor more than thirty (30) days in lieu of fine or imprisonment, or both.

(b) For the second offense within a five (5) year period, be fined not less than three hundred fifty dollars ($350) nor more than five hundred dollars ($500) and shall be imprisoned in the county jail for not less than seven (7) days nor more than six (6) months and, in addition to fine and imprisonment, may be sentenced to community labor for not less than ten (10) days nor more than six (6) months.

(c) For a third offense within a five (5) year period, be fined not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000) and shall be imprisoned in the county jail for not less than thirty (30) days nor more than twelve (12) months and may, in addition to fine and imprisonment, be sentenced to community labor for not less than ten (10) days nor more than twelve (12) months.

(d) For a fourth or subsequent offense within a five (5) year period, be guilty of a Class D felony.

(e) For purposes of this chapter, prior offenses shall include all convictions in this state, and any other state, or jurisdiction for operating or being in control of a vehicle while under the influence of alcohol or other substances that impair one's driving ability, or any combination of alcohol and such substances, or while having an unlawful alcohol concentration, or any measurable quantity of a Schedule I or II substance or operating a vehicle while intoxicated.

(4) Any person who violates the provisions of subsection (1)(f) of this section shall be sentenced to attend an alcohol and drug education program, and the person shall be fined no less than one hundred dollars ($100) and no more than five hundred dollars ($500), or sentenced to twenty (20) hours of community service in lieu of a fine. A person subject to the penalties of this paragraph shall not be subject to the penalties established in subsection (3) of this section or any other penalty established under this chapter.

(5) Except for violations of (1)(f) of this section, for a second or third offense within a five (5) year period, the minimum sentence of imprisonment or community labor shall not be suspended, probated, or subject to conditional discharge

or other form of early release.

(6) For a fourth or subsequent offense under this section, the minimum term of imprisonment shall be one hundred twenty (120) days, and this term shall not be suspended, probated, or subject to conditional discharge or other form of early release. For a second or subsequent offense, at least forty-eight (48) hours of the mandatory sentence shall be served consecutively.

(7) When sentencing persons under subsection (3)(a) of this section at least one (1) of the penalties shall be assessed and that penalty shall not be suspended, probated, or subject to conditional discharge or other form of early release.

(8) In determining the five (5) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.

Section 4. KRS 189A.050 is amended to read as follows:

(1) All persons convicted of violation of KRS 189A.010 ***or Section 3 of this Act*** shall be sentenced to pay a service fee of two hundred ***fifty*** dollars ***($250)***[~~($200)~~], which shall be in addition to all other penalties authorized by law.

(2) The fee shall be imposed in all cases but shall be subject to the provisions of KRS 534.020 relating to the method of imposition and KRS 534.060 as to remedies for nonpayment of the fee.

(3) ***The revenue collected from*** the service fee ***imposed by*** [~~shall be utilized to fund enforcement of~~] this ***section shall be distributed as follows:***

(a) Fifteen percent (15%) of the amount collected shall be transferred to the Kentucky State Police Forensic Laboratory for the acquisition, maintenance, testing, and calibration of alcohol concentration testing instruments and the training of laboratory personnel to perform these tasks;[~~chapter and for the support of jails, recordkeeping, treatment and education programs authorized by this chapter, and the Department of Public Advocacy.~~]

(b)[~~(4)~~] Twenty-five percent (25%) of the service fee collected pursuant to this section shall be allocated to the Department of Public Advocacy. These funds shall be placed in a special trust and agency account for the Department of Public Advocacy***;***[~~, and the funds shall not lapse.~~]

(c) One percent (1%) shall be transferred to the Office of the Attorney General for training of prosecutors for the prosecution of persons charged with violations of this chapter and for obtaining expert witnesses in cases involving the prosecution of persons charged with violations of this chapter or any other offense in which driving under the influence is a factor in the commission of the offense charged;

(d) Any amount specified by a specific statute shall be transferred as provided in that statute; and

(e) The service fee shall be utilized to fund enforcement of this chapter and for the support of jails, recordkeeping, treatment and educational programs authorized by this chapter, and the Department of Public Advocacy.

(4) The amounts specified in paragraphs (a), (b), and (c) of subsection (3) of this section shall be placed in trust and agency accounts which shall not lapse.

Section 5. KRS 189A.070 is amended to read as follows:

(1) [~~Unless the person is under eighteen (18) years of age, in addition to the penalties specified in KRS 189A.010,~~]A person convicted of violation of KRS 189A.010(1) ***or subsection (1) of Section 3 of this Act***[~~(a), (b), (c), or (d)~~] shall have his license to operate a[~~ motor~~] vehicle[~~ or motorcycle~~] revoked[~~ by the court~~] as follows:

(a) For the first offense within a five (5) year period, ***sixty (60)***[~~ninety~~] days;

(b) For the second offense within a five (5) year period, twelve (12) months;

(c) For a third offense within a five (5) year period, twenty-four (24) months; and

(d) For a fourth or subsequent offense within a five (5) year period, sixty (60) months.

(e) For purposes of this section, "offense" shall have the same meaning as described in KRS 189A.010***(3) and subsections (a) to (e) of Section 3 of this Act***[~~(4)(e)~~].

(2) In determining the five (5) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.

(3) In addition to the period of license revocation set forth in subsection (1) of this section, no person shall be eligible for reinstatement of his privilege to operate a motor vehicle until he has ***enrolled in***[~~completed~~] the alcohol or substance abuse education or treatment program ordered pursuant to KRS 189A.040. ***If the offender has received his license and has not completed a drug and alcohol treatment program in the time specified by KRS 189A.040, as of the date he should have completed the program, his license shall be suspended until he successfully completes the program.***

(4) A person under the age of eighteen (18) who is convicted of violation of ***Section 3 of this Act***[~~KRS 189A.010(1)(a), (b), (c), or (d)~~] shall have his license revoked[~~ by the court~~] until he reaches the age of eighteen (18) or shall have his license

revoked as provided in subsection (1) of this section, whichever penalty will result in the longer period of revocation.

(5) Licenses revoked pursuant to this chapter shall forthwith be surrendered to the court upon conviction. The court shall transmit the conviction records, and other appropriate information to the Transportation Cabinet ***within five (5) days of conviction***. A court shall not waive or stay this procedure.

(6) ***Any***[~~Should a~~] person ***who has had his***[~~convicted under this chapter whose~~] license[~~ is~~] revoked ***pursuant to Sections 7, 8, 9, 10, 11, 12, 13, 14, or 15 of this Act for***[~~fail to surrender it to~~] the ***same offense,***[~~ court upon conviction, the court~~] shall ***be given credit towards a post conviction revocation***[~~issue an order directing the sheriff or any other peace officer to seize the license forthwith and deliver it to the court~~].

Section 6. KRS 189A.100 is amended to read as follows:

(1) Law enforcement agencies may administer preliminary breath tests using devices or equipment ***to determine breath***[~~which will ensure an accurate determination of blood~~] alcohol ***presence***[~~content~~]. ***Sobriety***[~~Such~~] tests may be administered[~~ in the field~~] to a person suspected of violation of KRS 189A.010 ***or Section 3 of this Act*** before the person is arrested. ***These tests***[~~This test~~] may be administered in addition to any other blood***, breath, or urine tests***[~~ alcohol level test~~] authorized by law. A person's refusal to take a preliminary breath test ***or sobriety tests***[~~ shall not~~] be used against him in a court of law or in any administrative proceeding.

(2) Law enforcement agencies may record on film or video tape or by other visual and audible means ***the pursuit, stop of the vehicle operated by the driver, or*** field sobriety tests administered at the scene of an arrest for violation of KRS 189A.010 ***or Section 3 of this Act*** or such tests at a police station, jail, or other suitable facility subject to the following conditions:

(a) The testing is recorded in its entirety (except for blood alcohol analysis testing); and

(b) The entire recording is shown in court unless the defendant waives the showing of any portions not offered by the prosecution; and

(c) The entire recording is available to be shown by the defense at trial if the defendant so desires regardless of whether it was introduced by the Commonwealth; and

(d) ***Upon request,*** the defendant or his counsel***, before trial, shall be***[~~ is~~] afforded an opportunity to view the entire recording a reasonable time before the trial in order to prepare an adequate defense; and

(e) Recordings shall be used for official purposes only and shall be shown only in court, to the prosecution and defense in preparation for a trial, or upon the order of a court. Recordings shall otherwise be considered as confidential records; and

(f) After all appeals have been exhausted the recordings shall, upon the order of a District Court, be destroyed; and

(g) Public officials or employees utilizing or showing recordings other than as permitted in this chapter or permitting others to do so shall be guilty of official misconduct in the first degree.

SECTION 7. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

(1) The cabinet shall revoke the license of any person upon its determination that the person drove or was in actual physical control of a vehicle while:

(a) The alcohol concentration in the blood, breath, or urine of the person who is charged with a violation of KRS 189A.010(1) or subsection (1) of Section 3 of this Act was 0.08 or more;

(b) The alcohol concentration in the blood, breath, or urine of the person charged with a violation of KRS 281A.210 was 0.04 or more;

(c) The alcohol concentration in the blood, breath, or urine of the person charged with a violation of KRS Section 3(1)(f) of this Act was at least 0.02 and less than 0.08;

(d) The person refused to take an alcohol concentration test; or

(e) The person, subsequent to an accident resulting, in an injury refused to provide a blood, breath, or urine sample to be tested for the use of a substance or combination of substances which impairs one's driving ability where there was a reasonable suspicion that impairing substances were involved.

(2) The cabinet shall make a determination of these facts on the basis of the report of an officer required in Section 8 of this Act, and this determination shall be final unless an administrative review, pursuant to Section 13 of this Act, or a hearing, pursuant to Section 14 of this Act, rescinds the order of revocation.

(3) The determination of these facts by the cabinet is independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect any revocation under this section.

SECTION 8. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

(1) Unless the physical condition of the offender prevents an arrest or breath testing, an officer who arrests any person

for a violation of KRS 189A.010(1), subsection (1) of Section 3 of this Act, KRS 281A.210 or any person who has refused to submit to any test or tests pursuant to KRS 189A.103, shall, within three (3) working days, forward to the cabinet:

(a) A sworn report of all information relevant to the enforcement action, including information which adequately identifies the arrested person;

(b) A statement of the officer's grounds for belief that the person violated KRS 189A.010(1), subsection (1) of Section 3 of this Act, KRS 281A.210, or KRS 189A.103;

(c) A report of the results of any chemical tests which were conducted;

(d) A statement that the person refused an alcohol concentration test; and

(e) A copy of the citation and complaint filed with the court.

(2) The report required by this section shall be made on forms supplied by the cabinet or in a manner specified by administrative regulations of the cabinet.

(3) Failure of the officer to submit the report shall have no effect on prosecution of the offense or license revocation actions.

(4) Failure of the officer to submit the report within the time specified shall be a violation of KRS 522.030.

(5) If, subsequently evidence of blood, breath, or urine tests done by hospital or medical personnel become available and show a blood alcohol level in violation of KRS 189A.010 or Section 3 of this Act, the officer shall submit, within three (3) days of receiving the report, a copy of the report to the cabinet for any action authorized by law with regard to administrative license revocation.

SECTION 9. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

(1) Whenever a person has either refused an alcohol concentration test and is being charged with a violation of KRS 189A.103; or the chemical test results for a person being charged with a violation of KRS 189A.010(1) or subsection (1) of Section 3 of this Act; or the person is being charged with a violation of KRS 281A.210, the officer, supervising or conducting the testing specified in this section, acting on behalf of the cabinet, shall serve the notice of revocation personally or by certified mail on the arrested person.

(2) When the officer serves the notice of revocation, the officer shall take possession of any operator's license that is held by the person. When the officer takes possession of the operator's license, the officer, acting on behalf of the cabinet, shall issue a temporary permit which is valid for fifteen (15) days after its date of issuance, except that no temporary permit shall be issued if the officer determines that:

(a) The person is charged with a second or subsequent offense; or

(b) The person has refused the test under KRS 189A.103; or

(c) The person was driving under a suspended license; or

(d) The person, in the operation of the vehicle, caused death or physical injury to another person.

(3) The cabinet shall immediately revoke a temporary permit and retain the operator's license if the cabinet, upon administrative review, determines that:

(a) The person is charged with a second or subsequent offense; or

(b) The person has refused the test under KRS 189A.103; or

(c) The person was driving under a suspended license; or

(d) The person, in the operation of the vehicle, caused death or physical injury to another person.

(4) A copy of the completed notice of revocation form, a copy of any completed temporary permit form, and any operator's license taken into possession under this section, shall be forwarded immediately to the cabinet by the officer.

(5) If the license received by the cabinet under this section has been issued by a state other than this state, the cabinet shall notify forthwith the issuing state of this fact.

(6) The cabinet shall provide forms for notice of revocation and for temporary permits to law enforcement agencies, or in a manner specified by regulations of the cabinet.

(7) The notice of revocation served by the officer shall contain the same information as required by subsection (3) of Section 10 of this Act.

SECTION 10. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

(1) Upon receipt of the report of the officer, the cabinet shall make the determination described in Section 13 of this Act. If the cabinet determines that the person is subject to license revocation, and if notice of revocation has not already been served upon the person by the officer as required in Section 9 of this Act, the cabinet shall issue a

notice of revocation.

(2) The notice of revocation shall be mailed to the person at the last known address shown on the cabinet's records, and to the address provided by the officer's report if that address differs from the address of record. The notice is deemed received three (3) days after mailing.

(3) The notice of revocation shall clearly specify the reason and statutory grounds for the revocation, the effective date of the revocation, the right of the person for an administrative review, the procedure for requesting a hearing, and the date by which a request for a hearing shall be made in order to receive a determination prior to the effective date of the revocation.

(4) If the cabinet determines that the person is not subject to license revocation, the cabinet shall notify the person of its determination and shall rescind any order of revocation served upon the person by the officer.

(5) Where a person's license was issued by a state other than this state, the cabinet shall notify the issuing state of the final disposition.

SECTION 11. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

(1) Unless the license has been revoked by the cabinet under Section 9 of this Act or has been reinstated by the cabinet, the license revocation shall become effective fifteen (15) days after the subject person has received the notice of revocation as provided in Section 9 of this Act or is deemed to have received the notice of revocation by mail as provided in Section 10 of this Act.

(2) The period of license revocation shall be as follows:

- *(a) If the person was charged with a violation of KRS 281A.210 the period shall be ninety (90) days if the person's driving record shows no prior alcohol or drug related enforcement contacts during the immediately preceding five (5) years.*
- *(b) If the person was charged with a violation of KRS 189A.010(1) or Section 3 of this Act the period shall be sixty (60) days, if the person's driving record shows no prior alcohol or drug related enforcement contacts during the immediate preceding five (5) years.*
- *(c) If the person has refused to take an alcohol test in accordance with KRS 189A.103 the period shall be one hundred eighty (180) days if the person's driving record shows no prior alcohol or drug related enforcement contacts during the immediately preceding five (5) years.*
- *(d) The period shall be one (1) year if the person's driving record shows one (1) prior alcohol or drug related enforcement contact during the immediately preceding five (5) years.*
- *(e) For purposes of this section, "alcohol or drug related enforcement contacts" means any revocation under Section 9 or 10 of this Act, any suspension or revocation entered in this or any other state for a refusal to submit to chemical testing under an implied consent law, and any conviction in this or any other state for a violation that involves driving a vehicle while having an unlawful alcohol concentration, or while under the influence of alcohol, drugs, or alcohol and drugs.*
- *(f) A person under the age of eighteen (18), who is charged with a violation of subsection (1) of Section 3 of this Act, shall have his license revoked until he reaches the age of eighteen (18) or shall have his license revoked as provided in subsection (2)(b) of this section, whichever penalty will result in the longer period of revocation.*

(3) When a license is revoked as provided by this section and the person is also convicted on criminal charges arising out of the same occurrence for a violation of KRS 189A.010(1), Section 3 of this Act, or KRS 281A.210, both the revocation as provided by section and the revocation under KRS 281A.190 shall be imposed, but the periods of revocation shall run concurrently, and the total period of revocation shall not exceed the longer of the two (2) revocation periods.

SECTION 12. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

(1) The periods of revocation specified by Section 11 of this Act are intended to be mandatory periods of revocation for the described conduct. No license shall be restored under any circumstances during the revocation period, nor shall any restricted or hardship permit be issued.

(2) Following a license revocation, the cabinet shall not issue a new license or otherwise restore the driving privilege unless and until the person presents evidence satisfactory to the cabinet that the person has complied with the applicable section of KRS 189A.040 and Section 5 of this Act. No driving privilege may be restored until all applicable reinstatement fees have been paid.

SECTION 13. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

(1) Any person who has received a notice of revocation under Section 9 or 10 under this Act shall receive notice of an administrative review. The notice shall notify the person of his right to submit any statement or statements or any

other relevant evidence that the person wants the cabinet to consider in reviewing the determination made under Section 9 of this Act.

(2) When the administrative review is made, the cabinet shall review the determination made under Section 9 of this Act. In the review, the cabinet shall give consideration to any relevant statement or other evidence submitted by the person and to the sworn statement of the officer required by Section 9 of this Act. If the cabinet determines, by a preponderance of the evidence, that the person drove or was in actual physical control of a vehicle either while having an alcohol concentration of 0.08 or more if charged with a violation of KRS 189A.010, or an alcohol concentration of 0.04 or more if charged with a violation of KRS 281A.210, or an alcohol concentration of 0.02 or more if charged with a violation of subsection (1) of Section 3 of this Act, or refused to submit to an alcohol concentration test, the cabinet shall sustain the order of revocation. If the evidence does not support such a determination, the cabinet shall rescind the order of revocation. The determination of the cabinet upon administrative review is final unless a hearing is requested under Section 14 of this Act.

(3) The cabinet shall make a determination upon administrative review prior to the effective date of the revocation order. Where the person submits additional information for the administrative review and this information is received by the cabinet more than eight (8) days following service of the notice of revocation, the cabinet shall make its determination within seven (7) days following the receipt of the information.

(4) The administrative review does not stay the license revocation. If the cabinet is unable to make a determination within the time limits specified in subsection (3) of this section, it may stay the revocation pending that determination.

(5) The submission of information for administrative review may be made by mail or in person or at any office of the cabinet. The cabinet shall provide forms which the person may use in the administrative review or the person may submit any statement, but use of the forms is not required.

(6) A person may request and be granted a hearing under Section 14 of this Act without an administrative review under this section. Administrative review is not available after a hearing is requested.

SECTION 14. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

(1) Any person who has received a notice of revocation may, within ten (10) days of the receipt of the notice of revocation, make a written request for a review of the cabinet's determination at a hearing. The request may be made on a form available at each office of the cabinet and shall be accompanied by payment of a fee not to exceed seventy-five dollars ($75), which is to be deposited in a trust and agency account, which shall not lapse, to be used for the purpose of implementing, administering and defending Sections 7, 8, 9, 10, 11, 12, 13, 14 and 15 of this Act. If the person's operators license has not been previously surrendered, it shall be surrendered at the time the request for a hearing is made. A request for a hearing does not stay the license revocation.

(2) The hearing shall be scheduled to be held as quickly as practicable within not more than twenty (20) days of the filing of the request for a hearing. The hearing shall be held, by the cabinet, in the county, as close as practicable to where the arrest occurred, unless the parties agree to a different location. The cabinet shall provide a written notice of the time, date, and place of the hearing to the party requesting the hearing at least ten (10) days prior to the scheduled hearing, unless both parties agree to waive this requirement. The notice shall also include the name, official title, and mailing address of the hearing officer and a statement of the factual basis for the agency's action along with a statement of the issues involved; it shall advise the person of his right to counsel.

(3) The presiding hearing officer shall be an authorized representative of the cabinet. The presiding hearing officer shall have authority to administer oaths and affirmations; to examine witnesses and take testimony; to receive relevant evidence; to issue subpoenas, take depositions, or cause depositions or interrogatories to be taken; to regulate the course and conduct of the hearing; and to make a final ruling on the issue.

(4) A hearing officer may conduct all or part of an administrative hearing, or a prehearing conference, by telephone, video teleconferencing, or other electronic means, if each party to the hearing agrees in writing prior to the commencement of the hearing.

(5) The sole issue at the hearing shall be whether by a preponderance of the evidence the person drove or was in actual physical control of a vehicle while either having an alcohol concentration of 0.08 or more if charged with a violation of KRS 189A.010(1)(a) to (e), or an alcohol concentration of 0.04 or more if charged with a violation of KRS 281A.210, or an alcohol concentration of 0.02 or more if charged with a violation of subsection (1) of Section 3 of this Act, or refused to submit to an alcohol concentration test. If the presiding hearing officer finds that all of the requirements for revocation have been met, the revocation order shall be sustained. If the presiding hearing officer finds that the requirements for revocation have not been met, the revocation order shall be rescinded.

(6) The hearing shall be recorded. Either party may request, at the party's own expense, a transcript of the hearing. The decision of the presiding hearing officer shall be rendered in writing and shall contain a finding of fact. A copy will be provided to the person who requested the hearing. The final decision shall be rendered within five (5) days and

shall include a statement concerning the person's right of appeal.

(7) The notice provided the persons shall state that if the person who requested the hearing fails to appear without just cause, the right to a hearing shall be waived, and the cabinet's earlier determination shall be final.

SECTION 15. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

(1) Within thirty (30) days of the issuance of the final determination of the cabinet following a hearing under Section 14 of this Act, a person aggrieved by the determination shall have the right to file a petition in the Franklin Circuit Court or the Circuit Court in the county in which the hearing occurred for judicial review. If the hearing took place by electronic communications, it shall be deemed to have occurred where the hearing officer presided over the hearing. The filing of a petition for judicial review shall not stay the revocation order.

(2) The review shall be on the record, without taking additional testimony. If the court finds that the cabinet exceeded its authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is unsupported by the evidence in the record, the court may reverse the cabinet's determination.

Section 16. KRS 189A.090 is amended to read as follows:

(1) No person shall operate a[~~ motor~~] vehicle while his license is revoked or suspended for violation of KRS 189A.010 ***or Section 3 of this Act***[~~, nor shall any person who has no motor vehicle or motorcycle operator's license operate a motor vehicle while his privilege to operate a motor vehicle has been revoked or suspended for a violation of KRS 189A.010~~].

(2) Any person who violates subsection (1) of this section shall:

  (a) For a first offense, be guilty of a Class B misdemeanor;

  (b) For a second offense, be guilty of a Class A misdemeanor; ***and***

  (c) For a third or subsequent offense, be guilty of a Class D felony.

(3) ***Any person who is convicted of a violation of KRS 189A.010 or Section 3 of this Act who at the time of the arrest for that offense was also in violation of subsection (1) of this section shall:***

  (a) For a first offense, be guilty of a Class A misdemeanor;

  (b) For a second offense, be guilty of a Class D felony; and

  (c) For a third or subsequent offense, be guilty of a Class C felony.

(4) In addition to the penalties above***, the defendant's***[~~his~~] operator's license shall be revoked for twice the original period of revocation ***but the period of revocation shall not be less than six (6) months***.

Section 17. KRS 189A.103 is amended to read as follows:

The following provisions shall apply to any person who operates or is in physical control of a motor vehicle or a vehicle that is not a motor vehicle in this Commonwealth:

(1) ***A person***[~~He~~] is deemed to have given[~~ his~~] consent to one (1) or more tests of ***the person's***[~~his~~] blood, breath, and urine, or combination thereof, for the purpose of determining alcohol concentration or presence of a substance which may impair one's driving ability***.***

(2) If the defendant is involved in a physical injury where there was a reasonable suspicion that alcohol was involved or the person is,[~~if~~] arrested for any offense arising out of a violation of KRS 189A.010(1) or***, subsection (1) of Section 3 of this Act, they are also deemed to have given their consent***[~~189.520(1)~~].

(3)[~~(2)~~] Any person who is dead, unconscious, or otherwise in a condition rendering him incapable of refusal is deemed not to have withdrawn the consent provided in subsection (1) of this section, and the test may be given.

(4)[~~(3)~~] The breath, blood, and urine tests administered pursuant to this section shall be administered at the direction of ***an***[~~a peace~~] officer having reasonable grounds to believe the person has committed a violation of KRS 189A.010(1) or ***subsection (1) of Section 3 of this Act***[~~189.520(1)~~].

  (a) Tests of the person's breath, blood, or urine, to be valid pursuant to this section, shall have been performed according to the administrative regulations promulgated by the secretary of the Justice Cabinet.

  (b) All breath tests ***utilizing the breath testing instrument supplied pursuant to KRS 189A.300*** shall be administered by ***an***[~~a peace~~] officer holding a certificate, as an operator of a breath analysis instrument, issued by the secretary of the Justice Cabinet or his designee.

(5)[~~(4)~~] A breath test shall consist of a test which is performed in accordance with the manufacturer's instructions for the use of the instrument.

(6)[~~(5)~~] When[~~ the preliminary breath test, breath test, or~~] other evidence gives the peace officer reasonable grounds to believe there is impairment by a substance which is not subject to testing by a breath test, then blood or urine tests, or both, ***shall***[~~may~~] be required in addition to a breath test, or in lieu of a breath test.

(7)[~~(6)~~] Only a physician, registered nurse, phlebotomist, medical technician, or medical technologist not otherwise prohibited by law can withdraw any blood of any person submitting to a test under this section.

(8)[~~(7)~~] ***At the conclusion of the test or tests administered at the direction of the officer,*** the person tested shall be permitted to have a person listed in subsection (6) of this section of his own choosing administer a test or tests in addition to any tests administered at the direction of the peace officer. Tests conducted under this section shall be conducted within a reasonable length of time. Provided, however, the nonavailability of the person chosen to administer a test or tests in addition to those administered at the direction of the peace officer within a reasonable time shall not be grounds for rendering inadmissible as evidence the results of the test or tests administered at the direction of the[~~ peace~~] officer.

Section 18. KRS 189A.105 is amended to read as follows:

(1) No person shall be compelled to submit to any test or tests specified in KRS 189A.103 ***or Section 7 of this Act***, but his refusal to submit to such tests shall result in revocation of his driving privilege as provided in this chapter.

(2) (a) At the time a breath, blood, or urine test is requested, the person shall be informed:

1. That, if the person refuses to submit to such tests, the person's privilege to drive shall be revoked for a period of six (6) months, or more[~~, pursuant to this chapter~~]; and

2. That, if a test is taken and the results indicate that the person has ***violated KRS 189A.010, or Section 3 of this Act, or KRS 281A.210***[~~an alcohol concentration of 0.10 or greater, or, if the person is under the influence of alcohol or a substance that impairs one's driving ability or a combination of alcohol and such substance~~], the person shall be subject to criminal penalties and the person's driving license shall be revoked for ***the***[~~a~~] period ***set forth by statute***[~~of at least ninety (90) days~~]; and

3. That the person has the right to have a test or tests of his blood performed by a person of his choosing described in KRS 189A.103 within a reasonable time of his arrest at the expense of the person arrested.

(b) Nothing in this subsection shall be construed to prohibit a judge of a court of competent jurisdiction from issuing a search warrant or other court order requiring a blood or urine test, or a combination thereof, of a defendant charged with a violation of KRS 189A.010, or other statutory violation arising from the incident, when a person is killed or suffers physical injury, as defined in KRS 500.080, as a result of the incident in which the defendant has been charged.

SECTION 19. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

The administrative procedures act codified in KRS Chapter 13B shall not apply to Sections 7, 8, 9, 10, 11, 12, 13, 14 and 15 of this Act.

Section 20. KRS 189A.330 is amended to read as follows:

(1) The clerk of the court in which hearings for violation of KRS 189A.010 are heard shall report to the Administrative Office of the Courts on or within five (5) working days of January 1, April 1, July 1, and October 1 of each year the cases involving violations of KRS 189A.010 ***or Section 3 of this Act*** which have not resulted in a final ruling by the court within ninety (90) days of the date upon which the person was charged with a violation of KRS 189A.010 ***or Section 3 of this Act***.

(2) The Administrative Office of the Courts shall forward a copy of the lists of these cases to the Chief Justice and the Office of the Attorney General.

(3) Upon a determination that there is sufficient cause, the Office of the Attorney General may appoint a special prosecutor or prosecutors to assist in the disposition of these cases within a reasonable time period.

(4) The provisions of this section shall not be utilized by any judge as a reason for amending or dismissing a case.

(5) The Chief Justice may take actions deemed necessary and reasonable to facilitate the resolution of these cases within a reasonable time period.

SECTION 21. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

(1) No offense under this chapter shall be subject to:

(a) Pretrial diversion;

(b) Mediation; or

(c) Other alternative disposition prior to trial.

(2) This section shall not preclude a court from dismissal of charges as provided by the Rules of Criminal Procedure.

SECTION 22. A NEW SECTION OF KRS CHAPTER 281A IS CREATED TO READ AS FOLLOWS:

(1) No offense under this chapter shall be subject to:

(a) Pretrial diversion;

(b) Mediation; or

(c) Other alternative disposition prior to trial.

(2) This section shall not preclude a court from dismissal of charges as provided by the Rules of Criminal Procedure.

Section 23. KRS 186.018 is amended to read as follows:

(1) For purposes of maintaining driving history records of operators of motor vehicles of the Commonwealth, the files of the Transportation Cabinet shall be used to ascertain the driving history record of each person who is licensed to operate a motor vehicle within the Commonwealth. Except as provided in subsection (2) ***or (3)*** of this section, the Transportation Cabinet shall destroy, and shall not maintain records of moving traffic convictions that are more than five (5) years old. Notwithstanding, for any licensee who now holds, who has applied for, or has ever held a Class A, B, or C license issued pursuant to KRS 281A.170, the cabinet shall keep conviction records indefinitely.

(2) The Transportation Cabinet shall not release information on the driving history record of a person under the age of twenty-one (21) whose operator license has been suspended pursuant to ***Section 3 of this Act***[~~KRS 189A.010(5). The cabinet shall destroy, and shall not maintain, the record of the suspension of a person's operator's license if the license was suspended pursuant to KRS 189A.010(5), within five (5) working days of the person's operator's license being reinstated~~].

(3) ***Notwithstanding subsection (1), the cabinet shall destroy records of moving traffic convictions that are more than five (5) years old, except convictions of KRS Chapter 189A and administrative actions taken pursuant to Section 11 of this Act, records of such convictions shall be maintained for ten (10) years.***

(4) The cabinet shall charge a fee of three dollars ($3) for any driving history record, ten cents ($0.10) of which shall be deposited in a special account within the road fund to be used exclusively by the Transportation Cabinet for the state driver education program as designated in KRS 186.535.

Section 24. KRS 235.240 is amended to read as follows:

(1) No person shall operate any motorboat or vessel, or manipulate any water skis, surfboard or similar device in a reckless or negligent manner so as to endanger the life or property of any person.

(2) ***A***[~~No~~] person shall ***not*** operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device while ***under the influence of alcohol or any substance or combination of substances that may impact one's boating ability***[~~intoxicated or under the influence of any narcotic drug, barbiturate or marijuana~~].

(3) For the purposes of enforcing this section, the elements of the offense shall be those established in KRS 189A.010 and Section 3 of this Act, except that the penalties for this offense are set forth in Section 25 of this Act.

Section 25. KRS 235.990 is amended to read as follows:

(1) ***Except as provided in subsection (3) of this sections,*** any person who violates any of the provisions of this chapter shall be fined not less than fifteen dollars ($15) nor more than one hundred dollars ($100).

(2) Any person failing to obey a citation issued in accordance with KRS 235.315 shall be guilty of a separate offense and shall be fined not less than fifteen dollars ($15) nor more than one hundred dollars ($100).

(3) Any person who violates Section 24 of this Act shall:

(a) For the first offense be fined not less than one hundred dollars ($100) nor more than two hundred fifty dollars ($250);

(b) For a second offense be fined not less that two hundred fifty dollars ($250) nor more than five hundred dollars ($500); and

(c) For a third or subsequent offense fined not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000), or imprisoned in the county jail for not less than thirty (30) days and not more than six (6) months.

Section 26. KRS 189A.210 is amended to read as follows:

When a defendant is arrested upon a charge of violating KRS 189A.010(1) ***or subsection (2) of Section 3 of this Act***, the court clerk shall obtain forthwith the information from the defendant's driving history record and make it a part of the record of the case.

Section 27. KRS 189A.040 is amended to read as follows:

(1) In addition to any other penalty prescribed by[~~ subsection (4)(a) of~~] KRS 189A.010, the court shall sentence the person to attend an alcohol or substance abuse education or treatment program subject to the following terms and conditions for a first offender:

(a) The treatment or education shall be for a period of ninety (90) days and the program shall provide an assessment of the defendant's alcohol or other substance abuse problems, which shall be performed at the start of the program.

(b) Each defendant shall pay the cost of the education or treatment program up to his ability to pay but no more than the actual cost of the treatment.

(c) Upon written report to the court by the administrator of the program that the defendant has completed the program recommended by the administrator based upon the assessment of the defendant, the defendant may be released prior to the expiration of the ninety (90) day period.

(d) Failure to complete the education or treatment program or to pay the amount specified by the court for education or treatment shall constitute contempt, and the court shall, in addition to any other remedy for contempt, reinstitute all penalties which were previously imposed but suspended or delayed pending completion of the education or treatment program.

(2) In addition to any other penalty prescribed by[~~ subsection (4)(b) of~~] KRS 189A.010, the court shall sentence the person to an alcohol or substance abuse treatment program subject to the following terms and conditions for a second offender:

(a) The sentence shall be for a period of one (1) year and the program shall provide an assessment of the defendant's alcohol or other substance abuse problems, which shall be performed at the start of the program.

(b) Each defendant shall pay the cost of the treatment program up to his ability to pay but no more than the actual cost of the treatment.

(c) Upon written report to the court by the administrator of the program that the defendant has completed the program recommended by the administrator based upon the assessment of the defendant, the defendant may be released prior to the expiration of the one (1) year period.

(d) Failure to complete the treatment program or to pay the amount specified by the court for treatment shall constitute contempt of court and the court shall, in addition to any other remedy for contempt, reinstitute all penalties which were previously imposed but suspended or delayed pending the completion of the treatment program.

(3) In addition to any other penalty prescribed by[~~ subsection (4)(c) or (d) of~~] KRS 189A.010, the court shall sentence the person to an alcohol or substance abuse treatment program subject to the following terms and conditions for a third or subsequent offender:

(a) The sentence shall be for a period of one (1) year and the program shall provide an assessment of the defendant's alcohol or other substance abuse problems, which shall be performed at the start of the program. The program may be an inpatient or residential type program.

(b) Each defendant shall pay the cost of the treatment program up to his ability to pay but no more than the actual cost of the program.

(c) A defendant, upon written recommendation to the court by the administrator of the program, may be released from the inpatient or residential program prior to the expiration of one (1) year but shall be retained in the program on an outpatient basis for the remainder of the year period.

(d) Failure to complete the treatment program or to pay the amount specified by the court for treatment shall constitute contempt of court, and the court shall, in addition to any other remedy for contempt, reinstitute all penalties which were previously imposed but suspended or delayed pending completion of the treatment program.

(4) Costs of treatment or education programs which are paid from the service fee established by KRS 189A.050, or from state or federal funds, or any combination thereof, shall be deducted from the amount which the defendant must pay.

(5) For the purposes of this section, treatment means service in an alcohol or substance abuse education or treatment program or facility licensed, regulated, and monitored by the Cabinet for Human Resources for services as required under this section.

(6) The Cabinet for Human Resources shall promulgate administrative regulations for the licensure of education and treatment facilities and programs for offenders receiving education or treatment under this section. The criteria developed by the Cabinet for Human Resources shall include:

(a) Manner of assessment;

(b) Appropriate education and treatment plans; and

(c) Referrals to other treatment providers.

(7) The participating facilities and programs shall be required to abide by these standards and shall report completion to the Transportation Cabinet. Upon request, the facility or program shall report to the courts regarding the progress of offenders being treated pursuant to this section.

(8) Administrative decisions regarding the licensure of education and treatment facilities and programs may be appealed, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 28. KRS 186.560 is amended to read as follows:

(1) The cabinet shall forthwith revoke the license of any operator of a motor vehicle upon receiving record of his conviction of any of the following offenses:

(a) Murder or manslaughter resulting from the operation of a motor vehicle;

(b) Driving a vehicle which is not a motor vehicle while under the influence of alcohol or any other substance which may impair one's driving ability;

(c) Perjury or the making of a false affidavit under KRS 186.400 to 186.640 or any law requiring the registration of motor vehicles or regulating their operation on highways;

(d) Any felony in the commission of which a motor vehicle is used;

(e) Conviction or forfeiture of bail upon three (3) charges of reckless driving within the preceding twelve (12) months;

(f) Conviction of driving a motor vehicle involved in an accident and failing to stop and disclose his identity at the scene of the accident;

(g) Conviction of theft of a motor vehicle or any of its parts, including the conviction of any person under the age of eighteen (18) years;

(h) Failure to have in full force and effect the security required by Subtitle 39 of KRS Chapter 304 upon conviction of a second and each subsequent offense within any five (5) year period;

(i) Conviction for fraudulent use of a driver's license or use of a fraudulent driver's license to purchase or attempt to purchase alcoholic beverages, as defined in KRS 241.010, in violation of KRS 244.085; and

(j) Conviction of operating a motor vehicle, motorcycle, or moped without an operator's license as required by KRS 186.410.

(2) If the person convicted of any offense named in subsection (1) of this section is not the holder of a license, the cabinet shall deny the person so convicted a license for the same period of time as though he had possessed a license which had been revoked. If through an inadvertence the defendant should be issued a license, the cabinet shall forthwith cancel it.

(3) The cabinet upon receiving a record of the conviction of any person upon a charge of operating a motor vehicle while the license of that person is denied or suspended, or revoked, or while his privilege to operate a motor vehicle is withdrawn, shall immediately extend the period of the first denial, suspension, revocation, or withdrawal for an additional like period.

(4) The revocation or denial of a license or the withdrawal of the privilege of operating a motor vehicle for a violation of subsection (1)(a) of this section shall be for a period of not less than five (5) years. Revocations or denials under this section shall not be subject to any lessening of penalties authorized under any other provision of this section or any other statute.

(5) Except as provided in subsections (3), (4), and (8) of this section, in all other cases, the revocation or denial of a license or the withdrawal of the privilege of operating a motor vehicle under this section shall be for a period of six (6) months, except that, if the same person has had one (1) previous conviction of any offense enumerated in subsection (1) of this section, regardless of whether the person's license was revoked because of the previous conviction, the period of the revocation, denial, or withdrawal shall be one (1) year; if the person has had more than one (1) previous conviction of the offenses considered collectively as enumerated in subsection (1) of this section, regardless of whether the person's license was revoked for any previous conviction, the period of revocation, denial, or withdrawal shall be for not less than two (2) years. If the cabinet, upon receipt of the written recommendation of the court in which any person has been convicted of violating[~~ KRS 189.520(1) or~~] KRS 244.085(5) as relates to instances in which a driver's license or fraudulent driver's license was the identification used or attempted to be used in the commission of the offense, who has had no previous conviction of said offense, the person's operator's license shall not be revoked, but the person's operator's license shall be restricted to any terms and conditions the secretary in his discretion may require, provided the person has enrolled in an alcohol or substance abuse education or treatment program as the cabinet shall require. If the person fails to satisfactorily complete the education or treatment program or violates the restrictions on his operator's license, the cabinet shall immediately revoke his operator's license for a period of six (6) months.

(6)[~~ In order to secure the reinstatement of a license to operate a motor vehicle or motorcycle restored following a period of suspension or revocation pursuant to KRS 189A.060, 189A.070, and 189A.080, the person whose license is suspended or revoked shall comply with the fees and other procedures of the Transportation Cabinet with regard to the reinstatement of suspended or revoked licenses.~~

~~(7)~~] The cabinet shall revoke the license of any operator of a motor vehicle upon receiving notification that the person is under age eighteen (18) and has dropped out of school or is academically deficient, as defined in KRS 159.051(1).

(7)[~~(8)~~] A person under the age of eighteen (18) who is convicted of the offenses of subsections (1) or (3) of this section, except for subsection (1)(h) of this section, shall have his license revoked until he reaches the age of eighteen (18) or shall have his license revoked as provided in this section, whichever penalty will result in the longer period of revocation.

Section 29. KRS 189.990 is amended to read as follows:

(1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160,

subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of[~~ KRS 189.520,~~] KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456 and 189.960, shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense. Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars ($20) nor more than two thousand dollars ($2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars ($11) nor more than thirty dollars ($30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.

(2) (a) Any person who violates the weight provisions of KRS 189.221, 189.222, 189.226, 189.230, 189.270, or 189.271 shall be fined two cents (2¢) per pound for each pound of excess load when the excess is two thousand (2,000) pounds or less, three cents (3¢) per pound when the excess exceeds two thousand (2,000) pounds and is three thousand (3,000) pounds or less, five cents (5¢) per pound when the excess exceeds three thousand (3,000) pounds and is four thousand (4,000) pounds or less, seven cents (7¢) per pound when the excess exceeds four thousand (4,000) pounds and is five thousand (5,000) pounds or less, and nine cents (9¢) per pound when the excess exceeds five thousand (5,000) pounds but in no case shall the fine be less than sixty dollars ($60) nor more than five hundred dollars ($500).

(b) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, or 189.490, for which another penalty is not specifically provided, shall be guilty of a misdemeanor and shall be fined not less than ten dollars ($10) nor more than five hundred dollars ($500).

(c) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.

(3) (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars ($15).

(b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars ($35) nor more than two hundred dollars ($200).

(4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.

(5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars ($100) nor more than two hundred dollars ($200) or imprisoned not less than thirty (30) days nor more than sixty (60) days or both. For each subsequent offense occurring within three (3) years, such person shall be fined not less than three hundred dollars ($300) nor more than five hundred dollars ($500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.

(6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars ($15) in excess of the cost of the repair of the road.

(7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars ($20) nor more than fifty dollars ($50).

(8)[~~ Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100).~~

~~(9)~~] Any person who violates KRS 189.530 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.

(9)[~~(10)~~] Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.

(10)[~~(11)~~] Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars ($30) nor more than one hundred dollars ($100) for each offense.

(11)[~~(12)~~] The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and in case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.

(12)[~~(13)~~] Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(13)[~~(14)~~] Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars ($20) nor more than twenty-five dollars ($25).

(14)[~~(15)~~] Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(15)[~~(16)~~] Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars ($100), and upon subsequent convictions, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or imprisoned for thirty (30) days, or both.

(16)[~~(17)~~] (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.

(b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name such vehicle used in the transportation of inflammable liquids or explosives is licensed, such person shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500). Each violation shall constitute a separate offense.

(17)[~~(18)~~] Any person who abandons a vehicle upon the right-of-way of a state highway for seven (7) consecutive days shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.

(18)[~~(19)~~] Every person violating KRS 189.393 shall be punished upon a first conviction by imprisonment for a period of not less than five (5) days nor more than ninety (90) days, or by fine of not less than thirty-five dollars ($35) nor more than five hundred dollars ($500), or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than ten (10) days nor more than six (6) months, or by a fine of not less than sixty dollars ($60) nor more than one thousand dollars ($1,000), or by both such fine and imprisonment.

(19)[~~(20)~~] Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.

(20)[~~(21)~~] A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of such a regulation shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.

(21)[~~(22)~~] Any person who violates KRS 189.860 shall be fined not more than five hundred dollars ($500) or imprisoned for not more than six (6) months, or both.

(22)[~~(23)~~] Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars ($25) nor more than three hundred dollars ($300).

(23)[~~(24)~~] Any person who violates the provisions of KRS 189.125(3) shall be fined fifty dollars ($50).

(24)[~~(25)~~] Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars ($25).

(25)[~~(26)~~] Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.

(26)[~~(27)~~] A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle, may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:

(a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and

(b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.

Section 30. KRS 431.005 is amended to read as follows:

(1) A peace officer may make an arrest:

(a) In obedience to a warrant; or

(b) Without a warrant when a felony is committed in his presence; or

(c) Without a warrant when he has probable cause to believe that the person being arrested has committed a felony; or

(d) Without a warrant when a misdemeanor, as defined in KRS 431.060, has been committed in his presence; or

(e) Without a warrant when a violation of KRS 189.290, 189.393,[~~ 189.520,~~] 189.580, 511.080, or 525.070 has been committed in his presence, except that a violation of KRS 189A.010 or KRS 281A.210 need not be committed in his presence in order to make an arrest without a warrant if the officer has probable cause to believe that the person has violated KRS 189A.010 or KRS 281A.210.

(2) (a) Any peace officer may arrest a person without warrant when the peace officer has probable cause to believe that the person has intentionally or wantonly caused physical injury to a family member or member of an unmarried couple.

(b) For the purposes of this subsection, the term "family member" means a spouse, including a former spouse, a parent, a grandparent, a child, a stepchild, or any other person related by consanguinity or affinity within the second degree.

(c) For the purpose of this subsection, the term "member of an unmarried couple" means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together.

(3) For purposes of subsection (2) of this section, a "peace officer" is:

(a) A full-time sworn officer of the Kentucky State Police, a full-time sworn officer of the Kentucky Horse Park, a commissioned full-time state park ranger, a full-time state water patrol officer, a full-time city policeman, a full-time county policeman, a full-time university safety and security officer appointed pursuant to KRS 164.950 to 164.970, a full-time city-county policeman, a duly elected sheriff, or a full-time paid deputy sheriff; or

(b) A part-time paid law enforcement officer, or a special paid deputy, who has completed a Kentucky law enforcement council approved education and training program referred to in KRS 403.784.

(c) The provisions of this section relating to training shall not apply to a deputy sheriff who is subject to the training requirements specified in KRS 70.263(3).

(4) If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with KRS 431.064 and verifies that the alleged violator has notice of the conditions, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

(5) A private person may make an arrest when a felony has been committed in fact and he has probable cause to believe that the person being arrested has committed it.

Section 31. KRS 431.015 is amended to read as follows:

(1) A peace officer may issue a citation instead of making an arrest for a misdemeanor committed in his presence, if there are reasonable grounds to believe that the person being cited will appear to answer the charge. The citation shall provide that the defendant shall appear within a designated time.

(2) A peace officer may issue a citation instead of making an arrest for a violation committed in his presence but may not make a physical arrest unless there are reasonable grounds to believe that the defendant, if a citation is issued, will not appear at the designated time or unless the offense charged is a violation of KRS 189.290, 189.393,~~[189.520,]~~ 189.580, 511.080, or 525.070 committed in his presence or a violation of KRS 189A.010, not committed in his presence, for which an arrest without a warrant is permitted under KRS 431.005(1)(e).

(3) If the defendant fails to appear in response to the citation, or if there are reasonable grounds to believe that he will not appear, a complaint may be made before a judge and a warrant shall issue.

(4) When a physical arrest is made and a citation is issued in relation to the same offense the officer shall mark on the citation, in the place specified for court appearance date, the word "ARRESTED" in lieu of the date of court appearance.

Section 32. KRS 431.410 is amended to read as follows:

The issuance of a summons rather than an arrest warrant shall be mandatory for all offenses, except for violations of KRS 189.290, 189.393,~~[189.520,]~~ 189.580, 511.080 or 525.070, which are deemed violations as defined in KRS 532.020(4) and traffic infractions for which a fine only can be imposed unless the judicial officer finds that:

(1) The defendant previously has failed to respond to a citation or summons for an offense; or

(2) He has no ties to the community and there is a substantial likelihood that he will refuse to respond to a summons; or

(3) The whereabouts of the defendant are unknown and the issuance of an arrest warrant is necessary in order to subject him to the jurisdiction of the court; or

(4) Where arrest is necessary to prevent imminent bodily harm to the accused or to another; or

(5) For any other good and compelling reason as determined by the judicial officer.

Section 33. KRS 431.451 is amended to read as follows:

(1) Offenses for which citations may be issued and for which the minimum fine may be prepaid are: KRS 149.370, 149.375, 149.385, 149.390, 149.395, 149.400, 149.401, 149.405, 150.170, 150.175, 150.280, 150.290, 150.305, 150.320, 150.340, 150.370, 150.400, 150.410, 150.412, 150.440, 150.445, 150.450, 150.470, 150.660, 186.020, 186.050, 186.070, 186.190, 189.020, 189.030, 189.040, 189.045, 189.050(1)(2), 189.055, 189.060, 189.070, 189.080, 189.090(1)(2)(3), 189.095, 189.100, 189.110, 189.120, 189.130, 189.140, 189.150, 189.160, 189.190, 189.205, 189.231 for first offense only, 189.285, 189.290, 189.300, 189.310, 189.330, 189.338, 189.340, 189.350, 189.375, 189.380,

189.390, 189.430, 189.450, 189.470, 189.480, 189.550, 189.560, 189.570, 189.580(2), 189.820, 189.940(5), and 222.202.

(2) Offenses for which citations may be issued but for which no prepayment of the fine may be made are: KRS 138.665, 149.380, 177.230, 177.300, 186.052, 186.053, 186.170, 186.200, 186.210, 186.410, 186.450, 186.510, 186.540, 186.610, 186.620, 186.630, 187.990(2), 189.050(3)(4), 189.090(4), 189.221, 189.222, 189.223, 189.224, 189.270, 189.370, 189.393, 189.500, 189.505,~~[189.520,]~~ 189.530, 189.565, 189.580, 189.751, 189.920, 189.930, 189.950, 281.615, 281.720, and 281.804.

Section 34. The following KRS sections are repealed:

189.520 Operating vehicle not a motor vehicle while under influence of intoxicants or substance which may impair driving ability prohibited -- Presumptions concerning intoxication.

189A.060 Pretrial suspension of operator's license.

189A.080 Surrender and return of suspended or revoked licenses.

189A.107 License suspension for refusal to take alcohol or substance tests -- Time period.

189A.200 Pretrial suspension of license for refusal to take test, for persons under twenty-one, and for repeat offenders -- Hearing -- Length of suspension.

189A.220 Judicial review of pretrial license suspension for test refusal.

189A.240 Judicial review of pretrial license suspension for repeat offender.

189A.310 Attacking prior convictions -- Procedure -- Standard -- Availability.

189A.400 District Court jurisdiction over issuance of hardship license -- County attorney's review of application and right to object.

189A.410 Purposes for issuance of hardship license -- Prohibition against issuance when alcohol or substance test was refused.

189A.420 Required information for issuance of hardship license.

189A.430 Permit card and window decal for hardship driving privileges -- Requirement to carry permit -- Penalty for failure to display decal.

189A.440 Prohibition against use of vehicle other than for purpose authorized by hardship license -- Penalty -- Penalty for false application statement.

189A.450 Service fee for hardship driving privileges.

189A.460 Transportation Cabinet's responsibility as to administrative regulations and forms relating to hardship licenses.

The Committee Substitute to **HB 327** is as follows:

AN ACT relating to crimes and punishments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 189A.010 is amended to read as follows:

(1) A person shall not operate or be in physical control of a motor vehicle anywhere in this state:

(a) While the alcohol concentration in his blood or breath is ***0.08***~~[0.10]~~ or more based on the definition of alcohol concentration in KRS 189A.005;

(b) While under the influence of alcohol;

(c) While under the influence of any other substance or combination of substances which impairs one's driving ability;

(d) While under the combined influence of alcohol and any other substance which impairs one's driving ability; or

(e) While the alcohol concentration in his blood or breath is 0.02 or more based on the definition of alcohol concentration in KRS 189A.005 if the person is under the age of twenty-one (21).

(2) In any prosecution for a violation of subsection (1)(b) or (d) of this section in which the defendant is charged with having operated or been in physical control of a motor vehicle while under the influence of alcohol, the alcohol concentration in the defendant's blood as determined at the time of making analysis of his blood, or breath shall give rise to the following presumptions:

(a) If there was an alcohol concentration of less than 0.05 based upon the definition of alcohol concentration in KRS 189A.005, it shall be presumed that the defendant was not under the influence of alcohol; and

(b) If there was an alcohol concentration of 0.05 or greater but less than ***0.08***~~[0.10]~~ based upon the definition of alcohol concentration in KRS 189A.005, that fact shall not constitute a presumption that the defendant either was or was not under the influence of alcohol, but that fact may be considered, together with other competent evidence, in determining the guilt or innocence of the defendant.

The provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the questions of whether the defendant was under the influence of alcohol or other substances, in any prosecution for a violation of subsection (1)(b) or (d) of this section.

(3) The fact that any person charged with violation of subsection (1) of this section is legally entitled to use any substance, including alcohol, shall not constitute a defense against any charge of violation of subsection (1) of this section.

(4) Any person who violates the provisions of paragraphs (a), (b), (c) or (d) of subsection (1) of this section shall:

(a) For the first offense within a five (5) year period, be fined not less than two hundred dollars ($200) nor more than five hundred dollars ($500) or be imprisoned in the county jail for not less than forty-eight (48) hours nor more than thirty (30) days or both. Following sentencing, the defendant may apply to the judge for permission to enter a community labor program for not less than forty-eight (48) hours nor more than thirty (30) days in lieu of fine or imprisonment, or both.

(b) For the second offense within a five (5) year period, be fined not less than three hundred fifty dollars ($350) nor more than five hundred dollars ($500) and shall be imprisoned in the county jail for not less than seven (7) days nor more than six (6) months and, in addition to fine and imprisonment, may be sentenced to community labor for not less than ten (10) days nor more than six (6) months.

(c) For a third offense within a five (5) year period, be fined not less than five hundred dollars ($500) nor more than one thousand ($1,000) and shall be imprisoned in the county jail for not less than thirty (30) days nor more than twelve (12) months and may, in addition to fine and imprisonment, be sentenced to community labor for not less than ten (10) days nor more than twelve (12) months.

(d) For a fourth or subsequent offense within a five (5) year period, be guilty of a Class D felony.

(e) For purposes of this subsection, prior offenses shall include all convictions in this state, and any other state, or jurisdiction for operating or being in control of a motor vehicle while under the influence of alcohol or other substances that impair one's driving ability, or any combination of alcohol and such substances, or while having an unlawful alcohol concentration, or driving while intoxicated, but shall not include convictions for violating subsection (1)(e) of this section. A court shall receive as proof of a prior conviction a copy of that conviction, certified by the court ordering the conviction.

(5) Any person who violates the provisions of subsection (1)(e) of this section shall have his driving privilege or operator's license suspended by the court for a period of no less than thirty (30) days but no longer than six (6) months, and the person shall be fined no less than one hundred dollars ($100) and no more than five hundred dollars ($500), or sentenced to twenty (20) hours of community service in lieu of a fine. A person subject to the penalties of this paragraph shall not be subject to the penalties established in subsection (4) of this section or any other penalty established pursuant to KRS Chapter 189A.

(6) If the person is under the age of twenty-one (21) and there was an alcohol concentration of ***0.08***[~~0.10~~] or greater based on the definition of alcohol concentration in KRS 189A.005, the person shall be subject to the penalties established pursuant to subsection (4) of this section.

(7) For a second or third offense within a five (5) year period, the minimum sentence of imprisonment or community labor shall not be suspended, probated, or subject to conditional discharge or other form of early release. For a fourth or subsequent offense under this section, the minimum term of imprisonment shall be one hundred twenty (120) days, and this term shall not be suspended, probated, or subject to conditional discharge or other form of early release. For a second or subsequent offense, at least forty-eight (48) hours of the mandatory sentence shall be served consecutively.

(8) When sentencing persons under subsection (4)(a) of this section at least one (1) of the penalties shall be assessed and that penalty shall not be suspended, probated, or subject to conditional discharge or other form of early release.

(9) In determining the five (5) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.

Section 2. KRS 189A.040 is amended to read as follows:

(1) In addition to any other penalty prescribed by subsection (4)(a) of KRS 189A.010, the court shall sentence the person to attend an alcohol or substance abuse education or treatment program subject to the following terms and conditions for a first offender:

(a) The treatment or education shall be for a period of ninety (90) days and the program shall provide an assessment of the defendant's alcohol or other substance abuse problems, which shall be performed at the start of the program.

(b) Each defendant shall pay the cost of the education or treatment program up to his ability to pay but no more than the actual cost of the treatment.

(c) Upon written report to the court by the administrator of the program that the defendant has completed the program recommended by the administrator based upon the assessment of the defendant, the defendant may be released prior to the expiration of the ninety (90) day period.

(d) Failure to complete the education or treatment program or to pay the amount specified by the court for education or treatment shall constitute contempt, and the court shall, in addition to any other remedy for contempt, reinstitute all penalties which were previously imposed but suspended or delayed pending completion of the education or treatment program.

(2) In addition to any other penalty prescribed by subsection (4)(b) of KRS 189A.010, the court shall sentence the person to an alcohol or substance abuse treatment program subject to the following terms and conditions for a second offender:

(a) The sentence shall be for a period of one (1) year and the program shall provide an assessment of the defendant's alcohol or other substance abuse problems, which shall be performed at the start of the program.

(b) Each defendant shall pay the cost of the treatment program up to his ability to pay but no more than the actual cost of the treatment.

(c) Upon written report to the court by the administrator of the program that the defendant has completed the program recommended by the administrator based upon the assessment of the defendant, the defendant may be released prior to the expiration of the one (1) year period.

(d) Failure to complete the treatment program or to pay the amount specified by the court for treatment shall constitute contempt of court and the court shall, in addition to any other remedy for contempt, reinstitute all penalties which were previously imposed but suspended or delayed pending the completion of the treatment program.

(3) In addition to any other penalty prescribed by subsection (4)(c) or (d) of KRS 189A.010, the court shall sentence the person to an alcohol or substance abuse treatment program subject to the following terms and conditions for a third or subsequent offender:

(a) The sentence shall be for a period of one (1) year and the program shall provide an assessment of the defendant's alcohol or other substance abuse problems, which shall be performed at the start of the program. The program may be an inpatient or residential type program.

(b) Each defendant shall pay the cost of the treatment program up to his ability to pay but no more than the actual cost of the program.

(c) A defendant, upon written recommendation to the court by the administrator of the program, may be released from the inpatient or residential program prior to the expiration of one (1) year but shall be retained in the program on an outpatient basis for the remainder of the year period.

(d) Failure to complete the treatment program or to pay the amount specified by the court for treatment shall constitute contempt of court, and the court shall, in addition to any other remedy for contempt, reinstitute all penalties which were previously imposed but suspended or delayed pending completion of the treatment program.

(4) Costs of treatment or education programs which are paid from the service fee established by KRS 189A.050, or from state or federal funds, or any combination thereof, shall be deducted from the amount which the defendant must pay.

(5) For the purposes of this section, treatment means service in an alcohol or substance abuse education or treatment program or facility licensed, regulated, and monitored by the Cabinet for Human Resources***, Office of the Inspector General,*** for services as required under this section.

(6) The Cabinet for Human Resources***, Office of the Inspector General,*** shall promulgate administrative regulations for the licensure of education and treatment facilities and programs for offenders receiving education or treatment under this section. The criteria developed by the Cabinet for Human Resources***, Office of the Inspector General,*** shall include:

(a) ***Assessments Instruments approved by the National Traffic Safety Board***[~~Manner of assessment~~];

(b) ***Approval of individual***[~~Appropriate~~] education and treatment plans; [~~and~~]

(c) Referrals to other treatment providers***; and***

(d) Approval of individual and program certification.

(7) The Office of Inspector General shall accept individual certification established by the Kentucky Board of Certification of Alcohol and Drug Counselors identified in KRS 309.080. However, the board shall have reciprocity with the:

(a) National Association of Alcohol and Drug Counselors;

(b) International Counselors Reciprocity Consortium;

(c) American Academy of Health Care Providers in the Addiction Disorder; and

(d) National Association of Forensic Counselors / National Association of Addiction Examiners.

(8)[~~(7)~~] The participating facilities and programs shall be required to abide by these standards and shall report completion to the Transportation Cabinet. Upon request, the facility or program shall report to the courts regarding the progress of offenders being treated pursuant to this section.

(9)[~~(8)~~] Administrative decisions regarding the licensure of education and treatment facilities and programs may be appealed, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 3. KRS 189A.050 is amended to read as follows:

(1) All persons convicted of violation of KRS 189A.010 shall be sentenced to pay a service fee of two hundred ***fifty*** dollars ***($250)***[~~($200)~~], which shall be in addition to all other penalties authorized by law.

(2) The fee shall be imposed in all cases but shall be subject to the provisions of KRS 534.020 relating to the method of imposition and KRS 534.060 as to remedies for nonpayment of the fee.

(3) ***The revenue collected from*** the service fee ***imposed by*** [~~shall be utilized to fund enforcement of~~] this ***section shall be distributed as follows:***

(a) Fifteen percent (15%) of the amount collected shall be transferred to the Kentucky State Police Forensic Laboratory for the acquisition, maintenance, testing, and calibration of alcohol concentration testing instruments and the training of laboratory personnel to perform these tasks;[~~chapter and for the support of jails, recordkeeping, treatment and education programs authorized by this chapter, and the Department of Public Advocacy.~~]

(b)[~~(4)~~] Twenty-five percent (25%) of the service fee collected pursuant to this section shall be allocated to the Department of Public Advocacy. These funds shall be placed in a special trust and agency account for the Department of Public Advocacy***;***[~~, and the funds shall not lapse.~~]

(c) One percent (1%) shall be transferred to the Office of the Attorney General for training of prosecutors for the prosecution of persons charged with violations of this chapter and for obtaining expert witnesses in cases involving the prosecution of persons charged with violations of this chapter or any other offense in which driving under the influence is a factor in the commission of the offense charged;

(d) Any amount specified by a specific statute shall be transferred as provided in that statute; and

(e) The service fee shall be utilized to fund enforcement of this chapter and for the support of jails, recordkeeping, treatment and educational programs authorized by this chapter, and the Department of Public Advocacy.

(4) The amounts specified in paragraphs (a), (b), and (c) of subsection (3) of this section shall be placed in trust and agency accounts which shall not lapse.

Section 4. KRS 189A.105 is amended to read as follows:

(1) No person shall be compelled to submit to any test or tests specified in KRS 189A.103, but his refusal to submit to such tests shall result in revocation of his driving privilege as provided in this chapter.

(2) (a) At the time a breath, blood, or urine test is requested, the person shall be informed:

1. That, if the person refuses to submit to such tests, the person's privilege to drive shall be revoked for a period of six (6) months, or more, pursuant to this chapter; and

2. That, if a test is taken and the results indicate that the person has an alcohol concentration of ***0.08***[~~0.10~~] or greater, or, if the person is under the influence of alcohol or a substance that impairs one's driving ability or a combination of alcohol and such substance, the person shall be subject to criminal penalties and the person's driving license shall be revoked for a period of at least ninety (90) days; and

3. That the person has the right to have a test or tests of his blood performed by a person of his choosing described in KRS 189A.103 within a reasonable time of his arrest at the expense of the person arrested.

(b) Nothing in this subsection shall be construed to prohibit a judge of a court of competent jurisdiction from issuing a search warrant or other court order requiring a blood or urine test, or a combination thereof, of a defendant charged with a violation of KRS 189A.010, or other statutory violation arising from the incident, when a person is killed or suffers physical injury, as defined in KRS 500.080, as a result of the incident in which the defendant has been charged.

Section 5. KRS 189A.120 is amended to read as follows:

(1) When an alcohol concentration for a person twenty-one (21) years of age or older in a prosecution for violation of KRS 189A.010 is ***0.08***[~~0.10~~] or above, is 0.02 or above for a person under the age of twenty-one (21), or when the defendant, regardless of age, has refused to take an alcohol concentration or substance test, a prosecuting attorney shall not agree to the amendment of the charge to a lesser offense and shall oppose the amendment of the charge at trial, unless all prosecution witnesses are, and it is expected they will continue to be, unavailable for trial.

(2) A prosecuting attorney shall not amend a blood alcohol concentration, and he shall oppose the amendment of the percentage, unless uncontroverted scientific evidence is presented that the test results were in error. In the cases the

prosecutor shall state his reasons for agreeing with the amendment, and the scientific data upon which the amendment was made shall be made a part of the record in this case.

(3) The record of charges and disposition thereof, including reasons for amending the charges, shall be transmitted by the court to the Justice Cabinet for inclusion in the centralized criminal history record information system under KRS 17.150.

Section 6. KRS 189.520 is amended to read as follows:

(1) No person under the influence of intoxicating beverages or any substance which may impair one's driving ability shall operate a vehicle that is not a motor vehicle anywhere in this state.

(2) No peace officer or State Police officer shall fail to enforce rigidly this section.

(3) In any criminal prosecution for a violation of subsection (1) of this section, wherein the defendant is charged with having operated a vehicle which is not a motor vehicle while under the influence of intoxicating beverages, the alcohol concentration, as defined in KRS 189A.005, in the defendant's blood as determined at the time of making an analysis of his blood, urine, or breath, shall give rise to the following presumptions:

(a) If there was an alcohol concentration of less than 0.05, it shall be presumed that the defendant was not under the influence of alcohol;

(b) If there was an alcohol concentration of 0.05 or greater but less than ***0.08***[~~0.10~~], such fact shall not constitute a presumption that the defendant either was or was not under the influence of alcohol, but such fact may be considered, together with other competent evidence, in determining the guilt or innocence of the defendant;

(c) If there was an alcohol concentration of ***0.08***[~~0.10~~] or more, it shall be presumed that the defendant was under the influence of alcohol.

(4) The provisions of subsection (3) of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether the defendant was under the influence of intoxicating beverages.

SECTION 7. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

(1) Whenever a person has been charged with a violation of subsection (1) of Section 1 of this Act or KRS 281A.210, the charging officer shall take possession of any operator's license issued by the Commonwealth of Kentucky that is held by the person and, on behalf of the court, shall issue a temporary permit which is valid for twenty-one (21) days or the first court appearance, whichever is later, after its date of issuance, except that no permit shall be issued if the charging officer determines and indicates on the face of his uniform citation that:

(a) The person is charged with a second or subsequent offense; or

(b) The person has refused the test under KRS 189A.103.

(2) The temporary permit shall inform the person that upon its expiration that:

(a) The person is prohibited by order of the court from operating a motor vehicle in the Commonwealth of Kentucky, or under any operator's license issued by the Commonwealth of Kentucky;

(b) A court appearance will take place within twenty-one (21) days at which hearing the court will address issues of suspension or return of the person's operator's license and driving privileges; and

(c) The person shall present proof of basic motor vehicle reparation insurance coverage to the court at that appearance.

(3) When no temporary permit is issued the person shall be given notice that he is prohibited by order of the court from operating a motor vehicle in the Commonwealth of Kentucky, or under any operator's license issued by the Commonwealth of Kentucky, that a court appearance will take place within twenty-one (21) days at which time the court will address issues of suspension or return of the person's operator's license and driving privileges, and that the person shall present proof of basic motor vehicle reparation insurance coverage to the court at that appearance.

(4) The officer shall submit any seized operator's license along with a copy of any temporary permit issued or notice given to the District Court clerk along with the uniform citation form.

(5) At arraignment, or as soon as such relevant information becomes available, the court shall restore the motor vehicle operator's license and driving privileges of any person who:

(a) Provides proof that the person is a basic reparation insured under KRS 304.39-020; and

(b) Is not subject to suspension, revocation or disqualification under Section 1 of this Act or KRS 189A.060, 189A.070, 189A.200, or 281A.190.

(6) Any person whose privilege to operate a motor vehicle in the Commonwealth of Kentucky or under any operator's license issued by the Commonwealth is suspended or prohibited by the court pursuant to this chapter shall be given credit toward his suspension for the period of time prior to final disposition for which his license or operating privilege was suspended or prohibited.

The Committee on Labor and Industry reported **HB 487** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 487, AN ACT relating to the construction industry.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Advisory Council on Contractor Certification is hereby created to advise the commissioner of the Department of Housing, Buildings and Construction regarding the proper, effective, and efficient administration of the contractor certification program, which is created by Sections 1 to 6 of this Act to protect the consumers' best interests and provide a fair economic environment for the legitimate contractor community in this Commonwealth.

(2) The council shall be attached to the Department of Housing, Buildings and Construction for administrative purposes. Its membership shall include:

- *(a) The commissioner of the Department of Housing, Buildings and Construction, ex officio, or the commissioner's designee;*
- *(b) The director of the Division of Consumer Protection in the Attorney General's Office, ex officio, or the director's designee;*
- *(c) One (1) representative of Western Kentucky Construction Association, appointed by the Governor;*
- *(d) One (1) representative of the Associated General Contractors of Kentucky, appointed by the Governor;*
- *(e) One (1) representative of the Kentucky Homebuilders' Association, appointed by the Governor;*
- *(f) One (1) representative of the Kentucky State Building and Construction Trades Council, appointed by the Governor;*
- *(g) One (1) representative of the Kentucky State AFL-CIO, appointed by the Governor; and*
- *(h) Two (2) representatives of the general public who have no pecuniary interest in the construction industry, appointed by the Governor.*

(3) Terms of the ex officio members shall run concurrently with their terms in office. Initial terms for the remaining members shall be as follows: two (2) members for terms of four (4) years, two (2) members for terms of three (3) years, two (2) members for terms of two (2) years, and one (1) member for a term of one (1) year. All appointments shall expire on June 30 of the last year of the terms. Thereafter, these members shall be appointed for terms of three (3) years. Members shall serve until their successors are appointed.

(4) The council shall select a chairman at its first meeting with a quorum present. The chairman shall serve for at least one (1) year, but for no more than three (3) years in succession, subject to an annual vote. Four (4) members shall constitute a quorum for the conduct of business. In the first year, the council shall meet monthly, in a location designated by the commissioner. The commissioner shall provide secretarial and administrative support to the council as necessary and designate the date, time, and place for the initial meeting. After the first year, meetings shall be held at least quarterly, upon the call of the chairman or a majority of the council.

(5) Each voting member of the council shall be reimbursed for all necessary expenses incurred in the performance of official duties from funds derived from the contractor certification program.

(6) Vacancies in the membership of the council for any cause shall be filled by appointment by the Governor for the balance of the unexpired term.

SECTION 2. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) The commissioner shall develop and administer a program to certify contractors engaged in the construction industry and promulgate administrative regulations pursuant to KRS Chapter 13A to implement the program. The commissioner, as official certifier, may employ assistants and procure records, supplies, and equipment necessary to carry out the provisions of Sections 1 to 6 of this Act. A reasonable fee, approved by the council, may be collected from applicants for certification to recover the costs of this service and shall be placed in a trust and agency account established exclusively for this purpose.

(2) The completed application and accompanying fee, on the form prescribed by the commissioner, shall be notarized either locally, or by an official of the department for those applicants who present themselves in person. A wallet card declaring the applicant to be in compliance with the provisions of Sections 1 to 6 of this Act, and giving the applicant's business address and telephone number, shall be issued and renewed annually to those applicants seeking to be certified.

(3) The commissioner shall recognize any existing builder or contractor registration, license, or certification program in place on July 15, 1997, as equivalent to meeting the requirements of Sections 1 to 6 of this Act and shall allow the administration of these programs on a self-supporting basis by the sponsoring groups. Recognized registration,

license, or certification programs shall, on an annual basis, provide the department with a listing of all persons currently registered, their addresses, and certification that all registrants in the group have complied with the standards of proof promulgated by the commissioner under subsection (6)(a) of this section.

(4) Certification under Sections 1 to 6 of this Act is required of any person who performs construction work as classified and described in Division C of the Standard Industrial Codes issued by the federal Office of Management and Budget and any amendments thereto, under oral or written contract for another. For the purpose of this section, "person" means the individual or entity legally bound under contract to perform the work. If the contracting party employs subcontractors to perform all or part of the work, the subcontractors also shall be considered, for purposes of this section, as persons "legally bound" to do the work in question and required to be certified under Sections 1 to 6 of this Act. The certification program shall be designed to accommodate either individual or business applicants.

(5) Sections 1 to 6 of this Act do not apply to:

(a) Employees of the Commonwealth and its political subdivisions or employees of the federal government, when engaged in construction work as a part of their professional duties; or

(b) Any person doing new construction or remodeling himself or herself or by contract with a certified contractor on the person's own legal residence; or

(c) Construction or improvements on other real property owned by a person if these are not made with the intention of sale or lease within one (1) year after completion.

(6) The administrative regulations promulgated by the commissioner shall include, but not be limited to:

(a) A description of the application process that includes a listing of proofs sufficient to verify current compliance with KRS Chapters 341 and 342 and all applicable state laws pertaining to tax obligations either individual or corporate; a current certificate of insurance issued by an insurance carrier licensed and approved by the Kentucky Department of Insurance that covers general liability and property damage in a combined single limit policy of at least two hundred and fifty thousand dollars ($250,000); and the process by which an applicant may satisfactorily resolve any outstanding violation of the provisions of KRS Chapters 337 and 338, either reported by the applicant or known to the examining official. Any unresolved violation of these laws shall result in denial of certification until the matter is settled to the satisfaction of the enforcing authority;

(b) A description of the application process for those self-employed persons who hold themselves out as "independent contractors" under subsection (1) of Section 3 of this Act, noting any appropriate exemptions to the requirements in paragraph (a) of this subsection, as well as any proofs unique to this class;

(c) A description of the conditions under which the certification of a contractor may be denied, suspended, or revoked and the steps necessary for reinstatement;

(d) A schedule of fees for initial application, renewal, and reinstatement of certification; and

(e) The manner in which complaints against contractors will be handled by the department.

(7) In furtherance of subsection (1) of this section, and upon petition by the commissioner, the Governor and secretary of the Governor's Cabinet shall direct any other state agency or instrumentality of state government to cooperate fully in the development of an effective certification program, which shall include, but not be limited to, interagency meetings for the purpose of coordinating enforcement activities and avoiding duplication. The commissioner is directed to include in these collaborative efforts at least the following state agencies: the Labor Cabinet; the Revenue Cabinet; the Transportation Cabinet; the Division of Unemployment Insurance with the Department for Employment Services, Cabinet for Workforce Development; the Department of Facilities Management, Finance and Administration Cabinet; and the Division of Consumer Protection in the Office of the Attorney General.

(8) The commissioner shall plan and implement a computerized database for enforcement purposes, designed primarily to identify repeat and chronic offenders.

(9) Upon the appeal of a person whose certification has been denied, suspended, or revoked, or who has been assessed a fine under subsection (1) of Section 4 of this Act, the commissioner shall conduct an administrative hearing in accordance with KRS Chapter 13B.

SECTION 3. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) To achieve uniformity in administration and enforcement of KRS Chapters 337, 338, 341, 342, and this chapter, when the nature of an "independent contractor" is at issue in administrative and enforcement proceedings, the following definition shall be utilized: an "independent contractor" means a person who, in exercising self-employment, contracts to do certain work according to his or her own methods, and is subject to the control of the employing party only in regard to the final product or result of the work.

(2) The Kentucky Revenue Cabinet and the commissioner shall enter into exchange of information agreements to identify the need to deny any initial application for certification or the need to revoke, suspend, or deny renewal or

reinstatement of any contractor's certification due to unresolved state tax delinquencies.

(3) A person licensed under KRS Chapters 198B.560, 198B.650 to 198B.689, 227.490, 236.210, or 318.030, or certified under 815 KAR 30:060, to practice the skilled trade or specialized profession described therein, shall also be certified under subsection (4) of Section 2 of this Act.

SECTION 4. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) Any person who uses false evidence or misrepresentation in an application for certification under Sections 1 to 6 of this Act, or who refuses to be certified when required by law to do so, shall be assessed an administrative fine in the sum of five hundred dollars ($500) by the commissioner. The falsified application shall be considered void in its entirety and the applicant shall be required to furnish new proofs and may reapply after a waiting period of thirty (30) days from the date the fine is paid. If the commissioner finds that the applicant has proceeded to work prior to the issuance of his certification, the commissioner shall seek a permanent injunction to halt any work in progress and any other construction activity until the applicant has complied with Sections 1 to 6 of this Act. An additional administrative fine of fifteen hundred dollars ($1,500) or twice the amount earned on the work performed prior to issuance of certification, whichever is greater, shall be assessed. Each day in violation following the effective date of the injunction shall be a separate offense.

(2) Any person subject to Sections 1 to 6 of this Act who refuses to properly complete his or her certification, who fails to renew his or her certification in a timely manner for five (5) successive years while still engaged in the construction industry, or who has been cited and fined under subsection (1) of this section on at least ten (10) separate occasions, shall be deemed a persistent offender and, following an administrative hearing and any appeals, be prohibited from engaging in construction work for his or her livelihood for a period of five (5) consecutive years from the date of the last fine. A person deemed a persistent offender under this subsection is also prohibited from receiving any monetary benefit from the activities of construction firms in which the person has a financial interest during this period.

(3) Any fines collected pursuant to this section shall be deposited in the department's trust and agency account for administration of the contractor certification program.

SECTION 5. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) Funds for the initial administration of Sections 1 to 6 of this Act during fiscal year 1998-99, to the extent fee income is insufficient to meet actual cost as determined by the chief budget officer for the department, shall be borrowed from surplus trust and agency accounts of the department and repaid without interest over no more than the succeeding two (2) fiscal years.

(2) (a) Contractors in existence on the effective date of this Act shall comply with Sections 1 to 6 of this Act no later than December 31, 1999.

(b) Certifications, or certifications for renewal, issued under Sections 1 to 6 of this Act shall be valid for one (1) year from the date of issuance.

SECTION 6. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

Sections 1 to 6 of this Act may be cited as the Contractor Certification Act.

Section 7. KRS 198B.060 is amended to read as follows:

(1) Each local government in the State of Kentucky shall employ a building official or inspector and other code enforcement personnel as necessary, or shall contract for inspection and code enforcement services in accordance with subsections (8) and (11) of this section to enforce the Uniform State Building Code within the boundaries of its jurisdiction, and shall neither adopt nor enforce any other ordinance regulating buildings which conflicts with the Uniform State Building Code, except that a building code adopted by a local government prior to March 28, 1978, may continue in effect until the time the Uniform State Building Code becomes mandatory within that local government jurisdiction.

(2) Local governments shall be responsible for the examination and approval or disapproval of plans and specifications for churches having a capacity of four hundred (400) or less persons, and six thousand (6,000) or less square feet of total floor area, and buildings of no more than three (3) stories in height, exclusive of attic and basement, which do not contain more than twenty thousand (20,000) square feet of floor area, and are not intended for educational, institutional, or high hazard occupancy; or assembly, business, or industrial occupancy in excess of one hundred (100) persons, except churches as stated in this subsection, or for use as a frozen food locker plant as defined in KRS 221.010. Local governments shall be responsible for the issuance and revocation of building permits, licenses, certificates, and similar documents which cover activities within their area of responsibility, and the inspection of all buildings pursuant to the provisions of this chapter and the Uniform State Building Code. Each local government issuing a building or demolition permit or an initial certificate of occupancy on a new structure shall send a copy of the permit or certificate to the commissioner for his use in maintaining an accurate housing inventory for Kentucky.

(3) Urban-county governments may determine service districts within their boundaries within which farm dwellings and other farm buildings, not used in the business of retail trade or as a place of regular employment for ten (10) or more

people, shall be exempt from the requirements of the Uniform State Building Code. The determination may be reviewed and altered by the board.

(4) The department shall be responsible for the examination and approval or disapproval of plans and specifications for all buildings which are not the responsibility of local governments. The department may issue and revoke permits, licenses, certificates, and similar documents within its area of responsibility, and shall have concurrent jurisdiction with local governments for the inspection of all buildings pursuant to the provisions of this chapter and the Uniform State Building Code. If the commissioner determines that the local jurisdiction is not adequately performing any portion of its program, he may recommend to the board that the department preempt that portion of a local program. The commissioner shall explain his reasons for preemption in writing and provide a copy to the board and the local jurisdiction. The local jurisdiction may appeal the recommended preemption directly to the board, and the board shall review the appeal according to the procedures found in subsections (8) to (10) of KRS 198B.070. No preemption by the department shall take place until the final decision of the board. If the department preempts any portion of a local program, it shall collect the fees applicable to that portion of the program.

(5) Any local government may petition the commissioner requesting that additional plan review functions be allocated to that local government. The petition shall include evidence of the local government's capability to perform additional plan review functions. The commissioner, after review of the petition and supporting evidence, may grant or deny to the local government any part of a request for additional responsibility. If the commissioner denies any part of a petition, he shall explain his reasons for denial in writing, and provide a copy to the board and the local government. A local government may appeal the denial directly to the board, and the board shall review the appeal according to the procedures found in subsections (8) to (10) of KRS 198B.070. If the local government is granted additional responsibility by the commissioner or the board, the department shall hold concurrent jurisdiction over the additional responsibility, but the local government shall collect any fees for functions it performs pursuant to the additional responsibility.

(6) Any local government may also petition the commissioner requesting that plans and specifications inspection, building inspection, and approval responsibility relating to the application of local plumbing permits for local installations be allocated to the local government. The petition shall not be granted unless the local government has demonstrated to the commissioner that it can perform these functions in accordance with the provisions of KRS 198B.050 to 198B.090.

(7) The commissioner shall expedite the review of plans and specifications by assigning responsibilities and coordinating review activities among the department's various functional offices so as to prevent unnecessary duplication in the review of plans and specifications.

(8) Upon the effective date of the Uniform State Building Code, no building shall be constructed in this state until a local building official and an official representing the department, if the department has jurisdiction, issue a permit for the construction.

(9) The local building official or the representative of the department shall issue a permit if the proposed building satisfies the requirements of the Uniform State Building Code and if the party desiring to construct the building has complied with all other legal requirements concerning the location and construction of the building. The applicant for a building permit, by the act of applying for the permit, shall be deemed to have consented to inspection, by the local government or the department, of the building during construction and upon the completion of construction for the purpose of determining that the building is constructed in compliance with the Uniform State Building Code.

(10) (a) No permit for building, construction, reconstruction, renovation, demolition, or maintenance or for any activity related to building, construction, reconstruction, renovation, demolition, or maintenance shall be issued by any building department or by any political subdivision of the Commonwealth of Kentucky to any person seeking the permit unless the person ***or the person's representative,*** shall assure, by ***the showing of a current contractor's certification card or a membership card in a builders' association indicating the applicant is a member in good standing, to the examining official***~~[affidavit]~~, that all contractors***, independent contractors,*** and subcontractors employed, or that will be employed, on activity covered by the permit ***are certified as contractors with the department***~~[shall be in compliance with Kentucky requirements for workers' compensation insurance according to KRS Chapter 342 and unemployment insurance according to KRS Chapter 341]~~. ***The examining official, at the official's discretion, may require sufficient documentation of the person's identity or bona fide relationship to the applicant, if unknown to the examiner. A person who applies for a permit to do new construction himself or herself on his or her own legal residence or to do construction or improvements on other real property owned by the person, if these are not made with the intention of sale or lease within one (1) year after completion is not required to be certified as a contractor.***

(b) Any person who fails to comply with the assurances required under paragraph (a) of this subsection upon such finding by a court of competent jurisdiction, shall be fined an amount not to exceed ***ten***~~[four]~~ thousand dollars ***($10,000)***~~[($4,000)]~~ or an amount equal to the sum of all uninsured and unsatisfied claims brought under the provisions of KRS Chapter 342 and unemployment insurance claims for which no wages were reported as required by KRS Chapter 341, whichever is greater. ***The court may grant an injunction barring any violator from continuing work until any fine or compliance issue is resolved to the satisfaction of the court.***

(c) The penalty imposed in paragraph (b) of this subsection shall be enforced by ***officers, agents, or inspectors of the department; and by city, county, and Commonwealth's attorneys and the Attorney General, within their respective jurisdictions***[~~the county attorney for the county in which the violation occurred~~].

(11) After a certified electrical inspector has been employed, contracted for or with, or otherwise provided for by the local government or the department, no utility shall initiate permanent electrical service to any new building until a final certificate of approval has been issued by a certified electrical inspector. Unless the department shall notify the utility in writing as to which buildings are subject to departmental approval, it shall be presumed by the utility that the building is subject to the jurisdiction of the local government. However, nothing in this section shall prohibit the supply or use of necessary electrical services during the construction and testing process.

(12) This section shall apply to industrialized building systems, but destructive disassembly of industrialized building systems which carry a seal of approval pursuant to a manufactured building law in the state in which they were manufactured, which seal of approval is accepted by the Board of Housing, Buildings and Construction, shall not be performed in order to conduct the tests or inspections.

(13) No building on which construction was begun nor any industrialized building system on which site preparation and assembly were begun after the Uniform State Building Code became effective shall be occupied until the local building official or a representative of the department issues a certificate of occupancy certifying that the building was constructed in conformance with the standards of the Uniform State Building Code, or assembled or installed in conformance with applicable instructions.

(14) A local government may associate with other local governments, and may seek the technical assistance of other agencies or area development districts in order to provide for the local enforcement of the Uniform State Building Code.

(15) Local governments or associations of local governments may contract with a person, firm, or company to perform the plans and specifications inspection or building inspection functions required of the local government by the provisions of this section if:

(a) The person performing the plans and specifications inspection is certified by the department as having successfully completed the test requirements provided by KRS 198B.090 to practice as a certified plans and specifications inspector;

(b) The person performing the building inspection is certified by the department as having successfully completed the test requirements provided in KRS 198B.090 to practice as a certified building inspector;

(c) The person, firm, or company does not have a conflict of interest between its plan review or inspection functions and any other employment or business activities;

(d) The person performing the plumbing inspection is certified by the department as having successfully completed the requirements provided in KRS 318.140 to practice as a certified plumbing inspector; and

(e) The person, firm, or company does not have a conflict of interest between its plan review or inspection functions and any other employment or business activities.

(16) If the department has reason to believe that an inspector is not enforcing, or is improperly enforcing, the provisions of the Kentucky building codes, it shall conduct an informal hearing to review the inspector's procedures and return in written form the required corrections resulting from the hearing to the inspector, or may take action to suspend or revoke the inspector's certificate.

(17) If, after written notification from the department to the inspector of any corrections required, the inspector fails to comply within sixty (60) days, the department shall suspend the inspector's certification until the inspector complies. Any action to suspend or revoke an inspector's certificate may be appealed to the board, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

(18) Each local government and the department may establish a schedule of fees for the functions performed under the provisions of this chapter. The fees shall be designed to fully cover the cost of the service performed but shall not exceed the cost of the service performed. Fees payable to the department shall be paid into the State Treasury and credited to a trust and agency fund to be used by the department in carrying out the provisions of this chapter. No part of this fund shall revert to the general fund of the Commonwealth.

The Committee on Banking and Insurance reported **HB 401, HB 414,** with Committee Amendment attached thereto, **HB 457,** with Committee Substitute attached thereto, **HB 491, HB 493,** with Committee Substitute attached thereto, and **HB 515,** with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 401, AN ACT relating to insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.2-400 is amended to read as follows:

(1) There is created in the State Treasury a trust fund designated the "Insurance Regulatory Trust Fund" to which shall be credited all payments received under KRS 304.4-010.

(2) The moneys so received and deposited in the insurance regulatory trust fund shall be appropriated for use only by the department to defray the expenses of the department in discharge of its administrative and regulatory powers and duties as prescribed by law subject to the applicable laws relating to the appropriation of state funds and to the deposit and expenditure of state moneys. The department shall be responsible for the proper expenditure of these moneys as provided by law.

[~~(3) Any cash balance in excess of two million dollars ($2,000,000) in the insurance regulatory trust fund after all current fiscal year expenditures are met shall lapse to the general fund.~~]

Section 2. KRS 304.2-410 is amended to read as follows:

(1) It is the responsibility of the department, which is charged with the administration of the insurance regulatory trust fund, to make such moneys available for investment as fully as is consistent with the cash requirements of the fund and to authorize investment of such moneys by the agency or agencies of the Commonwealth of Kentucky authorized to make investments and reinvestments for and on behalf of any agency of the Commonwealth of Kentucky.

(2) Monthly, and more often as circumstances require, the department shall notify the investing authority of the amount available for investment, and the moneys shall be invested by the investing authority according to the laws relating to state investments. Such notification shall include the name and number of the fund for which the investments are to be made and the life of the investment if the principal sum is to be required for meeting obligations.

[~~(3) All earnings derived from such investments shall be paid into the general fund.~~]

Section 3. KRS 304.2-440 is amended to read as follows:

(1) As used in this section, "insurer" means assessment or cooperative insurers, insurers, fraternal benefit societies, nonprofit hospital, medical-surgical, dental, and health service corporations, health maintenance organizations, and prepaid dental plan organizations.

(2) If the commissioner finds that there are insufficient funds for operations of the department, he may make an assessment on all insurers not to exceed .000235 of net direct written premium from Kentucky as reported in insurers' annual statements for the immediately preceding calendar year. In making each assessment, the commissioner may establish a minimum assessment. Assessments made pursuant to this section shall be in addition to all other taxes, assessments, and fees.

(3) Overdue payment of any assessments shall bear interest at the tax interest rate as set forth in KRS 131.010(6) from the date due until paid. Any unpaid assessment may be recovered in an action brought thereon in the name of the department in the Franklin Circuit Court or in any other court of appropriate jurisdiction. Such interest penalty is separate from other penalties applicable to violations of KRS Chapter 299 and this chapter and such an action is separate from any other means of collecting an assessment under KRS Chapter 299 or this chapter.

(4) All funds derived from assessments made pursuant to this section shall be deposited in the insurance regulatory trust fund. However, funds derived from assessments made pursuant to this section shall not lapse to the general fund[~~ pursuant to KRS 304.2-400(3) or any other law~~], but shall at all times be available to defray expenses of the department in discharge of its administrative and regulatory powers.

Section 4. KRS 304.9-440 is amended to read as follows:

(1) The commissioner may suspend or may impose conditions upon the continuance of a license for not more than twelve (12) months, or may revoke or refuse to continue any license issued under this subtitle or any surplus lines broker license if, after notice to the licensee and to the insurer represented (as to an agent) or to the employer (as to a solicitor) and a hearing, the commissioner finds that as to the licensee any one (1) or more of the following causes exist:

- (a) Any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner.
- (b) Willful violation of or noncompliance with any applicable provision of this code, or willful violation of any lawful rule, regulation, or order of the commissioner.
- (c) Obtaining or attempting to obtain any such license through misrepresentation or fraud.
- (d) Misappropriation or conversion to his own use, or illegal withholding, of moneys belonging to policyholders, insurers, beneficiaries, or others and received in the conduct of business under the license.
- (e) Willful material misrepresentation of the terms of any actual or proposed insurance contract.
- (f) Conviction, by final judgment, of a ***crime involving dishonesty, breach of trust, or***[~~felony involving~~] moral turpitude.
- (g) In the conduct of his affairs under the license the licensee has used fraudulent, coercive, or dishonest practices, or has shown himself to be incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public.

(h) Surrendering or otherwise terminating any other license issued by this state or any other jurisdiction under threat of disciplinary action, denial or refusal of the issuance of or renewal of any other license issued by this state or any other jurisdiction, or revocation or suspension of any other license held by the licensee issued by this state or any other jurisdiction.

(2) The license of a firm or corporation may be suspended, revoked, or refused:

(a) For any of such causes as relate to an individual designated in or registered as to the license to exercise its powers; or

(b) If an individual licensee's violation was known or should have been known by one (1) or more of the partners, officers, or managers acting on behalf of the firm or corporation and such violation was not reported to the Department of Insurance nor corrective action taken thereon.

SECTION 5. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Each person licensed under this subtitle shall notify the commissioner in writing immediately if his license to conduct securities, real estate, auctioneer, investment, financial, or financial planning business of any kind in this state or elsewhere is surrendered or terminated under threat of disciplinary action, refused, suspended, revoked, or renewal of continuance denied.

Section 6. KRS 304.47-010 is amended to read as follows:

As used in Subtitle 47 of this chapter, unless the context requires otherwise:

(1) "Insurer" means any person, entity, or organization, including fraternal benefit societies as defined in Subtitle 29 of this chapter, nonprofit hospital, medical-surgical, dental, and health service corporation as defined in Subtitle 32 of this chapter, health maintenance organization as defined in Subtitle 38 of this chapter, prepaid dental plan organization as defined in Subtitle 43 of this chapter, or unauthorized insurer as defined in Subtitle 11 of this chapter, subject to regulation by or registration with the Department of Insurance under this chapter, and any "carrier," "self-insurer," or "insurance carrier" as defined by KRS Chapter 342.

(2) "Insurance policy" or "policy" means any individual or group policy, including those defined by KRS Chapter 342, certificate, or contract of an insurer as defined in subsection (1) of this section affecting the rights of any Kentucky resident or bearing a reasonable relation to Kentucky regardless of whether delivered or issued for delivery in Kentucky.

(3) "Insured" means any person who is a named insured or beneficiary under a policy as defined in subsection (2) of this section or a person who is not a named insured or beneficiary under a policy due to the fraudulent action of another, but who in good faith believes himself to be an insured or beneficiary.

(4) "Law enforcement agency" means any federal, state, county, or consolidated police or law enforcement department and any prosecuting official of the federal, state, county, local, or consolidated government.

(5) "Statement" includes, but is not limited to, any notice, statement, proof of loss, bill of lading, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or physician record or report, X-ray, test result, or other evidence of loss, injury, or expense.

(6) "Division" means the Division of Insurance Fraud Investigation of the Kentucky Department of Insurance, its employees, or authorized representatives.

Section 7. KRS 304.47-020 is amended to read as follows:

(1) For the purposes of this subtitle, a person or entity commits a "fraudulent insurance act" if he:

(a) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to an insurer, Board of Claims, Special Fund, or any agent thereof, any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy or from a "self-insurer" as defined by KRS Chapter 342, knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;

(b) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to an insurer, Board of Claims, or any agent thereof, any written or oral statement as part of, or in support of, an application for an insurance policy, knowing that this statement contains any false, incomplete, or misleading information concerning any fact or thing material to the application;

(c) Assists, abets, solicits, or conspires with another to prepare or make any written or oral statement that is intended to be presented to any insurer, person, entity, or organization in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy or from a "self-insurer" as defined by KRS Chapter 342, knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the claim;

(d) Knowingly and willfully transacts any contract, agreement, or instrument which violates this title;

(e) Receives money for the purpose of purchasing insurance and converts the money to the person's own benefit;

(f) Issues ***or knowingly presents*** fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;

(g) Makes any false or fraudulent representation as to the death or disability of a policy or certificate holder in any written statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer;

(h) Engages in unauthorized insurance, as defined in KRS 304.11-030; or

(i) Knowingly and with intent to defraud or deceive, receives temporary total disability benefits while being employed in work as defined in KRS 342.0011.

(2) (a) Except as provided in paragraph (b) of this subsection, a person convicted of a violation of subsection (1) of this section shall be guilty of a misdemeanor where the aggregate of the claim, benefit, or money referred to in subsection (1) of this section is less than or equal to three hundred dollars ($300), and shall be punished by:

1. Imprisonment for not more than one (1) year;

2. A fine, per occurrence, of not more than one thousand dollars ($1,000) per individual nor five thousand dollars ($5,000) per corporation or twice the amount of gain received as a result of the violation, whichever is greater; or

3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph;

(b) Where the claim, benefit, or money referred to in subsection (1) of this section exceeds an aggregate of three hundred dollars ($300), a person convicted of a violation of subsection (1) of this section shall be guilty of a felony and shall be punished by:

1. Imprisonment for not less than one (1) nor more than five (5) years;

2. A fine, per occurrence, of not more than ten thousand dollars ($10,000) per individual nor one hundred thousand dollars ($100,000) per corporation or twice the amount of gain received as a result of the violation, whichever is greater; or

3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph.

(c) In addition to imprisonment, the assessment of a fine, or both, a person convicted of a violation of paragraph (a) or (b) of subsection (2) of this section may be ordered to make restitution to any victim who suffered a monetary loss under the person's actions which resulted in the adjudication of guilt. The amount of restitution shall equal the monetary value of the actual loss or twice the amount of gain received as a result of the violation, whichever is greater.

(3) Any insurer damaged as a result of a violation of any provision of this section when there has been a criminal adjudication of guilt shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses, including attorneys' fees, at the trial and appellate courts.

(4) The provisions of this section shall also apply to any agent, unauthorized insurer or its agents or representatives, or surplus lines carrier who, with intent, injures, defrauds, or deceives any claimant with regard to any claim. The claimant shall have the right to recover the damages provided in subsection (3) of this section.

Section 8. KRS 304.47-040 is amended to read as follows:

(1) There is created within the Department of Insurance ***a Division of***~~[an]~~ Insurance Fraud ***Investigation***~~[Unit]~~, which shall include a Workers' Compensation Branch.

(2) (a) The commissioner shall appoint qualified persons to serve as special investigators for the ***Division of*** Insurance Fraud ***Investigation***~~[Unit]~~ who shall have general police powers including the power to arrest, and they shall possess all of the common law and statutory powers, privileges, and immunities of sheriffs, and their jurisdiction shall be coextensive with the state.

(b) The commissioner shall appoint appropriate staff for the Workers' Compensation Branch which shall include, at a minimum, three (3) special investigators, one (1) attorney, and one (1) administrative assistant. The appointments authorized by this paragraph shall be in addition to the staff employed by the ***division***~~[Insurance Fraud Unit]~~ as of December 12, 1996.

(3) The special investigator may:

(a) Administer oaths and affirmations;

(b) Order the attendance of witnesses or proffering of information and documentation;

(c) Collect evidence; and

(d) Make arrests for criminal violations established as a result of its investigations. The general laws applicable to arrests by sheriffs of the Commonwealth shall also be applicable to special investigators, who may:

1. Execute arrest warrants and search warrants for the criminal violations revealed as a result of their investigations;

2. Serve subpoenas issued for the examination, investigation, and trial of all offenses determined by their investigations; and

3. Arrest upon probable cause without warrant any person found in the act of violating any of the provisions of applicable laws.

(4) The ***division***[~~unit~~] may implement its powers if, based upon its own inquiries or as a result of information received, it has reason to believe that a person has engaged in, is engaging in, or is about to engage in a fraudulent insurance act.

(5) If the information the ***division***[~~unit~~] seeks to obtain is located outside the state, the person so requested may make it available to the ***division***[~~unit~~] or its representative to examine at the place where it is located. The ***division***[~~unit~~] may designate representatives, including officials of the state in which the matter is located, to inspect the information on the ***division's***[~~unit's~~] behalf, and it may respond to similar requests from officials of other states.

(6) It shall be unlawful for any person to resist an arrest authorized by this subtitle or in any manner to interfere, either by abetting or assisting this resistance or otherwise interfering, with special investigators employed by the commissioner under this subtitle in the duties imposed upon them by law, and shall be punishable as provided in KRS 520.090.

Section 9. KRS 304.47-050 is amended to read as follows:

(1) Any person, other than an insurer, agent, or other person licensed under this chapter, or an employee thereof, having knowledge or believing that a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or misdemeanor under the subtitle is being or has been committed may send to the ***Division of*** Insurance Fraud ***Investigation***[~~Unit~~] a report of information pertinent to this knowledge of or belief and any additional relevant information the commissioner may request.

(2) The following individuals having knowledge or believing that a fraudulent insurance act or any other act or practice which may constitute a felony or misdemeanor under this subtitle is being or has been committed shall send to the ***Division of*** Insurance Fraud ***Investigation***[~~Unit~~] a report or information pertinent to the knowledge or belief and additional relevant information that the commissioner or his employees or agents may require:

(a) Any professional practitioner licensed or regulated by the Commonwealth, except as provided by law;

(b) Any utilization review of benefits committee as defined in KRS 211.462 to 211.466;

(c) Any private medical review committee;

(d) Any insurer, agent, or other person licensed under this chapter; and

(e) Any employee of the persons named in paragraphs (a) to (d) of this subsection.

(3) The ***Division of*** Insurance Fraud ***Investigation***[~~Unit~~] or its employees or agents shall review this information or these reports and select the information or reports that, in the judgment of the ***division***[~~unit~~], may require further investigation. The ***division***[~~unit~~] shall then cause an investigation of the facts surrounding the information or report to be made to determine the extent, if any, to which a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or misdemeanor under this subtitle is being committed.

(4) The Department of Workers' Claims shall provide the ***division***[~~Insurance Fraud Unit~~] access to all relevant information the commissioner may request.

(5) The ***Division of*** Insurance Fraud ***Investigation***[~~Unit~~] shall report any alleged violations of law which the investigations disclose to the appropriate licensing agency and the Commonwealth's attorney, Attorney General, or other prosecuting agency having jurisdiction with respect to a violation. If prosecution by the Commonwealth's attorney, Attorney General, or other prosecuting agency is not begun within sixty (60) days of the report, the prosecuting attorney shall inform the ***division***[~~unit~~] of the reasons for the lack of prosecution. In addition to filing a report with the appropriate prosecuting agency, the commissioner may, through the Attorney General, prosecute violations of this subtitle in the Circuit Court of the county in which the alleged wrongdoer resides or has his principal place of business, in the Circuit Court of the county in which the fraudulent insurance act has been committed, or, with consent of the parties, in the Franklin Circuit Court.

(6) Notwithstanding the provisions of subsections (1) to (5) of this section, when an insurer or an insured knows or has reasonable grounds to believe that a person committed a fraudulent insurance act which the insurer reasonably believes not to have been reported to a law enforcement agency in this state, then, for the purpose of notification and investigation, the insurer or an agent authorized by an insurer to act on its behalf or the insured may notify a law enforcement agency of their knowledge or reasonable belief and provide information relevant to the fraudulent insurance act, including, but not limited to, insurance policy information including the application for insurance, policy premium payment records, history of previous claims made by the insured, and other information relating to the investigation of the claim, including statements of any person, proofs of loss, and notice of loss.

(7) If the information referred to in subsection (6) of this section is specifically requested by a law enforcement agency or prosecuting attorney, the insurer shall provide certified copies of the requested information within ten (10) business days of the request or as soon thereafter as reasonable.

(8) In the absence of malice, fraud, or gross negligence, no insurer or agent authorized by an insurer to act on its behalf, law enforcement agency, the Department of Workers' Claims, their respective employees, or an insured shall be subject to any civil liability for libel, slander, or related cause of action by virtue of filing reports or for releasing or receiving any information pursuant to this subsection.

Section 10. KRS 304.47-060 is amended to read as follows:

(1) In the absence of malice, fraud, or gross negligence, a person shall not be subject to civil liability for libel, slander, or any other relevant tort by virtue of filing reports or furnishing other information required by this chapter or requested by the ***Division of*** Insurance Fraud ***Investigation***~~[Unit]~~ or its authorized representative. No civil cause of action of any nature shall arise against the person:

(a) For any information relating to suspected fraudulent insurance acts furnished to or received from law enforcement officials, their agents, or employees;

(b) For any information relating to suspected fraudulent insurance acts furnished to or received from other persons subject to the provisions of this subtitle***, including those designated by KRS 304.47-080***;

(c) For any information furnished to or received from the Department of Workers' Claims, its agents, or employees; or

(d) For any information furnished in reports to the commissioner or the National Association of Insurance Commissioners.

(2) The commissioner or any employee or agent of the Department of Insurance shall not be subject to civil liability for libel, slander, or any other relevant tort. No civil cause of action shall exist against these persons by virtue of the execution of official activities or duties of the commissioner or the ***division***~~[Insurance Fraud Unit]~~ or by virtue of the publication of any report or bulletin related to the official activities or duties of the commissioner.

(3) This subtitle shall not abrogate or modify any common law or statutory privilege or immunity enjoyed by any person.

(4) The papers, documents, reports, or evidence relative to the subject of an investigation under this subtitle shall not be subject to public inspection for so long as the commissioner deems reasonably necessary to complete the investigation, to protect the person investigated from unwarranted injury, or to be in the public interest. Further, the papers, documents, reports, or evidence relative to the investigations shall not be subject to subpoena until opened for public inspection by the commissioner, unless the commissioner consents, or until, after notice to the commissioner and a hearing, a court of competent jurisdiction determines the commissioner would not be unnecessarily hindered by a subpoena. The commissioner or his employees or agents shall not be subject to subpoena in civil actions by any court of this state to testify concerning any matter of which they have knowledge pursuant to pending investigations of fraudulent insurance acts.

HB 414, AN ACT relating to insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.15-020 is amended to read as follows:

(1) "Industrial life insurance" is that form of life insurance written under policies of face amount of $3,000 or less issued on the basis of an industrial mortality table, and under which premiums are payable monthly or more often.

(2) "Wholesale life insurance" is that plan of life insurance, other than salary savings life insurance or pension trust insurance and annuities, under which individual policies are issued to the employees of any employer and where such policies are issued on the lives of not less than four (4) employees at date of issue. Premiums for such policies shall be paid either wholly from the employer's funds, or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees.

(3) "College life insurance" is that form of life insurance sold to college students, the initial premiums for which are financed by a promissory note.

(4) "Viatical settlement broker" means an individual, partnership, corporation, or other entity who or that for another and for a fee, commission, or other valuable consideration, offers or advertises the availability of viatical settlements, introduces a viator to viatical settlement providers, or offers or attempts to negotiate viatical settlements between a viator and one (1) or more viatical settlement providers. "Viatical settlement broker" does not include an attorney, accountant, or financial planner who is retained to represent the viator and whose compensation is not paid by the viatical settlement provider.

(5) "Viatical settlement contract" means a written agreement entered into between a viatical settlement provider and a person owning a life insurance policy or who owns or is covered under a group policy insuring the life of a person who has a catastrophic or life-threatening illness or condition. The agreement shall establish the terms under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policyowner's assignment, transfer,

sale, devise or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

(6) "Viatical settlement provider" means an individual, partnership, corporation, or other entity who or that enters into an agreement with a person owning a life insurance policy or who owns or is covered under a group policy insuring the life of a person who has a catastrophic or life-threatening illness or condition, under the terms of which the viatical settlement provider pays compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policyowner's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider. Viatical settlement provider does not include:

(a) Any bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;

(b) The issuer of a life insurance policy that provides accelerated benefits that accelerate in anticipation of death or upon the occurrence of specified life-threatening or catastrophic conditions as defined by the policy or rider; or

(c) Any natural person who enters into no more than one (1) agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit.

(7) "Viator" means the owner of a life insurance policy that insures the life of a person who has a catastrophic or life-threatening illness or condition, or the certificate holder who enters into an agreement under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

SECTION 2. A NEW SECTION OF SUBTITLE 15 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) No person may act as a viatical settlement provider or enter into or solicit a viatical settlement contract without first having obtained a license from the commissioner.

(2) The commissioner shall promulgate administrative regulations in accordance with KRS Chapter 13A that are necessary to provide for the licensing of viatical settlement providers and the termination or revocation of the license.

(3) No person shall use any viatical settlement contract in this Commonwealth unless it has been filed with and approved by the commissioner. Any viatical settlement contract form filed with the commissioner shall be deemed approved if it has not been disapproved within sixty (60) days of filing. The commissioner shall disapprove a viatical settlement contract form if, in the determination of the commissioner, the contract or provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise are misleading or unfair to the policyowner.

SECTION 3. A NEW SECTION OF SUBTITLE 15 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) The commissioner may, when the commissioner deems it reasonably necessary to protect the interests of the public, examine the business and affairs of any licensee or applicant for a license. The commissioner shall have the authority to order information reasonably necessary to ascertain whether the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the of the public. The expenses incurred in conducting any examination shall be paid by the licensee or applicant.

(2) Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the commissioner, unless required by law.

(3) Records of all transactions of viatical settlement contracts shall be maintained by the licensee and shall be available to the commissioner for inspection during reasonable business hours.

SECTION 4. A NEW SECTION OF SUBTITLE 15 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

A viatical settlement provider shall disclose the following information to the viator no later than the date that the viatical settlement contract is signed by all parties:

(1) That possible alternatives to viatical settlement contracts may exist for persons with catastrophic or life-threatening illnesses, including, but not limited to, accelerated benefits offered by the issuer of the life insurance policy;

(2) That some or all of the proceeds of the viatical settlement may be taxable, and that assistance should be sought from a personal tax advisor;

(3) That the viatical settlement could be subject to the claims of creditors;

(4) That receipt of a viatical settlement may adversely affect the recipient's eligibility for Medicaid or other government benefits or entitlements, and that advice should be obtained from the appropriate agencies;

(5) That the policyowner has a right to rescind a viatical settlement contract within thirty (30) days of the date it is

executed by all parties or within fifteen (15) days of the receipt of the viatical settlement proceeds by the viator, whichever is less; and

(6) That the funds will be available to the viator on a specific date and from a specific source.

SECTION 5. A NEW SECTION OF SUBTITLE 15 KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) A viatical settlement provider entering into a viatical settlement contract with any person who has a catastrophic or life-threatening illness or condition shall first obtain:

- *(a) A written statement from a licensed attending physician that the person is of sound mind and under no constraint or undue influence; and*
- *(b) A witnessed document in which the person consents to the viatical settlement contract, acknowledges the catastrophic or life-threatening illness, represents that he or she has a full and complete understanding of the viatical settlement contract and a full and complete understanding of the benefits of the life insurance policy, releases his or her medical records, and acknowledges that he or she has entered into the viatical settlement contract freely and voluntarily.*

(2) All medical information solicited or obtained by any licensee shall be subject to the applicable provision of state law relating to confidentiality of medical information.

(3) All viatical settlement contracts entered into in this state shall contain an unconditional refund provision that provides for a refund within at least thirty (30) days from the date of the contract or fifteen (15) days from the receipt of the viatical settlement proceeds, whichever is less.

(4) Immediately upon receipt from the viator of documents to effect the transfer of the insurance policy, the viatical settlement provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a bank approved by the commissioner, pending acknowledgment of the transfer by the issuer of the policy. The trustee or escrow agent shall be required to transfer the proceeds that are due to the viator immediately upon receipt of acknowledgment of the transfer from the insurer.

(5) Failure to tender the viatical settlement by the date disclosed to the viator renders the contract null and void.

SECTION 6. A NEW SECTION OF SUBTITLE 15 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The commissioner shall have the authority to:

(1) Promulgate administrative regulations in accordance with KRS Chapter 13A implementing Sections 1 to 6 of this Act;

(2) Establish standards for evaluating reasonableness of payments under viatical settlement contracts. The authority includes, but is not limited to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy;

(3) Establish appropriate licensing requirements and fees for agents and brokers; and

(4) Require a bond.

SECTION 7. A NEW SECTION OF SUBTITLE 15 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The activities regulated by Sections 1 to 6 of this Act shall be deemed the business of insurance and subject to Subtitle 12 of KRS Chapter 304.

The Committee Amendment No. 1 to **HB 414** is as follows:

On page 4, line 2, before "*of*" by inserting "*interests*".

HB 457, AN ACT relating to health insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.17A-150 is amended to read as follows:

(1) On and after July 15, 1995, it is an unfair trade practice for an insurer as defined in KRS 304.17A-100, agent, broker, or any other person in the business of marketing and selling health plans, to commit or perform any of the following acts:

- (a) Encourage individuals or groups to refrain from filing an application for coverage with the insurer because of the individual's or group's health status, claims experience, industry, occupation, or geographic location; or
- (b) Encourage or direct individuals or groups to seek coverage from another insurer because of the individual's or group's health status, claims experience, industry, occupation, or geographic location; or
- (c) Encourage an employer to exclude an employee from coverage.

The provisions of paragraphs (a) and (b) of this subsection shall not apply to information provided regarding the established geographic service area of an insurer.

(2) It is an unfair trade practice for an insurer to compensate an agent, broker, or any other person in the business of marketing and selling health plans on the basis of the health status, claims experience, industry, occupation, or geographic location of the insured or prospective insured.

(3) ***It is an unfair trade practice for an insurer to not pass on to the insured any discount received from a health care provider on a claim filed and to not reduce the insured's financial responsibility to the provider accordingly.***

(4) The remedy provided by KRS 304.12-120 shall be available for conduct proscribed by[~~ subsections (1) and (2) of~~] this section.

The Committee Substitute to **HB 457** is as follows:

AN ACT relating to health insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.17A-150 is amended to read as follows:

(1) On and after July 15, 1995, it is an unfair trade practice for an insurer as defined in KRS 304.17A-100, agent, broker, or any other person in the business of marketing and selling health plans, to commit or perform any of the following acts:

(a) Encourage individuals or groups to refrain from filing an application for coverage with the insurer because of the individual's or group's health status, claims experience, industry, occupation, or geographic location; or

(b) Encourage or direct individuals or groups to seek coverage from another insurer because of the individual's or group's health status, claims experience, industry, occupation, or geographic location; or

(c) Encourage an employer to exclude an employee from coverage.

The provisions of paragraphs (a) and (b) of this subsection shall not apply to information provided regarding the established geographic service area of an insurer.

(2) It is an unfair trade practice for an insurer to compensate an agent, broker, or any other person in the business of marketing and selling health plans on the basis of the health status, claims experience, industry, occupation, or geographic location of the insured or prospective insured.

(3) ***It is an unfair trade practice for an insurer not to compute an insured's coinsurance or cost sharing on the basis of the amount actually received by a health care provider from the insurer.***

(4) The remedy provided by KRS 304.12-120 shall be available for conduct proscribed by[~~ subsections (1) and (2) of~~] this section.

HB 491, AN ACT relating to bank branches.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 287.180 is amended to read as follows:

(1) Banks authorized under the laws of this state may, except as provided in subsections (2) or (3) of this section, exercise, only at their principal office, powers necessary to carry on the business of banking by discounting and negotiating notes, drafts, bills of exchange and other evidences of debt, and by purchasing bonds, receiving deposits and allowing interest on these items, buying and selling exchange, coin, and bullion, and lending money on personal or real security.

(2) ***(a)*** Any corporation presently or after July 13, 1990, engaged in the business of banking, and meeting the requirements of this subsection, may apply to the commissioner for permission to establish[~~, within any county in which its principal office or an existing branch is located,~~] a branch at which all of the powers conferred in subsection (1) of this section may be exercised***:***

1. ***Within any county in which its principal office or an existing branch is located; and***

2. ***Within any county contiguous to the county in which its principal office is located, but a branch may not be established in more than four (4) contiguous counties.***

(b) Before the commissioner shall approve or disapprove any application made under this subsection he shall ascertain and determine that the public convenience and advantage will be served and promoted and that there is reasonable probability of the successful operation of the branch based upon the financial and managerial impact of the branch on the bank establishing the branch.

(c) The following conditions shall apply to applications for branches:

1.[~~(a)~~] The permission to open a branch shall lapse one (1) year after the commissioner has rendered a final order as defined in KRS 13B.010, unless it shall have been opened and business actually begun in good faith. If, for reasons beyond the control of the applicant, the branch is not opened within this time period, permission to open the branch may, with the approval of the commissioner, be extended for any period of time he deems to be necessary; and

2.[~~(b)~~] An application to establish a branch office shall be approved or disapproved by the commissioner based upon the facts existing at the date of filing of the application, except for the financial condition of the bank proposing to establish a branch office, which condition shall be subject to review until an order ruling on the application is made.

(3) Any corporation which on January 1, 1966, was engaged in operating an agency or branch bank may continue to retain and operate the agency or branch bank under the general banking laws, and the requirements set forth in this section in respect to capital shall not apply to any existing agency or branch bank but only as to those agencies or branch banks which may be established in the future pursuant to the terms of this section.

(4) The provisions of this section shall not be construed to prohibit the merger of banks in the same county and the operation by the merged corporation of the banks, nor to prohibit the sale of any bank to, and the purchase by, any other bank in the same county and the operation of the bank by the purchasing bank as a branch, provided the commissioner shall determine that the public convenience and necessity will be served by the operation, and provided further that, at the time of the merger or purchase, each of the banks involved shall have been in operation for a period of five (5) years or more. The bank which does not survive the merger shall surrender its charter.

(5) Any national banking association or any state bank member of the Federal Reserve system whose principal office is located in this state may do all things and perform all acts which state banks are permitted to do or perform under this section, subject to the conditions and restrictions provided for banks as to exercise of these powers.

(6) When a branch or agency bank has once been established any operation of the branch or agency bank shall not be discontinued, and the branch or agency bank shall not be closed until after ninety (90) days' notice in writing to the commissioner. In the discretion of the commissioner the branch or agency bank proposing to discontinue operation may be required to give notice of the date when its operation will cease.

HB 493, AN ACT relating to insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF SUBTITLE 39 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

No basic or added reparation obligor shall request a reduction or modification of charges from a provider of services to a secured person if reduction or modification would require the secured person to make any payment to the provider of the services to satisfy the charges for the services. This provision shall in no way be interpreted to require any payment by an obligor above the contracted coverage for reparation benefits.

Section 2. KRS 304.39-210 is amended to read as follows:

(1) Basic and added reparation benefits are payable monthly as loss accrues. Loss accrues not when injury occurs, but as work loss, replacement services loss, or medical expense is incurred. Benefits are overdue if not paid within thirty (30) days after the reparation obligor receives reasonable proof of the fact and amount of loss realized, unless the reparation obligor elects to accumulate claims for periods not exceeding thirty-one (31) days after the reparation obligor receives reasonable proof of the fact and amount of loss realized, and pays them within fifteen (15) days after the period of accumulation. ***This period shall not be extended by the internal or external review of medical expenses by the reparation obligor.*** If reasonable proof is supplied as to only part of a claim, and the part totals one hundred dollars ($100) or more, the part is overdue if not paid within the time provided by this section. Medical expense benefits may be paid by the reparation obligor directly to persons supplying products, services, or accommodations to the claimant.

(2) Overdue payments bear interest at the rate of twelve percent (12%) per annum, except that if delay was without reasonable foundation the rate of interest shall be eighteen percent (18%) per annum.

(3) A claim for basic or added reparation benefits shall be paid without deduction for the benefits which are to be subtracted pursuant to the provisions on calculation of net loss if these benefits have not been paid to the claimant before the reparation benefits are overdue or the claim is paid. The reparation obligor is entitled to reimbursement from the person obligated to make the payments or from the claimant who actually receives the payments.

(4) A reparation obligor may bring an action to recover benefits which are not payable, but are in fact paid, because of an intentional misrepresentation of a material fact, upon which the reparation obligor relies, by the insured or by a person providing an item of medical expense. The action may be brought only against the person providing the item of medical expense, unless the insured has intentionally misrepresented the facts or knows of the misrepresentation. An insurer may offset amounts he is entitled to recover from the insured under this subsection against any basic or added reparation benefits otherwise due.

(5) A reparation obligor who rejects a claim for basic reparation benefits shall give to the claimant prompt written notice of

the rejection, specifying the reason. If a claim is rejected for a reason other than that the person is not entitled to the basic reparation benefits claimed, the written notice shall inform the claimant that he may file his claim with the assigned claims bureau and shall give the name and address of the bureau.

SECTION 3. A NEW SECTION OF SUBTITLE 39 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) A reparation obligor shall provide payments for loss in the order that the requests are received by the obligor, unless the reparation obligor chooses to accumulate benefits.

(2) If the reparation obligor chooses to accumulate benefits and if benefits which are applied for during this period exceed the coverage provided, any loss wage benefits or survivor's benefits shall be paid first. The remainder of benefits shall then be paid on a pro rata basis based on the total available coverage and the amount of the remaining claims then submitted.

Section 4. The following KRS section is repealed:

304.39-240 Assignment of benefits.

The Committee Substitute to **HB 493** is as follows:

AN ACT relating to insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF SUBTITLE 39 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

A reparation obligor may request or negotiate a reduction or modification of charges from a provider of services to a secured person. In no event shall a provider of services which agrees to a reduction or modification of the charges bill the secured person for the amount of the reduction or modification. Nothing in this section is intended to prohibit a provider of services from billing charges to a secured party if the charges are not paid by a reparation obligor because the reparation benefits have been exhausted.

Section 2. KRS 304.39-210 is amended to read as follows:

(1) Basic and added reparation benefits are payable monthly as loss accrues. Loss accrues not when injury occurs, but as work loss, replacement services loss, or medical expense is incurred. Benefits are overdue if not paid within thirty (30) days after the reparation obligor receives reasonable proof of the fact and amount of loss realized, unless the reparation obligor elects to accumulate claims for periods not exceeding thirty-one (31) days after the reparation obligor receives reasonable proof of the fact and amount of loss realized, and pays them within fifteen (15) days after the period of accumulation. ***Notwithstanding any provision of this chapter to the contrary, benefits are not overdue if a reparation obligor has not made payment to a provider of services due to the request of a secured person when the secured person is directing the payment of benefits among the different elements of loss.*** If reasonable proof is supplied as to only part of a claim, and the part totals one hundred dollars ($100) or more, the part is overdue if not paid within the time provided by this section. Medical expense benefits ***shall not***[~~may~~] be paid by the reparation obligor directly to persons supplying products, services, or accommodations to the claimant.

(2) Overdue payments bear interest at the rate of twelve percent (12%) per annum, except that if delay was without reasonable foundation the rate of interest shall be eighteen percent (18%) per annum.

(3) A claim for basic or added reparation benefits shall be paid without deduction for the benefits which are to be subtracted pursuant to the provisions on calculation of net loss if these benefits have not been paid to the claimant before the reparation benefits are overdue or the claim is paid. The reparation obligor is entitled to reimbursement from the person obligated to make the payments or from the claimant who actually receives the payments.

(4) A reparation obligor may bring an action to recover benefits which are not payable, but are in fact paid, because of an intentional misrepresentation of a material fact, upon which the reparation obligor relies, by the insured or by a person providing an item of medical expense. The action may be brought only against the person providing the item of medical expense, unless the insured has intentionally misrepresented the facts or knows of the misrepresentation. An insurer may offset amounts he is entitled to recover from the insured under this subsection against any basic or added reparation benefits otherwise due.

(5) A reparation obligor who rejects a claim for basic reparation benefits shall give to the claimant prompt written notice of the rejection, specifying the reason. If a claim is rejected for a reason other than that the person is not entitled to the basic reparation benefits claimed, the written notice shall inform the claimant that he may file his claim with the assigned claims bureau and shall give the name and address of the bureau.

SECTION 3. A NEW SECTION OF SUBTITLE 39 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

An insured may direct the payment of benefits among the different elements of loss, if the direction is provided in writing to the reparation obligor. A reparation obligor shall honor the written direction of benefits provided by an insured on a prospective basis.

Section 4. The following KRS section is repealed:

304.39-240 Assignment of benefits.

HB 515, AN ACT relating to the mortgage loan business.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 294.010 is amended to read as follows:

Unless the context otherwise requires:

(1) "Affiliate" means any person who directly or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with another person;

(2) "Department" means the Department of Financial Institutions;

(3) "Commissioner" means the commissioner of financial institutions;

(4) "Mortgage loan" means any loan secured by a mortgage on residential real property or any loan secured by collateral which has a mortgage lien interest in residential real property;

(5) "Residential real property" means any single family residence or multiple dwelling structure containing four (4) or less single dwelling units for four (4) or less family units, living independently of each other, or any single family condominium unit;

(6) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interest of the beneficiaries is evidenced by a security, an unincorporated organization, a government, a political subdivision of a government, or any other group however organized;

(7) "Mortgage loan company" means any person who directly or indirectly:

(a) Holds himself out as being able to make or purchase loans secured by mortgages on residential real property;

(b) Holds himself out as being able to service loans secured by mortgages on residential real property; and

(c) Holds himself out as being able to buy or sell notes secured by mortgages on residential real property;

(8) "Mortgage loan broker" means any person who for compensation or gain, or in the expectation of compensation or gain, directly or indirectly:

(a) Holds himself out as being able to serve as an agent for any person in an attempt to obtain a loan which will be secured by a mortgage on residential real property; ***or***[~~and~~]

(b) Holds himself out as being able to serve as an agent for any person who has money to loan, which loan is or will be secured by a mortgage on residential real property.

Section 2. KRS 294.020 is amended to read as follows:

(1) The following shall be exempt from this chapter:

(a) Any person doing business under the laws of this state or any other state or the United States relating to banks, bank holding companies, trust companies, credit unions, savings and loan associations, service corporation subsidiaries of savings and loan associations, consumer finance companies, industrial loan companies, insurance companies, or real estate investment trusts as defined in 26 U.S.C. sec. 856 and the affiliates of such companies,[~~mortgage loan companies regulated by the Department of Housing and Urban Development,~~] or an institution of the farm credit system organized under the Farm Credit Act of 1971 as amended;

(b) An attorney-at-law licensed to practice law in Kentucky who is not principally engaged in the business of negotiating mortgage loans, when the person renders services in the course of his practice as an attorney-at-law;

(c) Any person doing any act under order of any court;

(d)[~~Any natural person making a mortgage loan with his own funds for his own investment without intent to resell the mortgage loan;~~

~~(e) Any person doing business under the laws of this state or the United States relating to any broker dealer, agent, or investment adviser duly registered with the Department of Financial Institutions;~~

~~(f)~~] The United States of America, the Commonwealth of Kentucky, or any other state, and any Kentucky city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of the foregoing;

(e)[~~(g)~~]The Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA)[~~;~~

~~(h) Any person licensed in this state as a real estate broker or real estate sales associate, not actively engaged in the business of negotiating loans secured by real property, when the person renders services in the course of his practice as a real estate broker or real estate associate;~~

~~(i) Any person making less than five (5) mortgage loans per year~~].

(2) ***The following shall be exempt from all the provisions of KRS Chapter 294 except that they shall be subject to the examination or investigation provisions of subsections (4), (5), and (6) of Section 14 of this Act, KRS 294.180, and KRS 294.190 if it appears on grounds satisfactory to the commissioner, on written complaint, that an examination or investigation is necessary, and they shall be subject to the prohibited acts provisions of Section 15 of this Act:***

(a) Mortgage loan companies or mortgage loan brokers regulated by the Department of Housing and Urban Development;

(b) Any natural person making a mortgage loan with his or her own funds for the person's own investment without intent to resell the mortgage loan;

(c) Any person doing business under the laws of this state or the United States relating to any broker-dealer, agent, or investment adviser duly registered with the Department of Financial Institutions;

(d) Any person licensed in this state as a real estate broker or real estate sales associate, not actively engaged in the business of negotiating loans secured by real property, when the person renders the services in the course of his or her practice as a real estate broker or real estate associate; and

(e) Any person making less than five (5) mortgage loans per year.

(3) Any person relying upon an exemption under subsection ***(2)(c) or (d)***[~~(1)~~] of this section shall file with the commissioner a claim of exemption. The commissioner shall thereafter determine the availability of the claimed exemption and he shall not disallow an exemption that is validly claimed.

Section 3. KRS 294.032 is amended to read as follows:

(1) A license as a mortgage loan company or a mortgage loan broker may be obtained by filing a written application with the commissioner.

(2) The application shall:

(a) Be ***sworn to***[~~verified~~];

(b) State the name of the applicant and each of the applicant's affiliates engaged in business as a mortgage loan company or a mortgage loan broker;

(c) State the name under which the applicant will conduct business in Kentucky;

(d) State the location of the applicant's principal office and branch offices in Kentucky;

(e) List the name, residence, and business address of each person having an interest in the business as principal, partner, officer, trustee and director, specifying the capacity and title of each;

(f) Indicate the general plan and character of the business;

(g) Contain a corporate surety bond or other instrument as prescribed by KRS 294.060;

(h) ***If applying for a mortgage loan broker license, contain a compiled financial statement of the applicant; or, if applying for a mortgage loan company license, contain a reviewed or audited financial statement of the applicant prepared by a licensed or certified public accountant***[~~Contain a verified financial statement of the applicant prepared by a certified public accountant or by a public accountant registered in this state~~];

(i) Require payment of the appropriate registration fees; and

(j) Require such other information as the commissioner determines necessary.

(3) No mortgage loan ***company license may be granted unless the applicant has and maintains, so long as the license is in effect, a minimum, documented funding source of five hundred thousand dollars ($500,000). If a mortgage loan company has a net worth in excess of five hundred thousand dollars ($500,000), an additional funding source is not required***[~~broker's license may be granted to a person unless he is a bona fide resident of this state for a period of at least six (6) months immediately preceding the date of licensing~~].

(4)[~~ No mortgage loan broker's license may be granted unless the applicant has and maintains a principal place of business in this state for the transaction of business.~~

~~(5)~~] If a licensee is a person other than a natural person, the license issued to it shall entitle all officers and employees of the person, if a corporation, and all members, partners, trustees, and employees, if an association, partnership, or trust, to engage in the mortgage loan business licensed pursuant to this chapter.

(5) If a licensee desires to establish a branch office in Kentucky not already approved, the licensee shall file a registration statement with the commissioner that includes the address and telephone number of the branch office, the name of the prospective manager, the anticipated opening date, and any other information prescribed by the commissioner.

(6) All applicants for a mortgage loan broker license shall have successfully completed an educational training course, approved by the department, of not less than thirty (30) hours' duration. Mortgage loan brokers who have held a license for at least one (1) year shall be exempt from this requirement. This section shall not become effective until

the department has approved at least one (1) educational training course. This section shall not apply to renewals of existing licenses.

Section 4. KRS 294.034 is amended to read as follows:

(1) An applicant for a license under this chapter shall provide the commissioner with separate checks payable to the Kentucky State Treasurer for:

(a) An investigation fee of one hundred and fifty dollars ($150) for the principal office and forty dollars ($40) for each branch office; and

(b) A license fee of three hundred dollars ($300) for the principal office and two hundred dollars ($200) for each branch if the applicant applies for a license on or between July 1 and December 31 or of one hundred fifty dollars ($150) for the principal office and one hundred dollars ($100) for each branch if the applicant applies for a license on or between January 1 and June 30.

(2) A license under this chapter shall expire June 30 next after the date of issuance if it is not renewed.

(3) A license may be renewed by paying the annual fee for renewing a license which is three hundred dollars ($300) for the main office and two hundred dollars ($200) for each branch office ***in Kentucky***, ***and*** submitting an annual ***report of activity as prescribed by the commissioner, and any***[~~financial statement, and submitting~~] other information required by the commissioner.

(4) The information and payment shall be received by the commissioner on or before ***June 20 prior to***[~~July 15 following~~] the June 30 expiration date.[~~ If the information and payment are not received by July 15, the license shall be cancelled.~~] The commissioner may reinstate the license if the licensee pays the filing fee and a reinstatement fee of one hundred dollars ($100).

(5) The department shall provide a licensee with a duplicate copy of any license upon a satisfactory showing of its loss and payment of a ten dollar ($10) replacement fee.

Section 5. KRS 294.036 is amended to read as follows:

(1) Each license issued under this chapter shall state the address or addresses at which business is to be conducted, the name of the licensee, and the date and place of its incorporation, if applicable.

(2) A licensee shall post a copy of such license in a conspicuous place in the office to which it pertains.

(3) A license may not be transferred or assigned without the prior written approval of the commissioner.

(4) No licensee shall transact the business provided for by this chapter under any other name or maintain an office at any location other than that designated in the license.

(5) Every licensed mortgage loan company or mortgage loan broker shall notify the commissioner, in writing, within ten (10) days of the closing of any licensed office or registered Kentucky branch.

Section 6. KRS 294.060 is amended to read as follows:

(1) Except as otherwise provided in this section, at the time of filing an application for registration as a mortgage loan company or mortgage loan broker, the applicant shall post corporate surety bonds in an amount[~~ that the commissioner determines by administrative regulation to be necessary and appropriate under the circumstances but~~] not less than ***one hundred thousand dollars ($100,000)***[~~twenty-five thousand dollars ($25,000)~~] for mortgage loan companies and not less than ***fifty thousand dollars ($50,000)***[~~twenty-five thousand dollars ($25,000)~~] for mortgage loan brokers. Every bond shall provide for suit thereon by any person who has a cause of action under this chapter. The total liability of the surety, to all persons, cumulative or otherwise, shall not exceed the amount specified in the bond. Every bond shall provide that no suit shall be maintained to enforce any liability on the bond unless brought within three (3) years after the act upon which it is based.

(2) In lieu of posting corporate surety bonds, the applicant may:

(a) Deposit with the commissioner an irrevocable letter of credit for an amount equal to the required bond upon which the applicant is the obligor, issued by a bank approved by the commissioner, whose deposits are insured by the Federal Deposit Insurance Corporation;

(b) Establish an account payable to the commissioner in a federally insured financial institution in this state and deposit money of the United States in an amount equal to the amount of the required bond; or

(c) Deposit with the commissioner ***an escrow agreement for*** a savings certificate of a federally insured financial institution in this state for an amount payable which is equal to the amount of the required bond and which is not available for withdrawal except by direct order of the commissioner. Interest earned on the certificate accrues to the applicant.

(3) If the commissioner ***or the commissioner's representative*** shall at any time reasonably determine that the bond or securities aforesaid are insecure, deficient in amount, or exhausted in whole or part, he may by written order require the filing of a new or supplemental bond or the deposit of new or additional securities in order to secure compliance with

this chapter, the order to be complied with within thirty (30) days following service thereof upon the registrant.

Section 7. KRS 294.070 is amended to read as follows:

(1) The use of the words "certified" or "licensed" or any form thereof separately or in any combination thereof with other words or syllables, is prohibited as part of the name of a mortgage loan company ***or a mortgage loan broker***. No license of a proposed mortgage loan company ***or a mortgage loan broker*** having the same name as a corporation authorized to do business under the laws of this state or a name so nearly resembling it as to be calculated to deceive shall be issued by the commissioner.

(2) No person, unless lawfully authorized to do business in this state under the provisions of this chapter, and actually engaged in carrying on a mortgage loan or loan broker business, shall do business under any name or title which contains the terms "mortgage company," "mortgage loan company," "mortgage loan broker," "loan broker," "financial broker," or any combination employing the words "mortgage," "loan," or "broker," with one (1) or more of the words "association," "institution," "society," "company," "corporation," or words of similar import, or use any name or represent in any manner which indicates or reasonably implies that his or its business is that of a mortgage loan company or mortgage loan broker as defined by KRS 294.010.

Section 8. KRS 294.075 is amended to read as follows:

(1) As used in this section, "change of control" means:

(a) A transfer of voting stock which results in giving a person, directly or indirectly, the power to direct the management and policy of a mortgage ***loan*** company ***or mortgage loan broker***; or

(b) A transfer of at least ten percent (10%) of the outstanding voting stock of a mortgage ***loan*** company ***or a mortgage loan broker***.

[~~(2) The commissioner must approve~~]A transfer of voting stock of a mortgage ***loan*** company ***or mortgage loan broker*** which constitutes a change of control ***shall be approved in writing by the commissioner, prior to the transfer***.

(3) The owner, president, chief executive officer or a partner shall apply to the commissioner for approval of a transfer of voting stock in his mortgage ***loan*** company ***or mortgage loan broker*** which constitutes a change of control. The application must contain information which shows that the requirements of this chapter for obtaining a license will be satisfied after the change of control.

Section 9. KRS 294.090 is amended to read as follows:

The commissioner may deny, suspend, or revoke any license when the applicant or licensee:

(1) Does not meet or has failed to comply with the requirements of this chapter;

(2) Is unfit through lack of financial responsibility or experience to conduct the business of a mortgage loan company or mortgage loan broker, as the case may be;

(3) Does not conduct his business in accordance with law or the method of business includes or would include activities which are illegal where performed, or has willfully violated any provision of this chapter or any regulation hereunder;

(4) Collects interest at a usurious rate;

(5) Is in such financial condition that he cannot continue in business with safety to his customers;

(6) Has been guilty of fraud in connection with any transaction governed by this chapter, or is the subject of an administrative cease and desist order or similar order, or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the registrant; but the commissioner may not institute a proceeding under this subsection more than one (1) year from the date of the order or injunction relied on, and he may not enter an order under this subsection on the basis of an injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for an order under this section;

(7) Has made any misrepresentations or false statements to, or concealed any essential or material fact from, any person in the course of acting as a mortgage loan company or mortgage loan broker, or has engaged in a course of business which has worked or tended to work a fraud upon any person or would so operate;

(8) Has knowingly made or caused to be made to the commissioner any false representation of material fact or has suppressed or withheld from the commissioner any information which the applicant or licensee possesses, and which if submitted by him would have rendered the applicant or licensee ineligible to be licensed under this chapter;

(9) Has failed to account to persons interest for all funds received for the escrow account required under KRS 294.130;

(10) Has refused to permit an examination by the commissioner of his books and affairs or has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the commissioner under the provisions of this chapter;

(11) Has been convicted of any misdemeanor of which an essential element is fraud, or any felony, or has pending against him any felony charge***; or***

(12) Has had any license related to the financial services industry denied, suspended, or revoked under the laws of this

state or any other state or the United States.

Section 10. KRS 294.100 is amended to read as follows:

(1) No mortgage loan company or mortgage loan broker may establish or maintain a branch office ***in Kentucky*** without ***filing the registration statement as described in subsection (5) of Section 3 of this Act and the receipt of*** prior written approval of the commissioner.

(2) Each ***registration statement***[~~application~~] for approval of the establishment and maintenance of a branch office shall state the proposed location, the functions to be performed, and other information which the commissioner may require if different from that contained in the original application for ***a license***[~~registration~~].

(3) Each ***registration statement***[~~application~~] under this section shall be ***sworn to***[~~verified~~] and accompanied by the appropriate fee as set out in KRS 294.034(1)(b).

(4) Upon the receipt by the commissioner of ***a registration statement***[~~an application~~] and the required fee, if he finds that the applicant is otherwise in compliance with the provisions of this chapter, he shall approve the ***registration statement***[~~application~~].

Section 11. KRS 294.110 is amended to read as follows:

(1) Mortgage loan companies are prohibited from making loans and mortgage loan brokers are prohibited from brokering loans at a rate or rates in excess of those provided by KRS 360.010 and 360.025 or other applicable usury statutes.

(2)[~~Every loan shall be evidenced by a note for the amount of the loan. Every note evidencing a loan under this subsection shall contain the following information and provisions: The original principal amount of the loan, excluding any charge for the loan; a statement of the total charge for the loan; the terms of repayment, including the amount and date of installments and penalty or charge for late payment; the date of final maturity; and may contain all other terms of the loan contract. The borrower shall be given a copy of the note, at the time the loan is made and shall thereafter be given a receipt for each cash payment.~~

~~(3)~~] Every real estate loan shall be secured by a mortgage or other instrument constituting a lien upon the real estate securing the loan, according to any lawful or well-recognized practice which is best suited to the transaction. Any such instrument, constituting a lien, is herein termed a "mortgage." All such mortgages shall be recorded in accordance with the law of this Commonwealth.

(3)[~~(4)~~] Delinquency charges may be made for each installment more than ten (10) days in arrears, and only one (1) delinquency charge shall be made on any one (1) installment. No delinquency charge shall be made unless disclosed as required under subsection (2) of this section. In addition to such delinquency charges, attorneys' fees not exceeding fifteen percent (15%) of the unpaid balance shall be taxed as costs and court costs may be collected, provided that the note is referred to an attorney not a salaried employee of the holder for collection.

(4)[~~(5)~~] Any charges to be assessed against the borrower, in the event a loan is paid prior to maturity shall be prominently displayed and made part of the note and the loan closing statement regarding the method of computation of any rebate. ***No prepayment penalty shall be assessed against the borrower following the fifth anniversary date of the mortgage. No prepayment penalty shall exceed five percent (5%) of the outstanding balance of the loan.***

Section 12. KRS 294.120 is amended to read as follows:

(1) Every mortgage loan company may require borrowers to pay all necessary and reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of loans. Without limiting the generality of the foregoing, such expenses may include appraisal, attorneys' fees, abstract, recording and registration fees, title examination, title insurance, mortgage insurance, credit report, survey, drawing of papers, origination fees, loan closing costs, and taxes or charges imposed upon or in connection with the making and reporting of any mortgage.

(2) Every mortgage loan company also may require the borrowers to pay the cost of all other necessary and incidental services rendered by the mortgage loan company or by others in connection with loans in reasonable amounts. Without limiting the generality of the foregoing, such costs may include the cost of services of inspectors, engineers, and architects.

(3) Such initial charges as described in subsections (1) and (2) of this section may be collected by the mortgage loan company from the borrower and paid to any person rendering such services, or paid directly by the borrower.

(4) In lieu of such initial charges to cover such expenses and costs as described in subsections (1) and (2) of this section, a mortgage loan company may make a reasonable charge, part or all of which may be retained by the mortgage loan company which renders such service, or part or all of which may be paid to others who render such services.

(5) The fees and charges authorized by this section shall be in addition to interest authorized by law, and shall not be deemed to be a part of the interest collected or agreed to be paid on such loans within the meaning of any law of this Commonwealth which limits the rate of interest which may be exacted in any transaction.

(6) No person shall receive any fee or other compensation of any kind in connection with procuring any loan, except for services actually rendered as above provided, and in no event shall a mortgage loan company ***or mortgage loan broker***

require the payment of a fee greater than one hundred dollars ($100) as a condition to submitting a loan application unless the commissioner shall otherwise prescribe by rule.

(7)[~~Upon receipt of a loan application, the mortgage loan company shall provide the applicant with a written explanation of the nature of all fees, expenses and other costs allowable under subsections (1) and (2) of this section which, whether certain or uncertain, may be incurred or required of the borrower in connection with the approval, making, closing and disbursement of the loan.~~

~~(8) The mortgage loan company shall furnish a loan settlement statement to each borrower upon request one (1) business day prior to the settlement date in a form consistent with the provisions of the Real Estate Settlement Procedures Act of 1974 and any amendments thereto, and in all other regards the mortgage loan company shall make the necessary and appropriate disclosures consistent with the provisions of that act and any amendments thereto. A copy of the loan settlement statement and any other disclosure documents shall be retained in the records of the mortgage loan company.~~

~~(9)~~] All "letters of commitment," or any other contracts or agreements between prospective borrowers and a mortgage loan company or a loan broker, where the borrowers employ services, for a fee or commission, to obtain a loan commitment or funding from a lending institution shall indicate the terms and conditions thereof, including a full and detailed description of the services the broker or company undertakes to perform, a specific statement of the circumstances in which the broker or company will be entitled to obtain or retain consideration and the period that such agreement shall remain in effect.

(8)[~~(10)~~] Failure on the part of any party, with the exception of the borrower, to fulfill the terms of any loan commitment, letter of commitment, agreement or contract for the loan of money within the time and on such terms specified therein, or the failure to make a bona fide effort to secure a loan after receiving a fee for such service, shall constitute default by the mortgage loan company and any other person so in default; and any person damaged by such default may sue at law or equity for damages, reasonable attorneys' fees and interest at the legal rate of interest under KRS 360.010. Every cause of action for damages under this subsection survives the death of any person who might have been a plaintiff or defendant. No person may sue under this subsection more than five (5) years after any act constituting default.

[~~(11) The failure to disclose a dual agency capacity or effecting transactions upon terms and conditions other than those stated in the letter of commitment, loan commitment or any other contract for the loan of money, or entering into an agreement which establishes unfair terms and conditions or compensation, as the commissioner shall define by rule; or any contract of loan in the making or collection of which any act shall have been done which constitutes a willful violation of any provision of this section or of KRS 294.110 shall be void, and the mortgage loan company or the lender, if not the mortgage loan company, shall have no right to collect, receive or retain any interest or charges whatsoever on such loan, but the unpaid principal of the loan shall be paid in full.~~]

Section 13. KRS 294.160 is amended to read as follows:

Every mortgage loan company and mortgage loan broker shall make and keep such accounts, correspondence, memoranda, papers, books, data and other records as the commissioner prescribes***, or that are required by federal law***.[~~All records so required shall be preserved for three (3) years from the date of collection of the last installment payment due under each agreement unless the commissioner by rule prescribes otherwise for particular types of records.~~] Every mortgage loan company and mortgage loan broker shall file such financial reports as the commissioner by regulation prescribes. If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the licensee shall promptly file a correcting amendment.

Section 14. KRS 294.170 is amended to read as follows:

(1) Every mortgage loan company and mortgage loan broker shall keep at its principal office correct and complete books of accounts and minutes of proceedings of its directors, principals, or partners. Complete records of all business transactions at the principal office shall be maintained at the principal office. Each branch office shall keep detailed records of all transactions at such branch office and shall furnish full control records to the principal office.

(2) No mortgage loan company or mortgage loan broker by any system of accounting or any device of bookkeeping shall, either directly or indirectly, enter any of its assets upon its books in the name of any person, partnership, association, or corporation, or under any title, designation or value that is not thoroughly descriptive of any assets.

(3) The affairs of every mortgage loan company and mortgage loan broker and the records required to be maintained by KRS 294.160 are subject at any time or from time to time to such periodic, special, or other examinations by the commissioner or an examiner of the commissioner within or without this state and with or without notice to the mortgage loan company and mortgage loan broker, as the commissioner deems necessary or appropriate in the public interest. All books, papers, and records of assets of the mortgage loan company shall be subject to his inspection.

(4) The examiner shall make a thorough examination into the condition, workings and affairs of the association and report any violation of law or any unauthorized unsafe practices or any failure to keep and have correct any required books and records as he may find to the commissioner.

(5) A mortgage loan company or mortgage loan broker shall pay a fee for each such examination based on fair compensation for time and actual expense. For the purpose of avoiding unnecessary duplication of examinations, the commissioner,

insofar as he deems it practicable in administering this section, may cooperate with any agency of the state or federal government, other states, or the federal National Mortgage Association***, Government National Mortgage Association, and Federal Home Loan Mortgage Corporation,*** and may accept such examinations in whole or in part in lieu of an examination by the commissioner.

(6) The commissioner or his examiners or designated representative shall have access to all books and papers of a mortgage loan company and mortgage loan broker which relate to their business, and books and papers kept by any officers, agents, or employees, relating to or upon which any record of its business is kept.

Section 15. KRS 294.220 is amended to read as follows:

(1) It shall be unlawful for any person to make or cause to be made, in any document filed with the commissioner or in any proceeding under this chapter, any statement which is, at the time and in light of the circumstances under which it is made, false or misleading in any material respect.

(2) It shall be unlawful for any mortgage loan company or mortgage loan broker, in connection with the operation of a mortgage loan business or the management or servicing of mortgage contracts, directly or indirectly:

(a) To employ a device, scheme, or artifice to defraud;

(b) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

(c) To fail to disburse funds in accordance with a loan commitment;

(d) To delay closing of any mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower***;***

(e) Upon receipt of a customer's written request, to delay beyond two (2) business days the issuance of a written loan payoff amount or to delay beyond ten (10) business days the issuance of a payment history.

(3) Unless exempted by KRS 294.020, it shall be unlawful for any person to transact any mortgage loan business in this state unless it:

(a) Qualifies to do business in Kentucky as required by KRS Chapter 271B; and

(b) Complies with the provisions of this chapter.

SECTION 16. A NEW SECTION OF KRS CHAPTER 294 IS CREATED TO READ AS FOLLOWS:

(1) Reports of examination, and correspondence that relates to the report of examination, of a mortgage loan company or mortgage loan broker shall be considered confidential information. No officer or director of a mortgage loan company or mortgage loan broker, employee of the department, or employee of a state or federal regulatory authority shall release any information contained in the examination, except when:

(a) Required in a proper legal proceeding in which a subpoena and protective order insuring confidentiality has been issued by a court of competent jurisdiction; or

(b) The information is referred to an appropriate prosecuting attorney for possible criminal proceedings.

(2) The department may furnish to and exchange information and reports with officials and examiners of other properly authorized state or federal regulatory authorities.

(3) Every official report concerning a mortgage loan company or mortgage loan broker, and every report of examination, shall be prima facie evidence of the facts therein stated for all purposes in any action in which the department, mortgage loan company, or mortgage loan broker is a party.

Section 17. KRS 294.990 is amended to read as follows:

(1) Any person who willfully violates any provision of this chapter, except KRS 294.220(1), or who willfully violates KRS 294.220(1) knowing the statement to be false or misleading in any material respect, shall be guilty of a Class D felony.

(2) Any person who willfully violates any rule or order of the commissioner, authorized under this chapter, shall be guilty of a Class A misdemeanor, but no person may be imprisoned for violation of any rule or order of which that person did not have actual knowledge.

(3) The commissioner may refer the evidence available concerning violations of this chapter or any rule or order hereunder to the appropriate prosecuting attorney, who may, with or without reference, institute the appropriate criminal proceeding under this chapter.

(4) Nothing in this chapter shall limit the powers of the state to punish any person for any conduct which constitutes a crime.

(5) The commissioner ***may***[~~shall~~] assess a fine of not less than ***one thousand dollars ($1,000)***[~~fifty dollars ($50)~~] nor more than five ***thousand dollars ($5,000)***[~~hundred dollars ($500)~~] against any mortgage loan company ***or mortgage loan broker*** that ***violates any provision of this chapter***[~~fails to perform the duties set out in KRS 294.130~~]. The Attorney General shall institute an action, in the name of the Commonwealth, in the Franklin Circuit Court or the Circuit Court of the county in which the violation occurred, for the recovery of the fine.

(6) Any person who shall engage in the businesses regulated by this chapter without first securing a license therefor shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000).

[~~(7) Any person who, after a cease and desist order has been issued by the commissioner, violates any provision of the cease and desist order, shall be punished by a fine of not less than five hundred dollars ($500) nor more than one thousand ($1000). The fine shall not be deemed to limit the power of the commissioner to revoke any license.~~]

Section 18. The following KRS section is repealed:

294.115 Broker to furnish disclosures in writing to borrower.

The Committee Substitute to **HB 515** is as follows:

AN ACT relating to the mortgage loan business.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 294.010 is amended to read as follows:

Unless the context otherwise requires:

(1) "Affiliate" means any person who directly or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with another person;

(2) "Department" means the Department of Financial Institutions;

(3) "Commissioner" means the commissioner of financial institutions;

(4) "Mortgage loan" means any loan secured by a mortgage on residential real property or any loan secured by collateral which has a mortgage lien interest in residential real property;

(5) "Residential real property" means any single family residence or multiple dwelling structure containing four (4) or less single dwelling units for four (4) or less family units, living independently of each other, or any single family condominium unit;

(6) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interest of the beneficiaries is evidenced by a security, an unincorporated organization, a government, a political subdivision of a government, or any other group however organized;

(7) "Mortgage loan company" means any person who directly or indirectly:

(a) Holds himself out as being able to make or purchase loans secured by mortgages on residential real property;

(b) Holds himself out as being able to service loans secured by mortgages on residential real property; and

(c) Holds himself out as being able to buy or sell notes secured by mortgages on residential real property;

(8) "Mortgage loan broker" means any person who for compensation or gain, or in the expectation of compensation or gain, directly or indirectly:

(a) Holds himself out as being able to serve as an agent for any person in an attempt to obtain a loan which will be secured by a mortgage on residential real property; ***or***[~~and~~]

(b) Holds himself out as being able to serve as an agent for any person who has money to loan, which loan is or will be secured by a mortgage on residential real property.

Section 2. KRS 294.020 is amended to read as follows:

(1) The following shall be exempt from this chapter:

(a) Any person doing business under the laws of this state or any other state or the United States relating to banks, bank holding companies, trust companies, credit unions, savings and loan associations, service corporation subsidiaries of savings and loan associations, consumer finance companies, industrial loan companies, insurance companies, or real estate investment trusts as defined in 26 U.S.C. sec. 856 and the affiliates of such companies,[~~mortgage loan companies regulated by the Department of Housing and Urban Development,~~] or an institution of the farm credit system organized under the Farm Credit Act of 1971 as amended;

(b) An attorney-at-law licensed to practice law in Kentucky who is not principally engaged in the business of negotiating mortgage loans, when the person renders services in the course of his practice as an attorney-at-law;

(c) Any person doing any act under order of any court;

(d)[~~Any natural person making a mortgage loan with his own funds for his own investment without intent to resell the mortgage loan;~~

~~(e) Any person doing business under the laws of this state or the United States relating to any broker-dealer, agent, or investment adviser duly registered with the Department of Financial Institutions;~~

~~(f)~~] The United States of America, the Commonwealth of Kentucky, or any other state, and any Kentucky city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of the foregoing;

(e)[~~(g)~~]The Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA)[~~;~~

~~(h) Any person licensed in this state as a real estate broker or real estate sales associate, not actively engaged in the business of negotiating loans secured by real property, when the person renders services in the course of his practice as a real estate broker or real estate associate;~~

~~(i) Any person making less than five (5) mortgage loans per year~~].

(2) ***The following shall be exempt from all the provisions of KRS Chapter 294 except that they shall be subject to the examination or investigation provisions of subsections (4), (5), and (6) of Section 14 of this Act, KRS 294.180, and KRS 294.190 if it appears on grounds satisfactory to the commissioner, on written complaint, that an examination or investigation is necessary, and they shall be subject to the prohibited acts provisions of Section 15 of this Act:***

(a) Mortgage loan companies or mortgage loan brokers regulated by the Department of Housing and Urban Development;

(b) Any natural person making a mortgage loan with his or her own funds for the person's own investment without intent to resell the mortgage loan;

(c) Any person doing business under the laws of this state or the United States relating to any broker-dealer, agent, or investment adviser duly registered with the Department of Financial Institutions;

(d) Any person licensed in this state as a real estate broker or real estate sales associate, not actively engaged in the business of negotiating loans secured by real property, when the person renders the services in the course of his or her practice as a real estate broker or real estate associate; and

(e) Any person making less than five (5) mortgage loans per year.

(3) Any person relying upon an exemption under subsection ***(2)(c) or (d)***[~~(1)~~] of this section shall file with the commissioner a claim of exemption. The commissioner shall thereafter determine the availability of the claimed exemption and he shall not disallow an exemption that is validly claimed.

Section 3. KRS 294.032 is amended to read as follows:

(1) A license as a mortgage loan company or a mortgage loan broker may be obtained by filing a written application with the commissioner.

(2) The application shall:

(a) Be ***sworn to***[~~verified~~];

(b) State the name of the applicant and each of the applicant's affiliates engaged in business as a mortgage loan company or a mortgage loan broker;

(c) State the name under which the applicant will conduct business in Kentucky;

(d) State the location of the applicant's principal office and branch offices in Kentucky;

(e) List the name, residence, and business address of each person having an interest in the business as principal, partner, officer, trustee and director, specifying the capacity and title of each;

(f) Indicate the general plan and character of the business;

(g) Contain a corporate surety bond or other instrument as prescribed by KRS 294.060;

(h) ***If applying for a mortgage loan broker license, contain a compiled financial statement of the applicant; or, if applying for a mortgage loan company license, contain a reviewed or audited financial statement of the applicant prepared by a licensed or certified public accountant***[~~Contain a verified financial statement of the applicant prepared by a certified public accountant or by a public accountant registered in this state~~];

(i) Require payment of the appropriate registration fees; and

(j) Require such other information as the commissioner determines necessary.

(3) No mortgage loan ***company license may be granted unless the applicant has and maintains, so long as the license is in effect, a minimum, documented funding source of five hundred thousand dollars ($500,000). If a mortgage loan company has a net worth in excess of five hundred thousand dollars ($500,000), an additional funding source is not required***[~~broker's license may be granted to a person unless he is a bona fide resident of this state for a period of at least six (6) months immediately preceding the date of licensing~~].

(4)[~~No mortgage loan broker's license may be granted unless the applicant has and maintains a principal place of business in this state for the transaction of business.~~

~~(5)~~] If a licensee is a person other than a natural person, the license issued to it shall entitle all officers and employees of the person, if a corporation, and all members, partners, trustees, and employees, if an association, partnership, or trust, to engage in the mortgage loan business licensed pursuant to this chapter.

(5) If a licensee desires to establish a branch office in Kentucky not already approved, the licensee shall file a registration statement with the commissioner that includes the address and telephone number of the branch office, the name of the prospective manager, the anticipated opening date, and any other information prescribed by the commissioner.

(6) All applicants for a mortgage loan broker license shall have successfully completed an educational training course, approved by the department, of not less than thirty (30) hours' duration. Mortgage loan brokers who have held a license for at least one (1) year shall be exempt from this requirement. This section shall not become effective until the department has approved at least one (1) educational training course. This section shall not apply to renewals of existing licenses.

Section 4. KRS 294.034 is amended to read as follows:

(1) An applicant for a license under this chapter shall provide the commissioner with separate checks payable to the Kentucky State Treasurer for:

(a) An investigation fee of ***three***[~~one~~] hundred[~~and fifty~~] dollars ***($300)***[~~($150)~~] for the principal office and ***one hundred fifty***[~~forty~~] dollars ***($150)***[~~($40)~~] for each branch office; and

(b) A license fee of ***four***[~~three~~] hundred ***fifty*** dollars ***($450)***[~~($300)~~] for the principal office and two hundred ***fifty*** dollars ***($250)***[~~($200)~~] for each branch ***in Kentucky*** if the applicant applies for a license on or between July 1 and December 31 or of one hundred fifty dollars ($150) for the principal office and one hundred dollars ($100) for each branch if the applicant applies for a license on or between January 1 and June 30.

(2) A license under this chapter shall expire June 30 next after the date of issuance if it is not renewed.

(3) A license may be renewed by paying the annual fee for renewing a license which is three hundred ***fifty*** dollars ***($350)***[~~($300)~~] for the main office and two hundred ***fifty*** dollars ***($250)***[~~($200)~~] for each branch office ***in Kentucky***, ***and*** submitting an annual ***report of activity as prescribed by the commissioner, and any***[~~financial statement, and submitting~~] other information required by the commissioner.

(4) The information and payment shall be received by the commissioner on or before ***June 20 prior to***[~~July 15 following~~] the June 30 expiration date.[~~If the information and payment are not received by July 15, the license shall be cancelled.~~] The commissioner may reinstate the license if the licensee pays the filing fee and a reinstatement fee of one hundred dollars ($100).

(5) The department shall provide a licensee with a duplicate copy of any license upon a satisfactory showing of its loss and payment of a ten dollar ($10) replacement fee.

Section 5. KRS 294.036 is amended to read as follows:

(1) Each license issued under this chapter shall state the address or addresses at which business is to be conducted, the name of the licensee, and the date and place of its incorporation, if applicable.

(2) A licensee shall post a copy of such license in a conspicuous place in the office to which it pertains.

(3) A license may not be transferred or assigned without the prior written approval of the commissioner.

(4) No licensee shall transact the business provided for by this chapter under any other name or maintain an office at any location other than that designated in the license.

(5) Every licensed mortgage loan company or mortgage loan broker shall notify the commissioner, in writing, within ten (10) days of the closing of any licensed office or registered Kentucky branch.

Section 6. KRS 294.060 is amended to read as follows:

(1) Except as otherwise provided in this section, at the time of filing an application for registration as a mortgage loan company or mortgage loan broker, the applicant shall post corporate surety bonds in an amount[~~that the commissioner determines by administrative regulation to be necessary and appropriate under the circumstances but~~] not less than ***one hundred thousand dollars ($100,000)***[~~twenty-five thousand dollars ($25,000)~~] for mortgage loan companies and not less than ***fifty thousand dollars ($50,000)***[~~twenty-five thousand dollars ($25,000)~~] for mortgage loan brokers. Every bond shall provide for suit thereon by any person who has a cause of action under this chapter. The total liability of the surety, to all persons, cumulative or otherwise, shall not exceed the amount specified in the bond. Every bond shall provide that no suit shall be maintained to enforce any liability on the bond unless brought within three (3) years after the act upon which it is based.

(2) In lieu of posting corporate surety bonds, the applicant may:

(a) Deposit with the commissioner an irrevocable letter of credit for an amount equal to the required bond upon which the applicant is the obligor, issued by a bank approved by the commissioner, whose deposits are insured by the Federal Deposit Insurance Corporation;

(b) Establish an account payable to the commissioner in a federally insured financial institution in this state and deposit money of the United States in an amount equal to the amount of the required bond; or

(c) Deposit with the commissioner ***an escrow agreement for*** a savings certificate of a federally insured financial institution in this state for an amount payable which is equal to the amount of the required bond and which is not available for withdrawal except by direct order of the commissioner. Interest earned on the certificate accrues to the applicant.

(3) If the commissioner ***or the commissioner's representative*** shall at any time reasonably determine that the bond or securities aforesaid are insecure, deficient in amount, or exhausted in whole or part, he may by written order require the filing of a new or supplemental bond or the deposit of new or additional securities in order to secure compliance with this chapter, the order to be complied with within thirty (30) days following service thereof upon the registrant.

Section 7. KRS 294.070 is amended to read as follows:

(1) The use of the words "certified" or "licensed" or any form thereof separately or in any combination thereof with other words or syllables, is prohibited as part of the name of a mortgage loan company ***or a mortgage loan broker***. No license of a proposed mortgage loan company ***or a mortgage loan broker*** having the same name as a corporation authorized to do business under the laws of this state or a name so nearly resembling it as to be calculated to deceive shall be issued by the commissioner.

(2) No person, unless lawfully authorized to do business in this state under the provisions of this chapter, and actually engaged in carrying on a mortgage loan or loan broker business, shall do business under any name or title which contains the terms "mortgage company," "mortgage loan company," "mortgage loan broker," "loan broker," "financial broker," or any combination employing the words "mortgage," "loan," or "broker," with one (1) or more of the words "association," "institution," "society," "company," "corporation," or words of similar import, or use any name or represent in any manner which indicates or reasonably implies that his or its business is that of a mortgage loan company or mortgage loan broker as defined by KRS 294.010.

(3) A mortgage loan company or mortgage loan broker required to have a license under this chapter shall not use the words "bank," "trust," "national," or "federal," or any form thereof separately or in combination thereof with other words or syllables as a part of its name or to otherwise identify itself.

Section 8. KRS 294.075 is amended to read as follows:

(1) As used in this section, "change of control" means:

(a) A transfer of voting stock which results in giving a person, directly or indirectly, the power to direct the management and policy of a mortgage ***loan*** company ***or mortgage loan broker***; or

(b) A transfer of at least ten percent (10%) of the outstanding voting stock of a mortgage ***loan*** company ***or a mortgage loan broker***.

[~~(2) The commissioner must approve~~]A transfer of voting stock of a mortgage ***loan*** company ***or mortgage loan broker*** which constitutes a change of control ***shall be approved in writing by the commissioner, prior to the transfer***.

(3) The owner, president, chief executive officer or a partner shall apply to the commissioner for approval of a transfer of voting stock in his mortgage ***loan*** company ***or mortgage loan broker*** which constitutes a change of control. The application must contain information which shows that the requirements of this chapter for obtaining a license will be satisfied after the change of control.

Section 9. KRS 294.090 is amended to read as follows:

The commissioner may deny, suspend, or revoke any license when the applicant or licensee:

(1) Does not meet or has failed to comply with the requirements of this chapter;

(2) Is unfit through lack of financial responsibility or experience to conduct the business of a mortgage loan company or mortgage loan broker, as the case may be;

(3) Does not conduct his business in accordance with law or the method of business includes or would include activities which are illegal where performed, or has willfully violated any provision of this chapter or any regulation hereunder;

(4) Collects interest at a usurious rate;

(5) Is in such financial condition that he cannot continue in business with safety to his customers;

(6) Has been guilty of fraud in connection with any transaction governed by this chapter, or is the subject of an administrative cease and desist order or similar order, or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the registrant; but the commissioner may not institute a proceeding under this subsection more than one (1) year from the date of the order or injunction relied on, and he may not enter an order under this subsection on the basis of an injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for an order under this section;

(7) Has made any misrepresentations or false statements to, or concealed any essential or material fact from, any person in

the course of acting as a mortgage loan company or mortgage loan broker, or has engaged in a course of business which has worked or tended to work a fraud upon any person or would so operate;

(8) Has knowingly made or caused to be made to the commissioner any false representation of material fact or has suppressed or withheld from the commissioner any information which the applicant or licensee possesses, and which if submitted by him would have rendered the applicant or licensee ineligible to be licensed under this chapter;

(9) Has failed to account to persons interest for all funds received for the escrow account required under KRS 294.130;

(10) Has refused to permit an examination by the commissioner of his books and affairs or has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the commissioner under the provisions of this chapter;

(11) Has been convicted of any misdemeanor of which an essential element is fraud, or any felony, or has pending against him any felony charge***; or***

(12) Has had any license related to the financial services industry denied, suspended, or revoked under the laws of this state or any other state or the United States.

Section 10. KRS 294.100 is amended to read as follows:

(1) No mortgage loan company or mortgage loan broker may establish or maintain a branch office ***in Kentucky*** without ***filing the registration statement as described in subsection (5) of Section 3 of this Act and the receipt of*** prior written approval of the commissioner.

(2) Each ***registration statement***[~~application~~] for approval of the establishment and maintenance of a branch office shall state the proposed location, the functions to be performed, and other information which the commissioner may require if different from that contained in the original application for ***a license***[~~registration~~].

(3) Each ***registration statement***[~~application~~] under this section shall be ***sworn to***[~~verified~~] and accompanied by the appropriate fee as set out in KRS 294.034(1)(b).

(4) Upon the receipt by the commissioner of ***a registration statement***[~~an application~~] and the required fee, if he finds that the applicant is otherwise in compliance with the provisions of this chapter, he shall approve the ***registration statement***[~~application~~].

Section 11. KRS 294.110 is amended to read as follows:

(1) Mortgage loan companies are prohibited from making loans and mortgage loan brokers are prohibited from brokering loans at a rate or rates in excess of those provided by KRS 360.010 and 360.025 or other applicable usury statutes.

(2)[~~Every loan shall be evidenced by a note for the amount of the loan. Every note evidencing a loan under this subsection shall contain the following information and provisions: The original principal amount of the loan, excluding any charge for the loan; a statement of the total charge for the loan; the terms of repayment, including the amount and date of installments and penalty or charge for late payment; the date of final maturity; and may contain all other terms of the loan contract. The borrower shall be given a copy of the note, at the time the loan is made and shall thereafter be given a receipt for each cash payment.~~

~~(3)~~] Every real estate loan shall be secured by a mortgage or other instrument constituting a lien upon the real estate securing the loan, according to any lawful or well-recognized practice which is best suited to the transaction. Any such instrument, constituting a lien, is herein termed a "mortgage." All such mortgages shall be recorded in accordance with the law of this Commonwealth.

(3)[~~(4)~~] Delinquency charges may be made for each installment more than ten (10) days in arrears, and only one (1) delinquency charge shall be made on any one (1) installment. No delinquency charge shall be made unless disclosed as required under subsection (2) of this section. In addition to such delinquency charges, attorneys' fees not exceeding fifteen percent (15%) of the unpaid balance shall be taxed as costs and court costs may be collected, provided that the note is referred to an attorney not a salaried employee of the holder for collection.

(4)[~~(5)~~] Any charges to be assessed against the borrower, in the event a loan is paid prior to maturity shall be prominently displayed and made part of the note and the loan closing statement regarding the method of computation of any rebate. ***No prepayment penalty shall be assessed against the borrower following the fifth anniversary date of the mortgage. No prepayment penalty shall exceed five percent (5%) of the outstanding balance of the loan.***

Section 12. KRS 294.120 is amended to read as follows:

(1) Every mortgage loan company may require borrowers to pay all necessary and reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of loans. Without limiting the generality of the foregoing, such expenses may include appraisal, attorneys' fees, abstract, recording and registration fees, title examination, title insurance, mortgage insurance, credit report, survey, drawing of papers, origination fees, loan closing costs, and taxes or charges imposed upon or in connection with the making and reporting of any mortgage.

(2) Every mortgage loan company also may require the borrowers to pay the cost of all other necessary and incidental services rendered by the mortgage loan company or by others in connection with loans in reasonable amounts. Without

limiting the generality of the foregoing, such costs may include the cost of services of inspectors, engineers, and architects.

(3) Such initial charges as described in subsections (1) and (2) of this section may be collected by the mortgage loan company from the borrower and paid to any person rendering such services, or paid directly by the borrower.

(4) In lieu of such initial charges to cover such expenses and costs as described in subsections (1) and (2) of this section, a mortgage loan company may make a reasonable charge, part or all of which may be retained by the mortgage loan company which renders such service, or part or all of which may be paid to others who render such services.

(5) The fees and charges authorized by this section shall be in addition to interest authorized by law, and shall not be deemed to be a part of the interest collected or agreed to be paid on such loans within the meaning of any law of this Commonwealth which limits the rate of interest which may be exacted in any transaction.

(6) No person shall receive any fee or other compensation of any kind in connection with procuring any loan, except for services actually rendered as above provided, and in no event shall a mortgage loan company ***or mortgage loan broker*** require the payment of a fee greater than one hundred dollars ($100) as a condition to submitting a loan application unless the commissioner shall otherwise prescribe by rule.

(7)[~~Upon receipt of a loan application, the mortgage loan company shall provide the applicant with a written explanation of the nature of all fees, expenses and other costs allowable under subsections (1) and (2) of this section which, whether certain or uncertain, may be incurred or required of the borrower in connection with the approval, making, closing and disbursement of the loan.~~

~~(8) The mortgage loan company shall furnish a loan settlement statement to each borrower upon request one (1) business day prior to the settlement date in a form consistent with the provisions of the Real Estate Settlement Procedures Act of 1974 and any amendments thereto, and in all other regards the mortgage loan company shall make the necessary and appropriate disclosures consistent with the provisions of that act and any amendments thereto. A copy of the loan settlement statement and any other disclosure documents shall be retained in the records of the mortgage loan company.~~

~~(9)~~] All "letters of commitment," or any other contracts or agreements between prospective borrowers and a mortgage loan company or a loan broker, where the borrowers employ services, for a fee or commission, to obtain a loan commitment or funding from a lending institution shall indicate the terms and conditions thereof, including a full and detailed description of the services the broker or company undertakes to perform, a specific statement of the circumstances in which the broker or company will be entitled to obtain or retain consideration and the period that such agreement shall remain in effect.

(8)[~~(10)~~] Failure on the part of any party, with the exception of the borrower, to fulfill the terms of any loan commitment, letter of commitment, agreement or contract for the loan of money within the time and on such terms specified therein, or the failure to make a bona fide effort to secure a loan after receiving a fee for such service, shall constitute default by the mortgage loan company and any other person so in default; and any person damaged by such default may sue at law or equity for damages, reasonable attorneys' fees and interest at the legal rate of interest under KRS 360.010. Every cause of action for damages under this subsection survives the death of any person who might have been a plaintiff or defendant. No person may sue under this subsection more than five (5) years after any act constituting default.

[~~(11) The failure to disclose a dual agency capacity or effecting transactions upon terms and conditions other than those stated in the letter of commitment, loan commitment or any other contract for the loan of money, or entering into an agreement which establishes unfair terms and conditions or compensation, as the commissioner shall define by rule; or any contract of loan in the making or collection of which any act shall have been done which constitutes a willful violation of any provision of this section or of KRS 294.110 shall be void, and the mortgage loan company or the lender, if not the mortgage loan company, shall have no right to collect, receive or retain any interest or charges whatsoever on such loan, but the unpaid principal of the loan shall be paid in full.~~]

Section 13. KRS 294.160 is amended to read as follows:

Every mortgage loan company and mortgage loan broker shall make and keep such accounts, correspondence, memoranda, papers, books, data and other records as the commissioner prescribes***, or that are required by federal law***.[~~All records so required shall be preserved for three (3) years from the date of collection of the last installment payment due under each agreement unless the commissioner by rule prescribes otherwise for particular types of records.~~] Every mortgage loan company and mortgage loan broker shall file such financial reports as the commissioner by regulation prescribes. If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the licensee shall promptly file a correcting amendment.

Section 14. KRS 294.170 is amended to read as follows:

(1) Every mortgage loan company and mortgage loan broker shall keep at its principal office correct and complete books of accounts and minutes of proceedings of its directors, principals, or partners. Complete records of all business transactions at the principal office shall be maintained at the principal office. Each branch office shall keep detailed records of all transactions at such branch office and shall furnish full control records to the principal office.

(2) No mortgage loan company or mortgage loan broker by any system of accounting or any device of bookkeeping shall, either directly or indirectly, enter any of its assets upon its books in the name of any person, partnership, association, or corporation, or under any title, designation or value that is not thoroughly descriptive of any assets.

(3) The affairs of every mortgage loan company and mortgage loan broker and the records required to be maintained by KRS 294.160 are subject at any time or from time to time to such periodic, special, or other examinations by the commissioner or an examiner of the commissioner within or without this state and with or without notice to the mortgage loan company and mortgage loan broker, as the commissioner deems necessary or appropriate in the public interest. All books, papers, and records of assets of the mortgage loan company shall be subject to his inspection.

(4) The examiner shall make a thorough examination into the condition, workings and affairs of the association and report any violation of law or any unauthorized unsafe practices or any failure to keep and have correct any required books and records as he may find to the commissioner.

(5) A mortgage loan company or mortgage loan broker shall pay a fee for each such examination based on fair compensation for time and actual expense. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, insofar as he deems it practicable in administering this section, may cooperate with any agency of the state or federal government, other states, or the federal National Mortgage Association***, Government National Mortgage Association, and Federal Home Loan Mortgage Corporation,*** and may accept such examinations in whole or in part in lieu of an examination by the commissioner.

(6) The commissioner or his examiners or designated representative shall have access to all books and papers of a mortgage loan company and mortgage loan broker which relate to their business, and books and papers kept by any officers, agents, or employees, relating to or upon which any record of its business is kept.

Section 15. KRS 294.220 is amended to read as follows:

(1) It shall be unlawful for any person to make or cause to be made, in any document filed with the commissioner or in any proceeding under this chapter, any statement which is, at the time and in light of the circumstances under which it is made, false or misleading in any material respect.

(2) It shall be unlawful for any mortgage loan company or mortgage loan broker, in connection with the operation of a mortgage loan business or the management or servicing of mortgage contracts, directly or indirectly:

(a) To employ a device, scheme, or artifice to defraud;

(b) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

(c) To fail to disburse funds in accordance with a loan commitment;

(d) To delay closing of any mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower***;***

(e) Upon receipt of a customer's written request, to delay beyond two (2) business days the issuance of a written loan payoff amount or to delay beyond ten (10) business days the issuance of a payment history.

(3) Unless exempted by KRS 294.020, it shall be unlawful for any person to transact any mortgage loan business in this state unless it:

(a) Qualifies to do business in Kentucky as required by KRS Chapter 271B; and

(b) Complies with the provisions of this chapter.

SECTION 16. A NEW SECTION OF KRS CHAPTER 294 IS CREATED TO READ AS FOLLOWS:

(1) Reports of examination, and correspondence that relates to the report of examination, of a mortgage loan company or mortgage loan broker shall be considered confidential information. No officer or director of a mortgage loan company or mortgage loan broker, employee of the department, or employee of a state or federal regulatory authority shall release any information contained in the examination, except when:

(a) Required in a proper legal proceeding in which a subpoena and protective order insuring confidentiality has been issued by a court of competent jurisdiction; or

(b) The information is referred to an appropriate prosecuting attorney for possible criminal proceedings.

(2) The department may furnish to and exchange information and reports with officials and examiners of other properly authorized state or federal regulatory authorities.

(3) Every official report concerning a mortgage loan company or mortgage loan broker, and every report of examination, shall be prima facie evidence of the facts therein stated for all purposes in any action in which the department, mortgage loan company, or mortgage loan broker is a party.

Section 17. KRS 294.990 is amended to read as follows:

(1) Any person who willfully violates any provision of this chapter, except KRS 294.220(1), or who willfully violates KRS 294.220(1) knowing the statement to be false or misleading in any material respect, shall be guilty of a Class D felony.

(2) Any person who willfully violates any rule or order of the commissioner, authorized under this chapter, shall be guilty of a Class A misdemeanor, but no person may be imprisoned for violation of any rule or order of which that person did not have actual knowledge.

(3) The commissioner may refer the evidence available concerning violations of this chapter or any rule or order hereunder to the appropriate prosecuting attorney, who may, with or without reference, institute the appropriate criminal proceeding under this chapter.

(4) Nothing in this chapter shall limit the powers of the state to punish any person for any conduct which constitutes a crime.

(5) The commissioner ***may***[~~shall~~] assess a fine of not less than ***one thousand dollars ($1,000)***[~~fifty dollars ($50)~~] nor more than five ***thousand dollars ($5,000)***[~~hundred dollars ($500)~~] against any mortgage loan company ***or mortgage loan broker*** that ***violates any provision of this chapter***[~~fails to perform the duties set out in KRS 294.130~~]. The Attorney General shall institute an action, in the name of the Commonwealth, in the Franklin Circuit Court or the Circuit Court of the county in which the violation occurred, for the recovery of the fine.

(6) Any person who shall engage in the businesses regulated by this chapter without first securing a license therefor shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000).

[~~(7) Any person who, after a cease and desist order has been issued by the commissioner, violates any provision of the cease and desist order, shall be punished by a fine of not less than five hundred dollars ($500) nor more than one thousand ($1000). The fine shall not be deemed to limit the power of the commissioner to revoke any license.~~]

Section 18. The following KRS section is repealed:

294.115 Broker to furnish disclosures in writing to borrower.

The Committee on Transportation reported **HB 14,** with Committee Amendment attached thereto, **HB 444, HB 504, HB 542,** with Committee Amendment attached thereto, **HJR 61, HJR 75, SB 101, SB 102,** and **SB 141** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 14, AN ACT relating to motor vehicle instruction permits.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 186.450 is amended to read as follows:

(1) A person who is at least sixteen (16) years of age may apply for an instruction permit to operate a motor vehicle, motorcycle, or moped in the office of the circuit clerk in the county where the person lives. A person applying for an instruction permit shall be required to comply with the following:

  (a) If the person is under the age of eighteen (18), the instruction permit application shall be signed by the applicant's parent or legal guardian. If the person does not have a living parent or does not have a legal guardian, the instruction permit application shall be signed by a person willing to assume responsibility for the applicant pursuant to KRS 186.590; and

  (b) All applicants for an instruction permit shall comply with the examinations required by KRS 186.480.

(2) If an applicant successfully passes the examinations required by KRS 186.480, the applicant shall be issued an instruction permit upon payment of a six dollar ($6) fee pursuant to KRS 186.531.

(3) An instruction permit shall be valid for one (1) year and may be renewed. A person shall have an instruction permit a minimum of one hundred eighty (180) days before applying for an operator's license.

(4) ***An instruction permit holder***[~~A person~~] shall have the instruction permit in his possession at all times when operating a motor vehicle, motorcycle, or moped upon the highway. When operating a motor vehicle, an instruction permit holder shall be accompanied by a person with a valid operator's license who is at least ***eighteen (18)***[~~twenty one (21)~~] years of age occupying the seat beside the operator at all times.

(5) A person with an instruction permit who is under the age of eighteen (18) shall not operate a motor vehicle, motorcycle, or moped between the hours of 12 midnight and 6 a.m. unless the person can demonstrate good cause for driving including, but not limited to, emergencies, involvement in school related activities, or involvement in work related activities.

(6) A person under the age of eighteen (18) who accumulates more than six (6) points against his driving privilege may have the driving privilege suspended pursuant to KRS Chapter 186 or probated by the court.

(7) An applicant for relicensing after revocation shall pay the clerk a fee of twenty-five dollars ($25). The twenty-five dollar ($25) fee shall not apply to any person whose license was suspended for failure to meet the conditions described in KRS 186.411 when, within one (1) year of suspension, the driving privileges of such individuals are reinstated and ***to*** persons reinstated pursuant to KRS 159.051.

The Committee Amendment No. 1 to **HB 14** is as follows:

On page 1, lines 22 and 23, by deleting the word and number "*eighteen (18)*" and inserting in lieu thereof the word and number "*nineteen (19)*".

HB 444, AN ACT relating to aviation and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 183 IS CREATED TO READ AS FOLLOWS:

(1) The "Kentucky Aviation Economic Development Fund" is established in the State Treasury. All receipts collected under KRS Chapter 139 from the sales or use tax on aviation jet fuel shall be deposited in this fund.

(2) The fund may also receive state appropriations, gifts, grants, and federal funds and shall include earnings from investments of moneys from the fund.

(3) Any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year.

(4) The Transportation Cabinet shall use all moneys deposited in the fund or accruing to the fund for the development, rehabilitation, and maintenance of publicly owned or operated aviation facilities and for other aviation programs within the Commonwealth that will benefit publicly owned or operated aviation facilities.

(5) The cabinet shall be prohibited from expending moneys deposited in the fund for administrative costs incurred by the cabinet or for any purpose other than the development, rehabilitation, and maintenance of publicly owned or operated aviation facilities and other aviation programs benefiting publicly owned or operated aviation facilities.

Section 2. Whereas aviation facilities throughout the Commonwealth are in need of immediate development, rehabilitation, and maintenance, an emergency is declared to exist, and this Act takes effect on June 1, 1998.

HB 504, AN ACT relating to air transportation funding and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 183 IS CREATED TO READ AS FOLLOWS:

(1) The general fund appropriation amount to the Air Transportation budget unit of the Transportation Cabinet for fiscal year 1998-1999 and fiscal year 1999-2000 in the enacted State/Executive Branch Budget shall be made as a general fund appropriation from the revenues received from the sales and use tax levy on jet fuel under KRS Chapter 139.

(2) (a) The Office of Financial Management and Economic Analysis of the Finance and Administration Cabinet shall estimate the general fund revenues from the sales and use tax levy on jet fuel for fiscal year 1999-2000.

(b) The Office of Financial Management and Economic Analysis of the Finance and Administration Cabinet shall calculate the percentage of revenues estimated, under paragraph (a) of this subsection, needed for fiscal year 1999-2000 that provides for the general fund appropriation for fiscal year 1999-2000 to the Air Transportation budget unit of the Transportation Cabinet in the enacted State/Executive Branch Budget.

(3) Beginning with fiscal year 2000-2001 and each fiscal year thereafter, an amount equal to the general fund revenue from the sales and use tax collected on jet fuel, as calculated under subsection (4) of this section, shall be credited to the Air Transportation budget unit of the Transportation Cabinet.

(4) (a) The Office of Financial Management and Economic Analysis of the Finance and Administration Cabinet shall estimate the general fund revenues from the sales and use tax levy on jet fuel for fiscal year 2000-2001 and each fiscal year thereafter.

(b) The percentage calculated under paragraph (b) of subsection (2) of this section for fiscal year 1999-2000 shall be the base year percentage. The percentage for fiscal year 2000-2001 and each fiscal year thereafter shall be increased five percent (5%) above the base year percentage until the percentage equals one hundred percent (100%).

(c) The percentage calculated under paragraph (b) of this subsection shall be applied against the estimated general fund revenues from the sales and use tax levy on jet fuel determined under paragraph (a) of this subsection to calculate the amount to be credited the Air Transportation budget unit of the Transportation Cabinet for fiscal year 2000-2001 and each fiscal year thereafter as provide in subsection (3) of this section.

(5) The amount of the estimated general fund revenues credited to the Air Transportation budget unit under this section shall be adjusted after the close of the fiscal year based on the actual receipts received during the fiscal year from the sales and use tax collected on jet fuel.

Section 2. KRS 139.020 is amended to read as follows:

Any and all amounts derived from the levy and collection of the taxes levied by this chapter shall be appropriated and used as follows***, except as provided for in Section 1 of this Act***:

(1) Upon issuance and sale from time to time of bonds providing funds for purposes of paying the bonus to veterans as proposed by the General Assembly under KRS 40.005, and ratified by the electorate on November 3, 1959, there shall first be set aside out of each month's receipts such proportionate part of the next maturing principal of, and interest on, all such bonds as may then be outstanding as will provide for the payment of principal and interest when due.

(2) Monthly receipts in excess of the amounts necessary to make such provisions for the payment of the principal of and interest on all such outstanding bonds shall to the extent of such excess be credited to the general fund.

Section 3. Whereas the 1998-2000 State/Executive Branch Budget takes effect July 1, 1998, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

HB 542, AN ACT relating to motor vehicles.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 367.841 is amended to read as follows:

(1) "Buyer" means any resident person who buys or contracts to buy a new motor vehicle in the Commonwealth of Kentucky.

(2) "Manufacturer" means any person or corporation, resident or nonresident, who manufactures or assembles new motor vehicles which are sold in the Commonwealth of Kentucky.

(3) "Motor vehicle" means every vehicle which is self propelled, and which is intended primarily for use and operation on the public highways and required to be registered or licensed in the Commonwealth prior to such use or operation; however, "motor vehicle" shall not include***:***

(a) Any vehicle substantially altered after its initial sale from a dealer to an individual;[~~ conversion vans,~~]

(b) Motor homes***;***[~~,~~]

(c) Motorcycles***;***[~~,~~]

(d) Mopeds***;***[~~,~~]

(e) Farm tractors and other machines used in the production, harvesting***,*** and care of farm products***;***[~~,~~] or

(f) Vehicles which have more than two (2) axles.

(4) "New motor vehicle" means a motor vehicle which has been finally and completely assembled and is in the possession of a manufacturer, factory branch, distributor, wholesaler or an authorized motor vehicle dealer operating under a valid sales and service agreement, franchise or contract for the sale of such vehicle granted by the manufacturer, factory branch, distributor or wholesaler which is, in fact, new and on which the original title has never been issued.

(5) "Express warranty" or "warranty" means the written warranty, so labeled, of the manufacturer of a new automobile, including any terms or conditions precedent to the enforcement of obligations under the warranty.

(6) "Nonconformity" means a failure to conform with an express warranty in a manner which substantially impairs the use, value, or safety of the motor vehicle.

(7) "Reasonable allowance for use" means the amount directly attributable to a consumer's use of the vehicle other than those time periods when the vehicle is out of service due to the nonconformity.

The Committee Amendment No. 1 to **HB 542** is as follows:

On page 1, line 5, after the word "vehicles", by inserting "***, including new conversion van manufacturers,***".

HJR 61, A JOINT RESOLUTION directing the Transportation Cabinet to name the Morganfield Bypass as the "Sam M. McElroy Expressway" and to erect appropriate highway signs.

WHEREAS, Sam M. McElroy ably served the citizens of Union, Daviess, and Henderson Counties in the General Assembly as representative of the 7th House District from 1984 through 1994; and

WHEREAS, Sam M. McElroy's work in the General Assembly benefited from his background in agriculture, conservation, and land management with his service on the Agriculture, Natural Resources and Environment, and Counties and Special Districts Committees; and

WHEREAS, Sam M. McElroy worked diligently while in the General Assembly to improve roads in his district and was particularly instrumental in gaining approval for a bypass around Morganfield on US 60; and

WHEREAS, Sam M. McElroy is a graduate of the University of Kentucky, a veteran of the United States Army, and was named the University of Kentucky College of Agriculture's Outstanding Alumnus in 1977; and

WHEREAS, Sam M. McElroy is a past President of the State Association of Conservation Districts; and

WHEREAS, all who know Sam M. McElroy as a legislator, neighbor, and friend have been witness to his integrity, dedication, good humor, and kindness;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Transportation Cabinet is directed to name Morganfield Bypass, currently under development, as the "Sam M. McElroy Expressway".

Section 2. The Transportation Cabinet shall prepare the appropriate highway signs for the naming of the "Sam M. McElroy Expressway" to facilitate their erection upon the completion of the road.

Section 3. A copy of this Resolution shall be sent to the Secretary of the Transportation Cabinet and the District Highway Engineer in Madisonville, Kentucky.

HJR 75, A JOINT RESOLUTION directing the Transportation Cabinet to name the bridge on US 460 crossing the Levisa Fork of the Big Sandy River at Millard the "Veterans Memorial Bridge" and to erect appropriate highway signs.

WHEREAS, it is the Armed Forces that defend our great nation from foreign powers that act against our national interests and seek to tarnish the principles of freedom and justice; and

WHEREAS, countless servicemen have sacrificed their lives in defense of the Constitution that makes our country the model for the free world; and

WHEREAS, our veterans deserve our gratitude and recognition for their devotion and service to our Commonwealth and our nation;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Transportation Cabinet is directed to name the bridge on US 460 over the Levisa Fork of the Big Sandy River at Millard in Pike County the "Veterans Memorial Bridge".

Section 2. The Transportation Cabinet shall immediately begin preparing the appropriate highway signs naming the "Veterans Memorial Bridge" to facilitate their erection upon the effective date of this Resolution.

Section 3. A copy of this Resolution shall be sent to the Secretary of the Transportation Cabinet and the District Highway Engineer in Pikeville, Kentucky.

SB 101, AN ACT relating to speed limits.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 189.390 is amended to read as follows:

(1) As used in this section, unless the context requires otherwise:

(a) "Business district" means the territory contiguous to and including a highway if, within six hundred (600) feet along the highway, there are buildings in use for business or industrial purposes that occupy three hundred (300) feet of frontage on one (1) side or three hundred (300) feet collectively on both sides of the highway;

(b) "Residential district" means the territory contiguous to and including a highway not comprising a business district if the property on the highway for a distance of three hundred (300) feet or more is improved with residences or residences and buildings in use for business; ***and***

(c) "State highway" means a highway or street maintained by the Kentucky Department of Highways[~~; and~~

~~(d) "Non-urbanized area" means an area located outside of the federal-aid urban boundary designated for urbanized areas of fifty thousand (50,000) population or more as defined by the United States Bureau of Census~~].

(2) An operator of a vehicle upon a highway shall not drive at a greater speed than is reasonable and prudent, having regard for the traffic and for the condition and use of the highway.

(3) If conditions exist that require lower speed for compliance with subsection (2) of this section, the speed of any vehicle in excess of the limits specified in this section shall be unlawful:

(a) For vehicles other than motor vehicles of five (5) horsepower or less, thirty-five (35) miles per hour in any business or residential district, except as provided in subsection (5) of this section, and fifty-five (55) miles per hour in other locations, except where the speed limit has been posted at sixty-five (65) miles per hour;

(b) For motor vehicles of five (5) horsepower or less, thirty-five (35) miles per hour in any location except as provided in subsection (5) of this section;

(c) Vehicles using off-street parking facilities offered for public use whether publicly or privately owned, fifteen (15) miles per hour.

(4) (a) If the secretary of transportation determines, upon the basis of an engineering and traffic investigation, that any speed limit is greater or less than is reasonable or safe under the conditions found to exist at any intersection, or upon any part of a state highway, the secretary of transportation may establish by official order a reasonable and safe speed limit at the location. The secretary shall not increase any speed limit established by subsection (3) of this section in excess of fifty-five (55) miles per hour.

(b) In a highway work zone, the Transportation Cabinet may temporarily reduce established speed limits without an engineering or traffic investigation. A speed limit established under this paragraph shall become effective when and where posted. The Transportation Cabinet shall post signs notifying the traveling public of the temporary highway work zone maximum speed limit. Nothing in this paragraph shall be construed to prevent the Transportation Cabinet from using moveable or portable speed limit signs in highway work zones.

(5) (a) A city or a county may by ordinance establish speed limits within its own jurisdiction, except as provided in paragraph (b) of this subsection.

(b) The alteration of speed limits on state highways within a city or a county shall not be effective until the alteration has been approved by the secretary of transportation. The secretary shall not approve any alteration that could increase any speed limit established by subsection (3) of this section in excess of fifty-five (55) miles per hour.

(c) If a county determines, upon the basis of an engineering and traffic investigation and study, that it is unsafe to park motor vehicles on or along any highway, other than a state highway, within the unincorporated areas of the county, or that in any business district the congestion of traffic justifies a reasonable limitation on the length of time any one (1) motor vehicle is permitted to park in such district so as to reduce the congestion, the fiscal court may by ordinance establish "no parking" areas on the highway, or limit the length of time any motor vehicle may be parked in any business district.

(d) Notwithstanding the other limitations in this subsection, the secretary of transportation may establish, by official order, reasonable and safe speed limits on interstate highways and divided highways with four (4) or more lanes and fully controlled access~~[and located in a nonurbanized area]~~, a speed limit not to exceed sixty-five (65) miles per hour.

(6) A person shall not drive a motor vehicle at a speed that will impede or block the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation or in compliance with law.

(7) In every charge for a violation of any speed limit specified in this section, the warrant or citation shall specify the speed at which the defendant is alleged to have driven, and the lawful speed limit applicable at the location where the violation is charged to have occurred.

SB 102, AN ACT relating to motor vehicle usage tax.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 138.470 is amended to read as follows:

There is expressly exempted from the tax imposed by KRS 138.460:

(1) Motor vehicles sold to the United States, or to the Commonwealth of Kentucky or any of its political subdivisions;

(2) Motor vehicles sold to institutions of purely public charity and institutions of education not used or employed for gain by any person or corporation;

(3) Motor vehicles which have been previously registered and titled in any state or by the federal government when being sold or transferred to licensed motor vehicle dealers for resale. Such motor vehicles shall not be leased, rented, or loaned to any person and shall be held for resale only;

(4) Motor vehicles sold by or transferred from dealers registered and licensed in compliance with the provisions of KRS 186.070 and KRS 190.010 to 190.080 to nonresident members of the Armed Forces on duty in this Commonwealth under orders from the United States government;

(5) Commercial motor vehicles, excluding passenger vehicles having a seating capacity for nine (9) persons or less, owned by nonresident owners and used primarily in interstate commerce and based in a state other than Kentucky which are required to be registered in Kentucky by reason of operational requirements or fleet proration agreements and are registered pursuant to KRS 186.145;

(6) Motor vehicles previously registered in Kentucky, transferred between husband and wife, parent and child, stepparent and stepchild, or grandparent and grandchild;

(7) Motor vehicles transferred when a business changes its name and no other transaction has taken place or an individual changes his or her name;

(8) Motor vehicles transferred to a corporation from a proprietorship ***or limited liability company, to a limited liability company from a corporation or proprietorship***, or from a corporation ***or limited liability company*** to a proprietorship, within six (6) months from the time that the business is incorporated or dissolved;

(9) Motor vehicles transferred by will, court order, or under the statutes covering descent and distribution of property, if the vehicles were previously registered in Kentucky;

(10) Motor vehicles transferred between a subsidiary corporation ***or limited liability company*** and its parent corporation ***or limited liability company*** if there is no consideration, or nominal consideration, or in sole consideration of the cancellation or surrender of stock;

(11) The interest of a partner in a motor vehicle when other interests are transferred to him;

(12) Motor vehicles repossessed by a secured party who has a security interest in effect at the time of repossession and a repossession affidavit as required by KRS 186.045(4). The repossessor shall hold the vehicle for resale only and not for personal use, unless he has previously paid the motor vehicle usage tax on the vehicle; and

(13) Motor vehicles transferred to an insurance company to settle a claim. These vehicles shall be junked or held for resale only.

Section 2. The amendment contained in Section 1 of this Act shall apply for motor vehicles transferred after July 31, 1998.

SB 141, AN ACT relating to motor vehicles.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 186.020 is amended to read as follows:

(1) Before the owner of a motor vehicle, other than a motor vehicle engaged in the transportation of passengers for hire operating under a certificate of convenience and necessity, may operate it or permit its operation upon a highway, the owner shall apply for registration in accordance with ***administrative*** regulations ***promulgated***~~[issued]~~ by the cabinet, except that a person who purchases a motor vehicle, or brings a motor vehicle into the Commonwealth from another state shall make application for registration within fifteen (15) days. The bill of sale or assigned title must be in the motor vehicle during this fifteen (15) day period. If the owner of a motor vehicle is an individual and resides in the Commonwealth, the motor vehicle shall be registered with the county clerk of the county in which he resides. If the owner of a motor vehicle does not reside in the Commonwealth, the motor vehicle shall be registered with the county clerk of the county in which the motor vehicle is principally operated. If the owner of a motor vehicle is other than an individual and resides in the Commonwealth, the motor vehicle shall be registered with the county clerk of either county. The application when presented to the county clerk for registration shall be accompanied by:

(a) A bill of sale and a manufacturer's certificate of origin if the application is for the registration of a new motor vehicle;

(b) The owner's registration receipt, if the motor vehicle was last registered in this state;

(c) A bill of sale and the previous registration receipt, if last registered in another state where the law of that state does not require the owner of a motor vehicle to obtain a certificate of title or ownership;

(d) A certificate of title, if last registered in another state where the law of that state requires the owner of a motor vehicle to obtain a certificate of title or ownership;

(e) An affidavit from an officer of a local government saying that the motor vehicle has been abandoned and that the provisions of KRS 82.630 have been complied with, for local governments which elect to use the provisions of KRS 82.600 to 82.640; and

(f) The application from a person who has brought a motor vehicle into the Commonwealth from another state shall be accompanied by proof that the motor vehicle is insured in compliance with KRS 304.39-080.

(2) After that, the owner of any motor vehicle registered under KRS 186.050(1) or (2) shall register his motor vehicle on or before the date on which his certificate of registration expires. If, before operating the motor vehicle in this state, the owner registers it at some later date and pays the fee for the full year, he will be deemed to have complied with the law. Insofar as the owner is concerned, registration with the clerk shall be deemed to be registration with the cabinet.

(3) After that, the owner of any commercial vehicle registered under KRS 186.050(3) to (14) shall register his commercial vehicle on or before April 1 of each year. If, before operating a commercial vehicle in this state, the owner registers it at some later date and pays the required fee, he will be deemed to have complied with the law. Insofar as the owner is concerned, registration with the clerk shall be deemed to be registration with the cabinet. ***Except, the owner of any commercial motor vehicle to be registered pursuant to the International Registration Plan under KRS 186.050(13) shall register his commercial motor vehicles on or before the last day of the month of registration established pursuant to subsection (3) of Section 2 of this Act.***

(4) The application and documents presented therewith, including the sheriff's certificate of inspection, shall be affixed to the Transportation Cabinet copy of the certificate of title or registration and sent to the Transportation Cabinet by the clerk.

(5) At least thirty (30) days prior to the expiration of registration of any motor vehicle previously registered in the Commonwealth as provided by KRS 186A.035, the owner of the vehicle shall be notified by mail on the same notice required by KRS 134.805(5) of the date of expiration. In addition, the department shall provide appropriate forms and information to permit renewal of motor vehicle registration to be completed by mail. Any registration renewal by mail shall require payment of an additional two dollar ($2) fee which shall be received by the county clerk. Nonreceipt of the notice herein shall not constitute a defense to any registration related offense.

Section 2. KRS 186.051 is amended to read as follows:

(1) Notwithstanding the provisions of this chapter, the cabinet shall by January 1, 1978, establish a year-round system for the registration of vehicles under the provisions of KRS 186.050(1). The system shall be designed so as to distribute the work load as uniformly as practicable within the various offices of the county clerks, as well as the cabinet, on a year-round basis. In implementing a year-round registration system, the cabinet may establish separate and distinct registration years. Each registration year so designated shall begin on the first day of a calendar month and expire on the last day of the last calendar month in a registration period. Registration periods may be designated to include less than twelve (12) consecutive months and registration fees shall be computed at a rate of one-twelfth (1/12) of the appropriate annual registration fee per month in each registration period. The cabinet may establish a registration year of more than twelve (12) months except that registration fees for designated periods of more than twelve (12) months may be paid at the option of the owner. The cabinet may promulgate reasonable administrative regulations to carry out the orderly implementation and administration of the year-round registration system. Any transaction relating to registration or registration renewal which would cause an unexpired Kentucky motor vehicle license plate to be surrendered shall have that unexpired fee prorated or credited against any additional fee required by a subsequent registration.

(2) Notwithstanding the provisions of this chapter, the cabinet shall by April 1, 1980, establish a year-round system for the registration of vehicles under the provisions of KRS 186.050(3)(a). The system shall be designed so as to distribute the work load as uniformly as practicable within the various offices of the county clerks, as well as the cabinet, on a year-round basis. In implementing a year-round registration system, the cabinet may establish separate and distinct registration years. Each registration year so designated shall begin on the first day of a calendar month and expire on the last day of the last calendar month in a registration period. Registration periods may be designated to include less than twelve (12) consecutive months and registration fees shall be computed at a rate of one-twelfth (1/12) of the appropriate annual registration fee per month in each registration period. The cabinet may establish a registration year of more than twelve (12) months except that registration fees for designated periods of more than twelve (12) months may be paid at the option of the owner. The cabinet may promulgate reasonable administrative regulations to carry out the orderly implementation and administration of the year-round registration system.

(3) The Transportation Cabinet shall promulgate administrative regulations to establish a staggered registration system for those commercial motor vehicles registered pursuant to KRS 186.050(13).

The Committee on Cities reported **HB 49**, with Committee Substitute attached thereto, **HB 323**, and **HB 526** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 49, AN ACT relating to construction within floodplains.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 104 IS CREATED TO READ AS FOLLOWS:

Neither a county containing a city of the first class nor a city within that county shall issue a permit for the construction of a building in any floodplain within the county for a period of ten (10) years starting on the effective date of this Act. A building may be completed if a permit for construction has been issued before the effective date of this Act.

The Committee Substitute to **HB 49** is as follows:

AN ACT relating to construction within floodplains.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 104 IS CREATED TO READ AS FOLLOWS:

(1) Neither a county containing a city of the first class nor a city within that county shall issue a permit for the construction of a building, except for those listed in subsection (2) of this section, in any floodplain within the county for a period of two (2) years starting on the effective date of this Act. A building may be completed if a permit for construction has been issued before the effective date of this Act.

(2) A permit may be issued by a county containing a city of the first class or a city within that county to construct any of the following in a floodplain area:

- *(a) Facilities to be constructed by a public agency or public utility that provides a public service;*
- *(b) Extensions to be added to a private residence for residential purposes;*
- *(c) Garages to be added to an existing private residence if designed to house three (3) or fewer vehicles; and*
- *(d) Buildings to be located on properties with boundaries contiguous to the river in the floodplain area as well as buildings to be located on properties contiguous to those properties.*

HB 323, AN ACT relating to limited sales precincts in cities of the third class.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 242.1292 is amended to read as follows:

(1) The provisions of this section shall be applicable in any city of the second ***or third*** class notwithstanding any other provisions of this chapter relating to the discontinuance of prohibition in any county, city, or territory which may be to the contrary.

(2) In any city of the second ***or third*** class in which prohibition is in effect in all or part of the city, and upon a determination that an economic hardship exists in one (1) or more of the voting precincts of the city in the manner prescribed in subsection (10) of this section, the governing body of the city shall by ordinance designate ***the***[~~such~~] precinct or precincts as a limited sale precinct or precincts and shall provide for an election to be held in ***the***[~~such~~] precinct or precincts to take the sense of the people of each ***of these precincts***[~~such precinct~~] as to the discontinuance of prohibition in ***the***[~~such~~] precinct.

(3) The election shall be held in ***the***[~~such~~] precinct or precincts in the manner prescribed in KRS 242.010 to 242.040 and KRS 242.060 to 242.120. ***The***[~~Such~~] election shall not be deemed to be an election in the "same territory" within the meaning of subsection (5) of KRS 242.030; provided, however, that no election on the same question shall be held in the same precinct or precincts more often than once every five (5) years.

(4) The question shall be presented to the voters in conformance with the requirements of KRS 242.050 except that the form of the proposition shall be, "Are you in favor of the sale of alcoholic beverages in (official name and designation of precinct)?"

(5) If a majority of the votes cast in any limited sale precinct in which an election is held pursuant to this section are in favor of the sale of alcoholic beverages in that precinct, the governing body of the city shall by ordinance create or provide for the office of city alcoholic beverage control administrator and shall adopt a comprehensive regulatory ordinance covering the licensing and operation of establishments for the sale of alcoholic beverages within a limited sale precinct. In its discretion the governing body may provide that:

- (a) Only three (3) licenses permitting the package sale at retail of alcoholic beverages shall be granted within the territorial limits of any limited sale precinct.
- (b) Only four (4) licenses to sell alcoholic beverages by the drink for consumption on the premises by the general public shall be granted in any one (1) limited sale precinct. One (1)[~~ such~~] license in each limited sale precinct may be reserved for grant to any newly established hotel, motel or inn containing not less than fifty (50) sleeping units and having dining facilities for not less than one hundred (100) persons. The remaining three (3) licenses may be granted to a hotel, motel***,*** or inn meeting the aforestated requirements or to bona fide restaurants open to the general public having dining facilities for not less than one hundred (100) persons; and further provided that additional licenses to sell alcoholic beverages by the drink for consumption on the premises may be granted to social membership clubs established and maintained for the benefit of members only by bona fide fraternal or veterans organizations.

(6) The governing body may also incorporate in the regulatory ordinance ***any***[~~such~~] other reasonable rules and regulations as may be necessary or desirable for the proper administration and enforcement of this section and for the maintenance of public order in a limited sale precinct, and for the issuance of any licenses permitted by KRS 243.070; provided that any rule or regulation adopted in the regulatory ordinance shall conform to the requirements of KRS 241.190.

(7) Notwithstanding any limitations imposed on the city's taxing or licensing power by KRS 243.070 upon the discontinuance of prohibition in any limited sale precinct, the governing body of the city is hereby authorized to impose a regulatory license fee upon the gross receipts of each establishment located therein and licensed to sell alcoholic beverages. The regulatory license fee may be levied at the beginning of each city budget period at ***a***[~~such~~] percentage rate as shall be reasonably estimated to fully reimburse the city for the estimated costs of any additional policing, regulatory or administrative expenses related to the sale of alcoholic beverages in the city. ***The***[~~Such~~] regulatory license fee shall be in addition to any other taxes, fees or licenses permitted by law, but a credit against ***the***[~~such~~] fee shall be allowed in an

amount equal to any licenses or fees imposed by the city pursuant to KRS 243.070.

(8) Subject to the limitation imposed by subsection (3) of this section, no provision contained in this section providing for the establishment of a limited sale precinct shall preclude or abridge the right of the constitutionally qualified voters of ***the***[~~such~~] precinct to petition for a subsequent election on the same question.

(9) If an election is held pursuant to other provisions of KRS Chapter 242 in the city or the county in which a limited sale precinct is located for the purpose of taking the sense of the voters upon the question of adopting or repealing prohibition for the entire city or the entire county, the status of ***the***[~~such~~] question in a limited sale precinct shall be determined in the following manner:

(a) The status of a limited sale precinct shall not be affected by any election for the entire city or the entire county if ***the***[~~such~~] limited sale precinct was established less than five (5) years prior to the date of the proposed election for the entire city or the entire county and in such case the voters of any limited sale precinct shall not vote in ***the***[~~such~~] election.

(b) If ***the***[~~such~~] limited sale precinct was established more than five (5) years prior to the date of the proposed election for the entire city or the entire county, the voters within each limited sale precinct shall be presented with the question, "Are you in favor of continuing the sale of alcoholic beverages in (official name and designation of precinct) as a limited sale precinct?" No other question shall be presented to the voters of any limited sale precinct.

(c) The votes of each limited sale precinct shall be counted separately, and, if a majority of the votes cast in the limited sale precinct are in favor of continuing the sale of alcoholic beverages therein as a limited sale precinct, then ***the***[~~such~~] status shall continue within ***the***[~~such~~] precinct, except that if the city or the county in which the limited sale precinct is located votes against prohibition in the remainder of the city or the county, the limited sale precinct status of any precinct may be terminated by the governing body of the city or the county and thereafter the status of ***the***[~~such~~] precinct shall be the same as that in effect for the remainder of the city or the county.

(10) Any precinct located entirely within any city of the second ***or third*** class in which prohibition is in effect in all or part of the city shall be designated as a limited sale precinct by the governing body of the city; provided that:

(a) The governing body determines to its satisfaction that the general trade, business and economy of one (1) or more of the precincts within the city is substantially adversely affected by reason of the legal sale of alcoholic beverages in any neighboring or adjoining state, county, city, town, district or precinct. For the purpose of making ***the***[~~such~~] determination, the governing body may hold such hearings, examine such witnesses or receive ***any***[~~such~~] evidence as it believes necessary or desirable for ***the***[~~such~~] purpose; or

(b) The governing body receives a petition signed by a number of constitutionally qualified voters of a precinct equal to thirty-three percent (33%) of the votes cast in the precinct at the last preceding general election requesting the governing body of the city to designate such precinct as a limited sale precinct. The petition may consist of one (1) or more separate units and shall be filed with the mayor of the city. In addition to the name of the voter, the petition shall also state his post office address and the correct date upon which his name is signed. Upon receipt of the petition, the mayor shall cause the same to be presented to the governing body of the city at its next regularly scheduled meeting and, after verifying that such petition is in compliance with the requirements of this section, the governing body shall forthwith by ordinance designate the precinct to be a limited sale precinct.

HB 526, AN ACT relating to the relocation of cities in counties with cities of the first class.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 81.380 is amended to read as follows:

(1) Any city, located in a county containing a city of the first class, which is ***located within an area which is*** adversely affected by a public project that has been initiated by a city of the first class, ***or by action of a joint agency of a city of the first class and the county, after June 30, 1998, or*** upon the expiration ***of the initial twelve (12) year term provided in KRS 79.310(2)*** of a cooperative compact which is in effect in the county pursuant to KRS 79.310 to 79.330, may by ordinance relocate the corporate boundaries of the city to an unincorporated area of the county. The ordinance shall set out by metes and bounds that unincorporated area of the county where the city will be relocated. The area designated for relocation shall not exceed the acreage ***within the then existing boundaries***[~~of the original location~~] of the relocating city.

(2) All financial assets and legal obligations of the city shall not be altered or interrupted by a relocation.

(3) A city of the first class shall relinquish all priority rights ***or any rights pursuant to the terms of a cooperative compact*** for annexation to that unincorporated area which is designated for the relocation of a city as provided for in subsection (1) of this section. Any priority rights ***or any rights pursuant to the terms of a cooperative compact*** for annexation

which are relinquished for the relocation of a city shall then be attached in the name of the city of the first class to that area which has been abandoned by the relocating city ***pursuant to subsection (5) of this section. The relocating city shall forward a copy of the ordinance adopted pursuant to subsection (1) of this section to the mayor of the city of the first class and the county judge/executive of the county***.

(4) The right of a city to relocate is in no way meant to amend any provision of the statutes which govern the formation and operation of a cooperative compact created pursuant to KRS 79.310 to 79.330.

(5) Upon the relocation of a city, the city clerk shall forward to the Secretary of State within one (1) year from the date of the relocation, a document listing the name of the city, the date of the relocation, the present classification of the city, and ***a certified copy of the ordinance adopted pursuant to subsection (1) of this section***~~[the boundaries of the city]~~. If a city fails to comply with this section, it shall be barred from receiving state moneys until the city complies.

(6) Until ninety percent (90%) of the residential properties located within the relocating city's boundaries are acquired for the public project, the boundaries of the city shall include both the old city site and the area designated for the location of the new site of the city.

(7) After ninety percent (90%) of the residential properties have been acquired as set forth in subsection (6) of this section, the boundaries of the city shall no longer include the area where the city existed before relocation.

The Committee on Agriculture and Small Business reported **HB 531** and **HJR 72**, with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 531, AN ACT relating to guide dogs.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 258.500 is amended to read as follows:

(1) When a blind person is accompanied by a guide dog, neither the blind person nor the dog shall be denied admittance to any hotel, motel, restaurant, or eating establishment, nor shall the blind person be denied full and equal accommodations, facilities, and privileges of all public places of amusement, theater, or resort when accompanied by a guide dog.

(2) Any blind person accompanied by a guide dog shall be entitled to full and equal accommodations on all public transportation, if the guide dog shall not occupy a seat in any public conveyance, nor endanger the public safety.

(3) The blind person shall not be required to pay additional charges or fare for the transportation of any accompanying guide dog.

(4) Any blind person accompanied by a guide dog shall not be denied admittance and use of any public building, nor denied the use of any elevator operated for public use.

(5) Any blind person accompanied by a guide dog may keep the animal in his or her immediate custody while a tenant in any apartment, or building used as a public lodging.

(6) The provisions of this section shall not apply unless the guide dog has been trained by a recognized training agency or school, and is properly harnessed.

(7) All blind persons accompanied by a trained guide dog shall have in their personal possession a certificate issued by the guide dog training agency or school establishing that their dogs have been so trained.

(8) The provisions of this section shall not apply unless the blind master complies with the legal limitations applicable to sighted persons and unless all requirements of KRS 258.015, 258.135 and 258.145 have been complied with.

(9) The provisions of this section shall also apply to any deaf person accompanied by a dog trained to aid the deaf. As used in this section, "deaf person" means a person described in KRS 30A.410(1)(a).

(10) The provisions of this section shall also apply to any mobility-impaired person accompanied by a dog trained to provide support or assistance for a mobility-impaired person. As used in this section, "mobility-impaired person" means any person, regardless of age, who is subject to a physiological defect or deficiency, regardless of its cause, nature or extent, that renders the person unable to move about without the aid of crutches, a wheelchair, or any other form of support, or that limits the person's functional ability to ambulate, climb, descend, sit, rise, or to perform any related function.

(11) No person, firm, or corporation, or agent thereof, shall willfully or maliciously interfere with a guide dog or guide dog user.

(12) Guide dogs are exempt from all state and local licensing fees.

(13) Licensing authorities shall accept that the dog for which the license is sought is a guide dog, when a copy of the certificate, as required under subsection (7) of this section, is attached to the animal licensing form.

Section 2. KRS 258.991 is amended to read as follows:

Any person***, firm, or corporation, or agent thereof,*** violating KRS 258.500 shall be punished by a fine of not less than ***two hundred and fifty dollars ($250)***[~~twenty-five dollars ($25)~~], nor more than one ***thousand***[~~hundred~~] dollars ***($1,000)***[~~($100)~~], or by imprisonment in the county jail for not less than 10 nor more than 30 days, or both.

Section 3. KRS 258.135 is amended to read as follows:

(1) On or before July 1, 1954, and on or before July 1 of each year thereafter, the owner of any dog six (6) months old or over shall apply to the dog warden of the county in which he resides for a license for each dog owned or kept by him. The application shall be accompanied by a license fee of one dollar and fifty cents ($1.50) for each dog***, except as provided in Section 1 of this Act***. Any license issued for the year of 1954 before July 1, 1954, shall be effective until July 1, 1955. Dog wardens shall be agents of the Commonwealth in the collection of the license fees provided for herein, unless the department determines, with the approval of the Governor, to issue all licenses either directly or through other agents. For services rendered in collecting and paying over the fee, dog wardens shall be allowed to retain the sum of twenty-five cents ($0.25) for each license. The balance of the license fee collected shall be paid to the department on or before the fifteenth day of each next succeeding month and shall be credited to the livestock fund. If the committee finds it to be in the interest of maximum enforcement of this chapter to permit certain other portions of the license fee to be retained by the respective counties for use in enforcement, the department may allow these portions of the license fee to be so retained by the counties.

(2) Any county may choose to issue the license in conjunction with effective dates of a valid rabies vaccination, provided the dog shall be licensed each fiscal year.

HJR 72, A JOINT RESOLUTION authorizing and directing a comprehensive study of the aquacultural industry in Kentucky, and making an appropriation therefor.

WHEREAS, agricultural diversification is necessary for Kentucky's small farmers to thrive; and

WHEREAS, aquaculture is an industry ideally suited for small farmers; and

WHEREAS, the demand for aquacultural products raised in Kentucky far exceeds the supply; and

WHEREAS, Kentucky's climate and many sources of fresh water make the state suitable to promote the aquacultural industry;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Kentucky Aquaculture Task Force is created and is attached to the Department of Agriculture for administrative purposes. The membership of the task force shall consist of twelve (12) members as follows:

(1) The Speaker of the House of Representatives;
(2) The President of the Senate;
(3) The Chair of the Senate Agriculture and Natural Resources Committee;
(4) The Chair of the House Agriculture and Small Business Committee;
(5) The Commissioner of the Department of Agriculture; and
(6) Seven (7) members appointed by the Governor, with one (1) member representing each of the following interests:
    (a) Kentucky Aquaculture Association;
    (b) Kentucky State University aquaculture program;
    (c) Kentucky Farm Bureau;
    (d) Agriculture liaison, Office of the Governor;
    (e) Retailers of aquacultural products;
    (f) Wholesalers of aquacultural products; and
    (g) Producers of aquacultural products.

Section 2. A majority of the members shall constitute a quorum. The members shall elect one (1) member to serve as chair.

Section 3. The task force shall meet quarterly and may meet more often upon the call of the chair or by a majority of the members. Except as provided in KRS 18A.200, members of the task force shall receive actual traveling expenses while attending meetings of the task force. Staff services for the task force shall be provided by the Department of Agriculture.

Section 4. The task force shall develop a State Aquaculture Plan by September 1, 1999, and shall report on the plan to the Governor and to the Legislative Research Commission with respect to aquacultural policies and practices that result in the proper management, use, and marketing of the state's aquacultural industry. These policies and practices shall, at a minimum, address the following:

(1) Regulatory constraints and environmental awareness;
(2) Support for and promotion of the aquaculture industry and its products;
(3) Research, extension, and education; and
(4) Financial aspects of aquaculture.

Section 5. There is hereby appropriated from the general fund the sum of $20,000 to accomplish the study. Any amount remaining following the completion of the study shall revert to the general fund. The study shall begin not later than August 1, 1998, and the report and recommendations shall be submitted to the Governor and to the Legislative Research Commission no later than September 1, 1999.

The Committee Substitute to **HJR 72** is as follows:

HJR 72, A JOINT RESOLUTION authorizing and directing a comprehensive study of the aquacultural industry in Kentucky, and making an appropriation therefor.

WHEREAS, agricultural diversification is necessary for Kentucky's small farmers to thrive; and

WHEREAS, aquaculture is an industry ideally suited for small farmers; and

WHEREAS, the demand for aquacultural products raised in Kentucky far exceeds the supply; and

WHEREAS, Kentucky's climate and many sources of fresh water make the state suitable to promote the aquacultural industry;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Kentucky Aquaculture Task Force is created and is attached to the Department of Agriculture for administrative purposes. The membership of the task force shall consist of thirteen (13) members as follows:

(1) The Speaker of the House of Representatives;
(2) The President of the Senate;
(3) The Chair of the Senate Agriculture and Natural Resources Committee;
(4) The Chair of the House Agriculture and Small Business Committee;
(5) The Commissioner of the Department of Agriculture;
(6) The Commissioner of the Department of Fish and Wildlife Resources; and
(7) Seven (7) members appointed by the Governor, with one (1) member representing each of the following interests:
    (a) Kentucky Aquaculture Association;
    (b) Kentucky State University aquaculture program;
    (c) Kentucky Farm Bureau;
    (d) Agriculture liaison, Office of the Governor;
    (e) Retailers of aquacultural products;
    (f) Wholesalers of aquacultural products; and
    (g) Producers of aquacultural products.

Section 2. A majority of the members shall constitute a quorum. The members shall elect one (1) member to serve as chair.

Section 3. The task force shall meet quarterly and may meet more often upon the call of the chair or by a majority of the members. Except as provided in KRS 18A.200, members of the task force shall receive actual traveling expenses while attending meetings of the task force. Staff services for the task force shall be provided by the Department of Agriculture.

Section 4. The task force shall develop a State Aquaculture Plan by September 1, 1999, and shall report on the plan to the Governor and to the Legislative Research Commission with respect to aquacultural policies and practices that result in the proper management, use, and marketing of the state's aquacultural industry. These policies and practices shall, at a minimum, address the following:

(1) Regulatory constraints and environmental awareness;
(2) Support for and promotion of the aquaculture industry and its products;
(3) Research, extension, and education; and
(4) Financial aspects of aquaculture.

Section 5. There is hereby appropriated from the general fund the sum of $20,000 to accomplish the study. Any amount remaining following the completion of the study shall revert to the general fund. The study shall begin not later than August 1, 1998, and the report and recommendations shall be submitted to the Governor and to the Legislative Research Commission no later than September 1, 1999.

Calendar

HB 293, HB 544, HB 164, HB 291, HB 587, SB 67, HB 50, HB 146, HB 215, HB 225, HB 396, HB 417, HB 418, HB 424, HB 564, SB 169, HB 84, and **HB 127** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Representative Lindsay moved that the rules be suspended to grant floor privileges to former Representative Al Bennett. Agreed.

Representative Burch moved that the rules be suspended to grant floor privileges to First Lady Judi Patton. Agreed.

Representative Thomas moved that the rules be suspended to grant floor privileges and to act upon a Legislative Citation. Agreed. Representative Thomas moved the adoption of the following **Legislative Citation No. 94**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby honors the General Motors Corvette upon being named Motor Trend Car of the Year on November 24, 1997, at a ceremony held in Bowling Green, Kentucky. Assessed by such factors as technological achievement, value, performance and overall impact on the automotive market, the Chevrolet Corvette has performed at exceptional levels in all areas. The Corvette has received many accolades recognizing its superior performance including being named the North American Car of the Year at the Detroit International Auto Show and also being chosen as the 1998 Indianapolis 500 Pace Car, the eleventh time the Corvette has earned this honor. The General Motors Corvette Plant in Bowling Green, Kentucky, deserves recognition for the effort its employees have put forth in making the Corvette the superior and highly-recognized automobile that it has become. General Motors Corvette Plant employee and Bowling Green Mayor, Eldon Renaud; Corvette Plant Manager, Wil Cooksey; UAW Local 2164 President, Billy Jackson; and National Corvette Museum Executive Director, Wendell Strode are all to be highly commended for the many hours and the extraordinary effort they have put forth in developing the Corvette into one of the most highly-regarded automobiles in this nation. The members of this distinguished body are pleased to join with Speaker Jody Richards in extending to these fine gentlemen and all of the employees of the Corvette Plant best wishes for continued success in the future. **Legislative Citation No. 94** was adopted without objection.

Representative Sims moved that the rules be suspended to grant floor privileges and to act upon a Legislative Citation. Agreed. Representative Sims moved the adoption of the following **Legislative Citation No. 89**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes and honors the students of the Hart County Gifted and Talented Program upon the occasion of their visit to the Capitol in Frankfort to observe the legislative process in motion. These exceptional students have demonstrated an exemplary dedication to learning, both by their participation in the Hart County Gifted Program and further by their efforts to seek knowledge of democracy and government. The members of the House of Representatives of the Commonwealth of Kentucky are pleased to join with Representative Dottie Sims in commending these students for their initiative and curiosity and in extending to them best wishes for continued academic success in the future. **Legislative Citation No. 89** was adopted without objection.

Representative Hatcher moved that the rules be suspended to grant floor privileges and to act upon a Legislative Citation. Agreed. Representative Hatcher moved the adoption of the following **Legislative Citation No. 96**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby welcomes and recognizes the Central District Baptist Association Women's Auxiliary upon visiting the General Assembly in Frankfort, Kentucky, to learn more of the legislative process of our great Commonwealth. The members of this distinguished body are delighted to join Representative E. Porter Hatcher, Jr. in graciously welcoming these outstanding citizens to this day's session of the Kentucky House of Representatives. **Legislative Citation No. 96** was adopted without objection.

Report on Enrolled Bills

The Committee on Enrollment reported that **SB 148** and **SB 154** have been examined and found correctly enrolled. Said Bills were read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time - 2:35 p.m.)

Representative Ford moved that the rules be suspended to grant floor privileges to a former member. Agreed.

Representative Wilkey moved that the rules be suspended to grant floor privileges and to act upon Legislative Citations. Agreed. Representative Wilkey moved the adoption of the following **Legislative Citation No. 75**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby honors Franklin-Simpson Middle School for maintaining an exceptional record of success in providing an exemplary educational program which fosters the pursuit of academic excellence. Inasmuch as this outstanding institution is notably instrumental in developing high caliber citizens who are prepared to meet the challenges of the 21st century, it is with great pleasure that the members of this honorable body join with Representative Rob Wilkey in welcoming the students and teachers of Franklin-Simpson Middle School to today's session of The Kentucky House of Representatives. **Legislative Citation No. 75** was adopted without objection.

Representative Wilkey moved the adoption of the following **Legislative Citation No. 90**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes Leadership Franklin-Simpson as an outstanding program that develops high caliber citizens who are well-informed about the quality of life and the infrastructure of their communities. Inasmuch as Leadership Franklin-Simpson is a vital link in promoting the overall success of our communities, this great Commonwealth, and American society, this honorable body is pleased to join with Representative Rob Wilkey in commending this exemplary program for its noteworthy efforts and in extending best wishes for its continued success. **Legislative Citation No. 90** was adopted without objection.

Recess

Representative Stumbo moved to suspend the rules to allow the House to recess for a Committee on Rules meeting in the Speaker's Office. Agreed. At the appointed hour, the Speaker resumed the Chair and called the House to order.

Floor Amendments

Floor Amendment No. 1 to the Committee Substitute to **HB 168**, by Representative Gray:

On Page 4, line 14 , after the word "***may***" by inserting and underlining the word "***not***"; and

Continuing on the same line, by deleting the word "***and***" and inserting and underlining in lieu thereof "***to***"; and

On Page 4, line 16, by deleting the comma ","and inserting and underlining in lieu thereof a period "."; and

Continuing on that same line by deleting the rest of that line in its entirety; and

On Page 4, lines 17 and 18, by deleting them in their entirety.

Floor Amendment No. 1 to **SB 169**, by Representative D. Butler:

On page 1, line 17, after the word "until", by deleting the number "***8***" and inserting in lieu thereof the number "***9***".

Floor Amendment No. 3 to the Committee Substitute to **HB 455**, by Representative Yonts:

On page 29, line 20, after the word "***offender.***" to insert the following:

"***A sexual offender who does not complete the sex offender treatment program for any reason shall serve his entire sentence without benefit of good time, parole, or other form of early release.***"; and

On page 137, between lines 20 and 21, to insert the following language:

"Section 118. KRS 197.170 is amended to read as follows:

(1) The wardens of the state penitentiaries upon the release of any prisoner or inmate from confinement, shall immediately notify the Circuit Court, the Commonwealth's attorney of the district, the county attorney and sheriff of the county, the chief of police of the city and county, to which the inmate is released, and any victim, as defined in KRS 421.500, who has requested that he be notified on release of a particular inmate who victimized him and who has forwarded a current address and telephone number to the Department of Corrections, giving the residence of the person released and the name of the person to whom he was released. The provisions of KRS Chapter 202A notwithstanding, the Department of Corrections may release to the public the information that a petition to involuntarily hospitalize a prisoner has been filed concerning any inmate who is scheduled to be released from custody.

(2) If the Circuit Court notified pursuant to subsection (1) of this section is a court other than the court which sentenced the inmate, the warden shall also notify the sentencing court.

(3) Notices received by sheriffs and chiefs of police shall be posted in a conspicuous location where personnel employed by the department may see it. ***Notices posted pursuant to this subsection shall remain posted for not less than seven (7) days.***"; and

To renumber the ensuing sections accordingly; and

On page 138, line 8, after the number "24" to insert a comma "," and delete the word "and"; and

On page 138, line 8, after the number "25" to insert ", 72, and 118".

Report On Enrolled Bills

The Committee on Enrollment reported that **HB 137, HB 248, HB 265,** and **HJR 33** have been examined and found correctly enrolled. Said Bills and Resolution were read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -2:50 p.m.) **HB 137, HB 248, HB 265,** and **HJR 33** delivered to the Senate and signed by the President. Delivered to the Governor on February 19, 1998 at 3:29 p.m.

Floor Amendments (Continued)

Floor Amendment No. 2 to the Committee Substitute to **HB 168**, by Representative Brandstetter:

On Page 2, line 9, after the word "***utility***" by inserting and underlining "***or a company that is engaged in the business of providing the required infrastructure to a utility***"; and

On Page 3, line 4, after the word "***use***" but before the period "***.***" by inserting and underlining ":***, subject to the limitations imposed by 47 U.S.C. 332(c), KRS 278.030, 278.040, and 278.280***"; and

On Page 3, line 22, after the word "***utility***" by inserting and underlining "***and the Public Service Commission*** "; and

On Page 4, line 12, after the word "***expired***" but before the period "***.***" by inserting and underlining "***, whichever occurs first***"; and

On Page 4, line 20, by deleting the word "***appeal***" and inserting and underlining in lieu thereof "***intervene in***"; and

On Page 4, lines 22 through 26, after the word "***Commission***" by deleting all remaining underlined language before the period "***.***"on the last line.

Floor Amendment No. 2 to **HB 532**, by Representative Colter:

On page 32, between lines 25 and 26, by inserting the following:

"SECTION 17. A NEW SECTION OF KRS 161.230 TO 161.716 IS CREATED TO READ AS FOLLOWS:

On or after August 1, 1998, a member of the Teachers' Retirement System in active contributing status who has a minimum of twenty (20) years of service credit may purchase up to a maximum of five (5) years of service credit that is not otherwise purchasable under any of the provisions of KRS 161.230 to 161.716 and that meets the definition of nonqualified service as provided in Section 1526 of the Federal Taxpayer Relief Act of 1997. The member shall pay the full actuarial cost of the service credit as determined by the Teachers' Retirement System. The payment shall not be picked up by the employer as described in KRS 161.540(2), and the member's payment shall be credited to the member's contribution account and shall be considered accumulated contributions of the member. Payment by the member may be by lump sum or by installment payments as provided in KRS 161.597."; and

On page 32, line 26, by changing "Section 17" to Section 18".

Floor Amendment No. 1 to **HB 564**, by Representative Miller:

On page 3, lines 18 through 27, by deleting lines in their entirety;

On page 4, lines 1 through 9, by deleting lines in their entirety; and

By renumbering all subsequent sections accordingly.

Floor Amendment No. 2 to **HB 564**, by Representative Miller:

On page 10, lines 12 through 21, by deleting the lines in their entirety; and

On page 10, line 22, after "Section", by deleting "11" and inserting "10" in lieu thereof.

Floor Amendment No. 1 Title to the Committee Substitute to **HB 84**, by Representative A. Arnold:

Amend title to read, "An Act relating to fiscal court reorganization.".

Orders of the Day

HB 429, with Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of

members elected.

Representative Long moved that **HB 429** be passed.

Representative Hatcher moved the adoption of Floor Amendment No. 2 to **HB 429**. Floor Amendment No. 2 was adopted. (See February 19, 1998 roll call on Floor Amendment No. 2 to **HB 429** - Appendix.)

Representative Bruce moved the adoption of Floor Amendment No. 1 to **HB 429**. Agreed.

Representative Long moved that **HB 429**, as amended, be passed.

On the roll call the vote was: Yeas 89, Nays 0 (See February 19, 1998 roll call on **HB 429** - Appendix.) **HB 429**, as amended, was passed and the title agreed to. Representative Long moved that the vote by which **HB 429**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 378, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Crall moved the adoption of the Committee Substitute to **HB 378**. Agreed.

Representative Crall moved that **HB 378**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 70, Nays 18 (See February 19, 1998 roll call on **HB 378** - Appendix.) **HB 378**, by way of Committee Substitute, was passed and the title agreed to. Representative Crall moved that the vote by which **HB 378**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 267, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Treesh moved the adoption of the Committee Substitute to **HB 267**. Agreed.

Representative Treesh moved that **HB 267**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 90, Nays 0 (See February 19, 1998 roll call on **HB 267** - Appendix.) **HB 267**, by way of Committee Substitute, was passed and the title agreed to. Representative Treesh moved that the vote by which **HB 267**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 142, with Committee Substitutes and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Burch moved the adoption of the Committee Substitute No. 2 to **HB 142**. Agreed.

Representative Vincent moved the adoption of Floor Amendment No. 12 to the Committee Substitute No. 2 to **HB 142**. Agreed.

Representative Barrows moved the adoption of Floor Amendment No. 13 to the Committee Substitute No. 2 to **HB 142**. Agreed.

Representative Burch moved that **HB 142**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 89, Nays 2 (See February 19, 1998 roll call on **HB 142** - Appendix.) **HB 142**, by way of Committee Substitute as amended, was passed. Representative Burch moved the adoption of Floor Amendment No. 9 Title to the Committee Substitute No. 2 to **HB 142**. Agreed; and the title was agreed to. Representative Burch moved that the vote by which **HB 142**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 397, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Adkins moved the adoption of the Committee Substitute to **HB 397**. Agreed.

Representative Adkins moved that **HB 397**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 92, Nays 0 (See February 19, 1998 roll call on **HB 397** - Appendix.) **HB 397**, by way of Committee Substitute, was passed and the title agreed to. Representative Adkins moved that the vote by which **HB 397**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 307 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Mason moved that **HB 307** be passed.

On the roll call the vote was: Yeas 92, Nays 0 (See February 19, 1998 roll call on **HB 307** - Appendix.) **HB 307** was passed and the title agreed to. Representative Mason moved that the vote by which **HB 307** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 369, with Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Worthington moved that **HB 369** be passed.

Representative Barrows moved the adoption of Floor Amendment No. 1 to **HB 369**. Agreed.

Representative Worthington moved that **HB 369**, as amended, be passed.

On the roll call the vote was: Yeas 88, Nays 1 (See February 19, 1998 roll call on **HB 369** - Appendix.) **HB 369**, as amended, was passed. Representative Worthington moved the adoption of Floor Amendment No. 2 Title to **HB 369**. Agreed; and the title was agreed to.

HB 325, with Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Lindsay moved the adoption of Floor Amendment No. 1 to **HB 325**. Agreed.

Representative Lindsay moved that **HB 325**, as amended, be passed.

On the roll call the vote was: Yeas 90, Nays 3 (See February 19, 1998 roll call on **HB 325** - Appendix.) **HB 325**, as amended, was passed and the title agreed to. Representative Lindsay moved that the vote by which **HB 325**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

SB 187 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Pope moved that **SB 187** be passed.

On the roll call the vote was: Yeas 91, Nays 0 (See February 19, 1998 roll call on **SB 187** - Appendix.) **SB 187** was passed and the title agreed to. Representative Alexander moved that the vote by which **SB 187** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 477, with Committee Substitute and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Nunn moved the adoption of the Committee Substitute to **HB 477**. Agreed.

Representative Nunn moved the adoption of Floor Amendment No. 1 to the Committee Substitute to **HB 477**. Agreed.

Representative Nunn moved that **HB 477**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 90, Nays 0 (See February 19, 1998 roll call on **HB 477** - Appendix.) **HB 477**, by way of Committee Substitute as amended, was passed and the title agreed to. Representative Nunn moved that the vote by which **HB 477**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 2 to the Committee Substitute to **HB 327**, by Representative Riner:

On page 1, line 4, by deleting "***.08***" and inserting "***.05***"; and

On page 1, line 23, by deleting "***.08***" and inserting "***.05***"; and

On page 3, line 23, by deleting "***.08***" and inserting "***.05***"; and

On page 9, line 10, by deleting "***.08***" and inserting "***.05***"; and

On page 10, line 1, by deleting "***.08***" and inserting "***.05***"; and

On page 11, line 2, by deleting "*.08*" and inserting "*.05*"; and

On page 11, line 6, by deleting "*.08*" and inserting "*.05*".

Floor Amendment No. 1 to the Committee Substitute to **HB 327**, by Representative Riner:

On page 1, line 4, by deleting "*.08*" and inserting "*.07*"; and

On page 1, line 23, by deleting "*.08*" and inserting "*.07*"; and

On page 3, line 23, by deleting "*.08*" and inserting "*.07*"; and

On page 9, line 10, by deleting "*.08*" and inserting "*.07*"; and

On page 10, line 1, by deleting "*.08*" and inserting "*.07*"; and

On page 11, line 2, by deleting "*.08*" and inserting "*.07*"; and

On page 11, line 6, by deleting "*.08*" and inserting "*.07*".

Orders of the Day (Continued)

HB 56, with Senate Floor Amendment attached thereto, taken from the Orders of the Day. Representative Stumbo moved that it be placed upon its passage. Agreed.

The Senate Floor Amendment No. 1 to **HB 56** is as follows:

On page 1, line 10, after the word "board", by inserting an underlined period "."; and

On page 1, line 10, after the word "of", by deleting the underlined words "***eleven (11)***"; and

On page 1, line 10, after the new underlined "." by placing brackets and strikethroughs through the words "composed of ten (10) members."; and

On page 2, line 20, by deleting the new underlined language and bracketing and strikethroughing the words "composed of ten (10) members"; and

On page 2, line 23, by removing the new underlined language "***nine (9)***"; and

On page 3, line 2, by deleting "***Three (3)***" and removing the brackets and strikethroughs from "Two (2)"; and

On page 3, line 3, after the word "thereto," by deleting all new underlined language through line 5; and

On page 3, after line 5 and before line 6, by adding the following new language:

"***(d) If there is an incorporated alliance of incorporated neighborhood associations and fifth or sixth class cities, which represents citizens living within a five (5) mile radius of airport operations, the governor shall appoint one (1) member of the executive board of an alliance as an additional member to the air board. If more than one (1) incorporated alliance exists, the governor shall select the appointee from the executive boards of all the incorporated alliances.***".

Representative Wayne moved that the House concur in Senate Floor Amendment No. 1 to **HB 56**. Agreed.

Representative Wayne moved that **HB 56**, as amended by the Senate, be passed.

On the roll call the vote was: Yeas 92, Nays 0 (See February 19, 1998 roll call on **HB 56** - Appendix.) **HB 56**, as amended by the Senate, was passed and the title agreed to. Representative Wayne moved that the vote by which **HB 56**, as amended by the Senate, was passed be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions, Report of Committees and Posting of Bills and Resolutions for Consideration. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 648, by Representatives Callahan, Richards, L. Clark, Barrows, and Stumbo: AN ACT relating to revenue and taxation.

HB 649, by Representative Barrows: AN ACT relating to the practice of pharmacy.

HB 650, by Representatives Treesh and Turner: AN ACT relating to motor vehicle insurance.

HB 651, by Representatives Callahan, Long, Gooch, Murgatroyd, Kerr, A. Arnold, Brandstetter, and R. Adams: AN ACT relating to sanitation districts.

HB 652, by Representative Palumbo: AN ACT relating to elder abuse.

HB 653, by Representative Lee: AN ACT relating to the regulation of entities.

HB 654, by Representatives R. Adams, Brown, Weaver, and Haydon: AN ACT relating to hunting and fishing licenses.

HB 655, by Representative Worthington: AN ACT relating to the six (6) year road plan.

HB 656, by Representative D. Butler: AN ACT relating to motor vehicles.

HB 657, by Representatives Damron and Barrows: AN ACT relating to continuing care retirement communities.

HB 658, by Representatives D. Graham, Wilkey, Coleman, Allen, R. Adams, Sims, Thomas, A. Arnold, Moberly, J. Arnold, Lee, Cave, and Crall: AN ACT relating to farm safety, and making an appropriation therefor.

HB 659, by Representative Riggs: AN ACT relating to victims of crime.

HB 660, by Representative Nesler: AN ACT relating to safety inspections.

HB 661, by Representative Nesler: AN ACT relating to alcoholic beverages.

HB 662, by Representatives Mason, Callahan, Baugh, Stein, and Crenshaw: AN ACT relating to the legal process for the custody, care, and treatment of persons suffering from serious mental illness who are charged with or have been convicted of violent crimes.

HB 663, by Representatives Stein, Coleman, Gray, and Crenshaw: AN ACT relating to police and firefighter's retirement.

HB 664, by Representatives Stein, Coleman, Gray, and Crenshaw: AN ACT relating to police and firefighters retirement.

HB 665, by Representatives Crenshaw and Stein: AN ACT relating to crimes and punishments.

HCR 81, by Representatives Baugh and J. Adams: A CONCURRENT RESOLUTION directing a study by the Legislative Research Commission of single and multi-county agencies in the Commonwealth that are formed for various long-range planning or development activities.

HCR 82, by Representatives Allen, Crall, Newsome, Maricle, J. Arnold, Zimmerman, Cox, and Bratcher: A RESOLUTION directing a study of limiting bill requests or introductions.

Report of Committees (Continued)

The Committee on Rules reported that **HB 130, HB 280, HB 380, SB 93, HB 505, HB 352,HB 355, HB 359, HB 361, HB 363, HB 366, HB 375, HB 391, HB 393, HB 394, HB 419, HB 438, HB 445, HB 486, SB 172, HB 50, HB 84, HB 146, HB 215, HB 293, HB 396, HB 417, HB 418, HB 424, HB 564,** and **HB 587** have been posted for passage in the orders of the Day for February 20, 1998.

The Committee on Rules reported that the following Bills have been recommitted:

Education: **HB 474**

Appropriations and Revenue: **HB 225, HB 544, SB 67**

Judiciary: **HB 291**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Judiciary: **HB 623, HB 638, HB 181, HB 200, HB 281, HB 322, HB 489, HB 529**

Education: **HB 435, HB 436, HB 441, HB 446, HB 465, HB 469, HB 485, HB 494, HB 499, HB 511**

Appropriations and Revenue: **HB 45, HB 51, HB 65, HB 455, HB 547, HB 551, HB 568, HB 622**

Report of Committees (Continued)

The Committee on Judiciary reported **HB 85**, with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 85, AN ACT relating to abortion.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 311.720 is amended to read as follows:

As used in KRS 311.710 to 311.820, and laws of the Commonwealth unless the context otherwise requires:

(1) "Abortion" shall mean the use of any means whatsoever to terminate the pregnancy of a woman known to be pregnant with intent to cause fetal death.

(2) "Hospital" shall mean those institutions licensed in the Commonwealth of Kentucky pursuant to the provisions of KRS Chapter 216.

(3) "Consent" as used in KRS 311.710 to 311.820 with reference to those who must give their consent shall mean an informed consent expressed by a written agreement to submit to an abortion on a written form of consent to be promulgated by the secretary for human resources.

(4) "Cabinet" shall mean the Cabinet for Human Resources of the Commonwealth of Kentucky.

(5) "Fetus" shall mean a human being from fertilization until birth.

(6) "Human being" shall mean any member of the species homo sapiens from fertilization until death.

(7) "Physician" shall mean any person licensed to practice medicine in the Commonwealth or osteopathy pursuant to the provisions of this chapter.

(8) "Viability" shall mean that stage of human development when the life of the unborn child may be continued by natural or life-supportive systems outside the womb of the mother.

(9) "Accepted medical procedures" shall mean procedures of the type performed in the manner and in a facility with equipment sufficient to meet the standards of medical care which physicians engaged in the same or similar lines of work, would ordinarily exercise and devote to the benefit of their patients.

(10) "Medical emergency" means any physical condition which, on the basis of the physician's good faith clinical judgment, so complicates the physical medical condition of a pregnant female as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(11) "Probable gestational age of the embryo or fetus" means the gestational age that, in the judgment of a physician, is, with reasonable probability, the gestational age of the embryo or fetus at the time that the abortion is planned to be performed.

(12) "Qualified person" means an agent of the physician who is a psychologist, licensed social worker, licensed professional counselor, registered nurse, or physician.

SECTION 2. A NEW SECTION OF KRS 311.710 TO 311.820 IS CREATED TO READ AS FOLLOWS:

(1) No abortion shall be performed or induced except with the voluntary and informed written consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

(a) At least twenty-four (24) hours prior to the abortion, a physician has orally and in person informed the woman of all of the following:

1. The nature and purpose of the particular abortion procedure or treatment to be performed and of those medical risks and alternatives to the procedure or treatment that a reasonable patient would consider material to the decision of whether or not to undergo the abortion.

2. The probable gestational age of the embryo or fetus at the time the abortion is to be performed.

3. The medical risks associated with the pregnant woman carrying her pregnancy to term.

4. A description of the proposed abortion method and those risks of abortion when medically accurate including, but not limited to, the risks of infection, hemorrhage, danger to subsequent pregnancies, and breast cancer.

(b) At least twenty-four (24) hours prior to the abortion, in an individual, private setting, a qualified person to whom the responsibility has been delegated by the physician, has informed the pregnant woman that:

1. The cabinet publishes the printed materials described in paragraphs (a) and (b) of subsection (2) of this section and that she has a right to review the printed materials and that copies will be provided to her free of charge by the physician, licensed nurse, physician assistant, or social worker if she chooses *to review the printed materials.*

2. Medical assistance benefits may be available for prenatal care, childbirth, and neonatal care, and that more detailed information on the availability of this assistance is contained in the printed materials published by the cabinet.

3. The father of the fetus is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion.

(c) At least twenty-four (24) hours prior to the abortion, a copy of the printed materials has been provided to the pregnant woman if she chooses to view these materials.

(d) The pregnant woman certifies in writing, prior to the performance or inducement of the abortion:

1. That she has received the information required to be provided under paragraphs (a), (b), and (c) of this subsection; and

2. That she consents to the particular abortion voluntarily and knowingly and she is not under the influence of any drug of abuse or alcohol.

(e) Prior to the performance or inducement of the abortion, the physician who is scheduled to perform or induce the abortion or the physician's agent receives a copy of the pregnant woman's signed statement, on a form which may be provided by the physician, on which she consents to the abortion. The form shall include the certification required by paragraph (d) of this subsection.

(2) By January 1, 1999, the cabinet shall cause to be published in English in a typeface not less than twelve (12) point type the following materials:

(a) Materials that inform the pregnant woman about public and private agencies and services that are available to assist her through her pregnancy, upon childbirth, and while her child is dependent, including, but not limited to, adoption agencies. The materials shall include a comprehensive list of the available agencies, a description of the services offered by the agencies, and the telephone numbers and addresses of the agencies. The materials shall also inform the pregnant woman about available medical assistance benefits for prenatal care, childbirth, and neonatal care, and about the support obligations of the father of a child who is born alive. The cabinet shall ensure that the materials are comprehensive and do not directly or indirectly promote, exclude, or discourage the use of any agency or service described in this section.

(b) Materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the zygote, blastocyte, embryo, or fetus at two (2) week gestational increments for the first sixteen (16) weeks of her pregnancy and at four (4) week gestational increments from the seventeenth week of her pregnancy to full term, including any relevant information regarding the time at which the fetus possibly would be viable. The materials shall use language that is understandable by the average person who is not medically trained, shall be objective and nonjudgmental, and shall include only accurate scientific information about the zygote, blastocyte, embryo, or fetus at the various gestational increments. The materials shall include, for each of the two (2) or four (4) week increments specified in this paragraph, a pictoral or photographic depiction of the zygote, blastocyte, embryo, or fetus. The materials shall also include, in a conspicuous manner, a scale or other explanation that is understandable by the average person and that can be used to determine the actual size of the zygote, blastocyte, embryo, or fetus at a particular gestational increment as contrasted with the depicted size of the zygote, blastocyte, embryo, or fetus at that gestational increment.

(3) Upon submission of a request to the cabinet by any person, hospital, physician, or medical facility for one (1) or more copies of the materials published in accordance with subsection (2) of this section, the cabinet shall make the requested number of copies of the materials available to the person, hospital, physician, or medical facility that requested the copies. The cabinet shall charge a fee for each copy sufficient to cover the cost of preparation of the materials and postage.

(4) If a medical emergency compels the performance or inducement of an abortion, the physician who will perform or induce the abortion, prior to its performance or inducement if possible, shall inform the pregnant woman of the medical indications supporting the physician's judgment that an immediate abortion is necessary. Any physician who performs or induces an abortion without the prior satisfaction of the conditions specified in subsection (1) of this section because of a medical emergency shall enter the reasons for the conclusion that a medical emergency exists in the medical record of the pregnant woman.

(5) If the conditions specified in subsection (1) of this section are satisfied, consent to an abortion shall be presumed to be valid and effective.

(6) The failure of a physician to satisfy the conditions of subsection (1) of this section prior to performing or inducing an abortion upon a pregnant woman may be the basis of the following:

(a) A civil action for compensatory, exemplary, and punitive damages as described in Section 3 of this Act; and

(b) Disciplinary action pursuant to KRS 311.595.

SECTION 3. A NEW SECTION OF KRS CHAPTER 311.710 TO 311.820 IS CREATED TO READ AS FOLLOWS:

(1) Any physician who performs or induces an abortion with actual knowledge that the conditions specified in subsection (1) of Section 2 of this Act have not been satisfied or with a wanton indifference as to whether those conditions have been satisfied shall be liable for compensatory and exemplary damages in a civil action to any person, or any representative of the estate of any person, who sustains injury, death, or loss to person or property as a proximate result of the failure to satisfy those conditions. In the civil action, the court additionally may enter any injunctive or other equitable relief that it considers appropriate.

(2) Failure to provide the pregnant woman with information required by subsection (1) of Section 2 of this Act shall constitute prima facie evidence of failure to obtain informed consent in a civil action. The law of this Commonwealth shall not be construed to preclude award of punitive damages or damages for emotional distress even if unaccompanied by physical complications in any civil action brought pursuant to violations of Section 2 of this Act. Nothing in Sections 2 to 3 of this Act shall be construed to limit the common law rights of the woman to secure informed consent to any form of medical treatment, including abortion.

(3) The following shall be affirmative defenses in a civil action authorized by this section:

(a) The physician performed or induced the abortion under the circumstances described in subsection (4) of Section 2 of this Act;

(b) The physician satisfied the conditions specified in subsection (1) of Section 2 of this Act; and

(c) The physician or an agent of the physician requested copies of the materials published in accordance with subsection (2) of Section 2 of this Act from the cabinet, but the physician was not able to give a pregnant woman copies of the materials pursuant to paragraph (c) of subsection (1) of Section 2 of this Act and to obtain a certification as described in paragraphs (d) and (e) of subsection (1) of Section 2 of this Act because the cabinet failed to make the requested number of copies available to the physician or the physician's agent in accordance with subsection (3) of Section 2 of this Act.

Section 4. KRS 311.990 is amended to read as follows:

(1) Any person who violates KRS 311.250 shall be guilty of a violation.

(2) Any college or professor thereof violating the provisions of KRS 311.300 to 311.350 shall be civilly liable on his bond for a sum not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each violation, which may be recovered by an action in the name of the Commonwealth.

(3) Any person who presents to the county clerk for the purpose of registration any license which has been fraudulently obtained, or obtains any license under KRS 311.380 to 311.510 by false or fraudulent statement or representation, or practices podiatry under a false or assumed name or falsely impersonates another practitioner or former practitioner of a like or different name, or aids and abets any person in the practice of podiatry within the state without conforming to the requirements of KRS 311.380 to 311.510, or otherwise violates or neglects to comply with any of the provisions of KRS 311.380 to 311.510, shall be guilty of a Class A misdemeanor. Each case of practicing podiatry in violation of the provisions of KRS 311.380 to 311.510 shall be considered a separate offense.

(4) Each first violation of KRS 311.560 is a Class A misdemeanor. Each subsequent violation of KRS 311.560 shall constitute a Class D felony.

(5) Each violation of KRS 311.590 shall constitute a Class D felony. Conviction under this subsection of a holder of a license or permit shall result automatically in permanent revocation of such license or permit.

(6) Conviction of willfully resisting, preventing, impeding, obstructing, threatening, or interfering with the board or any of its members, or of any officer, agent, inspector, or investigator of the board or the Cabinet for Human Resources, in the administration of any of the provisions of KRS 311.550 to 311.620 shall be a Class A misdemeanor.

(7) Each violation of subsection (1) of KRS 311.375 shall, for the first offense, be a Class B misdemeanor, and, for each subsequent offense shall be a Class A misdemeanor.

(8) Each violation of subsection (2) of KRS 311.375 shall, for the first offense, be a violation, and, for each subsequent offense, be a Class B misdemeanor.

(9) Each day of violation of either subsection of KRS 311.375 shall constitute a separate offense.

(10) (a) Any person who intentionally or knowingly performs an abortion contrary to the requirements of KRS 311.723(1) shall be guilty of a Class D felony; and

(b) Any person who intentionally, knowingly, or recklessly violates the requirements of KRS 311.723(2) shall be guilty of a Class A misdemeanor.

(11)[~~Any person who intentionally, knowingly, or recklessly violates the requirements of KRS 311.726 shall be guilty of a Class A misdemeanor.~~

~~(12)~~] Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally or knowingly fails to conform to any requirement of KRS 311.732 is guilty of a Class A misdemeanor.

(12)[~~(13)~~] Any person who negligently releases information or documents which are confidential under KRS 311.732 is guilty of a Class B misdemeanor.

(13)[~~(14)~~] Any person who performs an abortion upon a married woman either with knowledge or in reckless disregard of whether KRS 311.735 applies to her and who intentionally, knowingly, or recklessly fails to conform to the requirements of KRS 311.735 shall be guilty of a Class D felony.

(14)[~~(15)~~] Any person convicted of violating KRS 311.750 shall be guilty of a Class B felony.

(15)[~~(16)~~] Any person who violates KRS 311.760(2) shall be guilty of a Class D felony.

(16)[~~(17)~~] Any person who violates KRS 311.770 or 311.780 shall be guilty of a Class D felony.

(17)[~~(18)~~] A person convicted of violating KRS 311.780 shall be guilty of a Class C felony.

(18)[~~(19)~~] Any person who violates KRS 311.810 shall be guilty of a Class A misdemeanor.

(19)[~~(20)~~] Any professional medical association or society, licensed physician, or hospital or hospital medical staff who shall have violated the provisions of KRS 311.606 shall be guilty of a Class B misdemeanor.

(20)[~~(21)~~] Any person who violates KRS 311.652 or any rule or regulation of the board of medical licensure adopted pursuant to KRS 311.654 shall be guilty of a Class A misdemeanor.

(21)[~~(22)~~] Any administrator, officer, or employee of a publicly-owned hospital or publicly-owned health care facility who performs or permits the performance of abortions in violation of KRS 311.800(1) shall be guilty of a Class A misdemeanor.

(22)[~~(23)~~] Any person who violates KRS 311.914 shall be guilty of a violation.

(23)[~~(24)~~] Any person who violates the provisions of KRS 311.820 shall be guilty of a Class A misdemeanor.

(24)[~~(25)~~] (a) Any person who fails to test organs, skin, or other human tissue which is to be transplanted, or violates the confidentiality provisions required by KRS 311.281, shall be guilty of a Class A misdemeanor;

(b) Any person who has human immunodeficiency virus infection, who knows he is infected with human immunodeficiency virus, and who has been informed that he may communicate the infection by donating organs, skin, or other human tissue who donates organs, skin, or other human tissue shall be guilty of a Class D felony.

(25)[~~(26)~~] A person who violates any provision of KRS 311.131 to 311.139 or any regulation adopted under KRS 311.131 to 311.139 shall be guilty of a Class A misdemeanor. Each day a violation is continued after the first conviction shall be a separate offense.

(26)[~~(27)~~] Any person who sells or makes a charge for any transplantable organ shall be guilty of a Class D felony.

(27)[~~(28)~~] Any person who offers remuneration for any transplantable organ for use in transplantation into himself shall be fined not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000).

(28)[~~(29)~~] Any person brokering the sale or transfer of any transplantable organ shall be guilty of a Class C felony.

(29)[~~(30)~~] Any person charging a fee associated with the transplantation of a transplantable organ in excess of the direct and indirect costs of procuring, distributing, or transplanting the transplantable organ shall be fined not less than fifty thousand dollars ($50,000) nor more than five hundred thousand dollars ($500,000).

(30)[~~(31)~~] Any hospital performing transplantable organ transplants which knowingly fails to report the possible sale, purchase, or brokering of a transplantable organ shall be fined not less than ten thousand dollars ($10,000) or more than fifty thousand dollars ($50,000).

Section 5. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section 6. The following KRS sections are repealed:

311.726 Voluntary and informed consent of woman -- Certificate -- Emergencies -- Civil liability of physician.

311.729 Information on alternatives.

The Committee Substitute to **HB 85** is as follows:

AN ACT relating to abortion.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 311.720 is amended to read as follows:

As used in KRS 311.710 to 311.820, and laws of the Commonwealth unless the context otherwise requires:

(1) "Abortion" shall mean the use of any means whatsoever to terminate the pregnancy of a woman known to be pregnant with intent to cause fetal death.

(2) "Hospital" shall mean those institutions licensed in the Commonwealth of Kentucky pursuant to the provisions of KRS Chapter 216.

(3) "Consent" as used in KRS 311.710 to 311.820 with reference to those who must give their consent shall mean an informed consent expressed by a written agreement to submit to an abortion on a written form of consent to be promulgated by the secretary for human resources.

(4) "Cabinet" shall mean the Cabinet for Human Resources of the Commonwealth of Kentucky.

(5) "Fetus" shall mean a human being from fertilization until birth.

(6) "Human being" shall mean any member of the species homo sapiens from fertilization until death.

(7) "Physician" shall mean any person licensed to practice medicine in the Commonwealth or osteopathy pursuant to the provisions of this chapter.

(8) "Viability" shall mean that stage of human development when the life of the unborn child may be continued by natural or life-supportive systems outside the womb of the mother.

(9) "Accepted medical procedures" shall mean procedures of the type performed in the manner and in a facility with equipment sufficient to meet the standards of medical care which physicians engaged in the same or similar lines of work, would ordinarily exercise and devote to the benefit of their patients.

(10) "Medical emergency" means any condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant female as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(11) "Medical necessity" means a medical condition of a pregnant woman that, in the reasonable judgment of the physician who is attending the woman, so complicates the pregnancy that it necessitates the immediate performance or inducement of an abortion.

(12) "Probable gestational age of the embryo or fetus" means the gestational age that, in the judgment of a physician, is, with reasonable probability, the gestational age of the embryo or fetus at the time that the abortion is planned to be performed.

SECTION 2. A NEW SECTION OF KRS 311.710 TO 311.820 IS CREATED TO READ AS FOLLOWS:

(1) No abortion shall be performed or induced except with the voluntary and informed written consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

(a) At least twenty-four (24) hours prior to the abortion, a physician, licensed nurse, physician assistant, or social worker to whom the responsibility has been delegated by the physician has verbally informed the woman of all of the following:

1. The nature and purpose of the particular abortion procedure or treatment to be performed and of those medical risks and alternatives to the procedure or treatment that a reasonable patient would consider material to the decision of whether or not to undergo the abortion;

2. The probable gestational age of the embryo or fetus at the time the abortion is to be performed; and

3. The medical risks associated with the pregnant woman carrying her pregnancy to term;

(b) At least twenty-four (24) hours prior to the abortion, in an individual, private setting, a physician, licensed nurse, physician assistant, or social worker to whom the responsibility has been delegated by the physician, has informed the pregnant woman that:

1. The cabinet publishes the printed materials described in paragraphs (a) and (b) of subsection (2) of this section and that she has a right to review the printed materials and that copies will be provided to her by the physician, licensed nurse, physician assistant, or social worker free of charge if she chooses to review the printed materials;

2. Medical assistance benefits may be available for prenatal care, childbirth, and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials published by the cabinet; and

3. The father of the fetus is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion;

(c) At least twenty-four (24) hours prior to the abortion, a copy of the printed materials has been provided to the

pregnant woman if she chooses to view these materials;

(d) The pregnant woman certifies in writing, prior to the performance or inducement of the abortion:

1. That she has received the information required to be provided under paragraphs (a), (b), and (c) of this subsection; and

2. That she consents to the particular abortion voluntarily and knowingly, and she is not under the influence of any drug of abuse or alcohol; and

(e) Prior to the performance or inducement of the abortion, the physician who is scheduled to perform or induce the abortion or the physician's agent receives a copy of the pregnant woman's signed statement, on a form which may be provided by the physician, on which she consents to the abortion and that includes the certification required by paragraph (d) of this subsection.

(2) By January 1, 1999, the cabinet shall cause to be published in English in a typeface not less than 12 point type the following materials:

(a) Materials that inform the pregnant woman about public and private agencies and services that are available to assist her through her pregnancy, upon childbirth, and while her child is dependent, including, but not limited to, adoption agencies. The materials shall include a comprehensive list of the available agencies and a description of the services offered by the agencies and the telephone numbers and addresses of the agencies, and inform the pregnant woman about available medical assistance benefits for prenatal care, childbirth, and neonatal care and about the support obligations of the father of a child who is born alive. The cabinet shall ensure that the materials are comprehensive and do not directly or indirectly promote, exclude, or discourage the use of any agency or service described in this section; and

(b) Materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the zygote, blastocyte, embryo, or fetus at two (2) week gestational increments for the first sixteen (16) weeks of her pregnancy and at four (4) week gestational increments from the seventeenth week of her pregnancy to full term, including any relevant information regarding the time at which the fetus possibly would be viable. The materials shall use language that is understandable by the average person who is not medically trained, shall be objective and nonjudgmental, and shall include only accurate scientific information about the zygote, blastocyte, embryo, or fetus at the various gestational increments. The materials shall include, for each of the two (2) of four (4) week increments specified in this paragraph, a pictorial or photographic depiction of the zygote, blastocyte, embryo, or fetus. The materials shall also include, in a conspicuous manner, a scale or other explanation that is understandable by the average person and that can be used to determine the actual size of the zygote, blastocyte, embryo, or fetus at a particular gestational increment as contrasted with the depicted size of the zygote, blastocyte, embryo, or fetus at that gestational increment.

(3) Upon submission of a request to the cabinet by any person, hospital, physician, or medical facility for one (1) or more copies of the materials published in accordance with subsection (2) of this section, the cabinet shall make the requested number of copies of the materials available to the person, hospital, physician, or medical facility that requested the copies. The cabinet shall charge a fee for each copy sufficient to cover the cost of preparation of the materials and postage.

(4) If a medical emergency or medical necessity compels the performance or inducement of an abortion, the physician who will perform or induce the abortion, prior to its performance or inducement if possible, shall inform the pregnant woman of the medical indications supporting the physician's judgment that an immediate abortion is necessary. Any physician who performs or induces an abortion without the prior satisfaction of the conditions specified in subsection (1) of this section because of a medical emergency or medical necessity shall enter the reasons for the conclusion that a medical emergency exists in the medical record of the pregnant woman.

(5) If the conditions specified in subsection (1) of this section are satisfied, consent to an abortion shall be presumed to be valid and effective.

(6) The failure of a physician to satisfy the conditions of subsection (1) of this section prior to performing or inducing an abortion upon a pregnant woman may be the basis of disciplinary action pursuant to KRS 311.595.

Section 3. KRS 311.990 is amended to read as follows:

(1) Any person who violates KRS 311.250 shall be guilty of a violation.

(2) Any college or professor thereof violating the provisions of KRS 311.300 to 311.350 shall be civilly liable on his bond for a sum not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each violation, which may be recovered by an action in the name of the Commonwealth.

(3) Any person who presents to the county clerk for the purpose of registration any license which has been fraudulently obtained, or obtains any license under KRS 311.380 to 311.510 by false or fraudulent statement or representation, or practices podiatry under a false or assumed name or falsely impersonates another practitioner or former practitioner of a

like or different name, or aids and abets any person in the practice of podiatry within the state without conforming to the requirements of KRS 311.380 to 311.510, or otherwise violates or neglects to comply with any of the provisions of KRS 311.380 to 311.510, shall be guilty of a Class A misdemeanor. Each case of practicing podiatry in violation of the provisions of KRS 311.380 to 311.510 shall be considered a separate offense.

(4) Each first violation of KRS 311.560 is a Class A misdemeanor. Each subsequent violation of KRS 311.560 shall constitute a Class D felony.

(5) Each violation of KRS 311.590 shall constitute a Class D felony. Conviction under this subsection of a holder of a license or permit shall result automatically in permanent revocation of such license or permit.

(6) Conviction of willfully resisting, preventing, impeding, obstructing, threatening, or interfering with the board or any of its members, or of any officer, agent, inspector, or investigator of the board or the Cabinet for Human Resources, in the administration of any of the provisions of KRS 311.550 to 311.620 shall be a Class A misdemeanor.

(7) Each violation of subsection (1) of KRS 311.375 shall, for the first offense, be a Class B misdemeanor, and, for each subsequent offense shall be a Class A misdemeanor.

(8) Each violation of subsection (2) of KRS 311.375 shall, for the first offense, be a violation, and, for each subsequent offense, be a Class B misdemeanor.

(9) Each day of violation of either subsection of KRS 311.375 shall constitute a separate offense.

(10) (a) Any person who intentionally or knowingly performs an abortion contrary to the requirements of KRS 311.723(1) shall be guilty of a Class D felony; and

(b) Any person who intentionally, knowingly, or recklessly violates the requirements of KRS 311.723(2) shall be guilty of a Class A misdemeanor.

(11)[~~Any person who intentionally, knowingly, or recklessly violates the requirements of KRS 311.726 shall be guilty of a Class A misdemeanor.~~

~~(12)~~] Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally or knowingly fails to conform to any requirement of KRS 311.732 is guilty of a Class A misdemeanor.

(12)[~~(13)~~] Any person who negligently releases information or documents which are confidential under KRS 311.732 is guilty of a Class B misdemeanor.

(13)[~~(14)~~] Any person who performs an abortion upon a married woman either with knowledge or in reckless disregard of whether KRS 311.735 applies to her and who intentionally, knowingly, or recklessly fails to conform to the requirements of KRS 311.735 shall be guilty of a Class D felony.

(14)[~~(15)~~] Any person convicted of violating KRS 311.750 shall be guilty of a Class B felony.

(15)[~~(16)~~] Any person who violates KRS 311.760(2) shall be guilty of a Class D felony.

(16)[~~(17)~~] Any person who violates KRS 311.770 or 311.780 shall be guilty of a Class D felony.

(17)[~~(18)~~] A person convicted of violating KRS 311.780 shall be guilty of a Class C felony.

(18)[~~(19)~~] Any person who violates KRS 311.810 shall be guilty of a Class A misdemeanor.

(19)[~~(20)~~] Any professional medical association or society, licensed physician, or hospital or hospital medical staff who shall have violated the provisions of KRS 311.606 shall be guilty of a Class B misdemeanor.

(20)[~~(21)~~] Any person who violates KRS 311.652 or any rule or regulation of the board of medical licensure adopted pursuant to KRS 311.654 shall be guilty of a Class A misdemeanor.

(21)[~~(22)~~] Any administrator, officer, or employee of a publicly-owned hospital or publicly-owned health care facility who performs or permits the performance of abortions in violation of KRS 311.800(1) shall be guilty of a Class A misdemeanor.

(22)[~~(23)~~] Any person who violates KRS 311.914 shall be guilty of a violation.

(23)[~~(24)~~] Any person who violates the provisions of KRS 311.820 shall be guilty of a Class A misdemeanor.

(24)[~~(25)~~] (a) Any person who fails to test organs, skin, or other human tissue which is to be transplanted, or violates the confidentiality provisions required by KRS 311.281, shall be guilty of a Class A misdemeanor;

(b) Any person who has human immunodeficiency virus infection, who knows he is infected with human immunodeficiency virus, and who has been informed that he may communicate the infection by donating organs, skin, or other human tissue who donates organs, skin, or other human tissue shall be guilty of a Class D felony.

(25)[~~(26)~~] A person who violates any provision of KRS 311.131 to 311.139 or any regulation adopted under KRS 311.131 to 311.139 shall be guilty of a Class A misdemeanor. Each day a violation is continued after the first conviction shall be a separate offense.

(26)[~~(27)~~] Any person who sells or makes a charge for any transplantable organ shall be guilty of a Class D felony.

(27)[~~(28)~~] Any person who offers remuneration for any transplantable organ for use in transplantation into himself shall be fined not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000).

(28)[~~(29)~~] Any person brokering the sale or transfer of any transplantable organ shall be guilty of a Class C felony.

(29)[~~(30)~~] Any person charging a fee associated with the transplantation of a transplantable organ in excess of the direct and indirect costs of procuring, distributing, or transplanting the transplantable organ shall be fined not less than fifty thousand dollars ($50,000) nor more than five hundred thousand dollars ($500,000).

(30)[~~(31)~~] Any hospital performing transplantable organ transplants which knowingly fails to report the possible sale, purchase, or brokering of a transplantable organ shall be fined not less than ten thousand dollars ($10,000) or more than fifty thousand dollars ($50,000).

Section 4. The following KRS sections are repealed:

311.726 Voluntary and informed consent of woman -- Certificate -- Emergencies -- Civil liability of physician.

311.729 Information on alternatives.

Motions, Petitions and Communications (Continued)

Representative Vincent moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Vincent moved that he be recorded as voting "nay" on **HB 378**. Agreed.

Representative Anderson moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Anderson moved that he be recorded as voting "nay" on **HB 378**. Agreed.

Representative Crimm moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Crimm moved that he be recorded as voting "yea" on **HB 429**. Agreed.

Representative Bruce moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Bruce moved that his vote be changed from "yea" to "nay" on **378**. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 1 to **HB 129**, by Representative Barrows:

On page 21, Between lines 7 and 8, By inserting the following new section:

"Section 9. KRS 205.690 is amended to read as follows:

The secretary shall submit a written report to the General Assembly during each regular session thereof and shall upon written request, submit a written report to or appear in person before any joint interim committee of the General Assembly within thirty (30) days of such request, the following information ***related to the implementation of Section 4 of this Act***:

(1) The number of recipients placed in ***public and private*** [~~a community~~] work experience ***programs*** [~~program~~];

(2) The number of recipients placed ***in*** [~~from such program into~~] regular full-time employment; and

(3) The costs to the Commonwealth and participating local agencies or organizations of the implementation of ***the work program required under Section 4 of this Act*** [~~such program~~].";

And on page 21, line 8, By renumbering "Section 9" as "Section 10";

And also on page 21, By deleting line 20 in its entirety.

Motions, Petitions and Communications (Continued)

Representative Palumbo moved that Floor Amendment No. 2 to **HB 62** be withdrawn. Agreed.

Representative Pope moved the adoption of the following **Legislative Citation No. 88**. Agreed.

It is the intent of the Kentucky House of Representatives to hereby adjourn this legislative day in loving memory of Donnie Adkisson who passed away February 16, 1998, after a long and valiant battle with cancer. He is survived by his devoted parents, Donnie and Lisa Adkisson; his loving sister, Laura Amanda Adkisson; his cherished grandparents, Fred and Pauline Adkisson and Bill and Joann Thomas; and his adoring great-grandparents, aunts, uncles and cousins. A native and resident of Harlan, Kentucky, and a student at Harlan High School, this exceptional young man was a member of the Pep Club, the Bible Club and was a football player. He was also a member of the Kelly Street Baptist Church and of the Harlan Baptist Church Youth Group. It was with this group of young people that he was given the opportunity to travel to South Dakota on a mission, a journey which was of tremendous importance to this young man who was such a faithful servant of God. He will long be mourned by his family and friends for his generosity and lightness of spirit and for the brevity of his life. The members of this distinguished body are honored to join with Representative Thomas Pope in extending deepest sympathy to the family of Donnie Adkisson and in hereby adjourning this legislative day in memory of this remarkable young citizen of the Commonwealth. **Legislative Citation No. 88** was adopted without objection.

Representative Baugh moved the adoption of the following **Legislative Citation No. 92**. Agreed.

The House of Representatives of the Commonwealth of Kentucky does hereby adjourn this legislative day in loving memory of Samuel J. Cunigan. The House of Representatives joins Representative Sheldon Baugh in expressing its deepest sympathy to all who share in the great loss on the passing of this devoted son of the late James and Mollie Sexton Cunigan; beloved husband of Mary Jo Reynolds Cunigan; adored father of two daughters, Judy Ann DeArmond and Bonnie Sue Cunigan; devoted brother of three sisters and three brothers, cherished grandfather of three and great-grandfather of two. Co-founder of Auburn Electric, he also served as a member of the Auburn Fire Department and on the board of directors for the development of Lake Malone, the Clearing House, the Auburn Fish and Game Club and was past chairman of the Logan County Airport Board. Samuel Cunigan was a World War II veteran, the recipient of both the Good Conduct Medal and the Victory Medal and served as commander of Auburn American Legion Post 258. His memory will continue to be an inspiration to all whose lives were illuminated by his earthly sojourn and will surely serve as a beacon for others to follow. **Legislative Citation No. 92** was adopted without objection.

Representative Baugh moved the adoption of the following **Legislative Citation No. 93**. Agreed.

Citation of Adjournment It is the intent of the House of Representatives of the Commonwealth of Kentucky to hereby adjourn this legislative day in loving memory of William Vernon Hadden and to join Representative Sheldon Baugh in expressing its profound sympathy to all who share in the loss on the passing of this fine gentleman, born in Detroit, Michigan, and a longtime resident of Auburn, Logan County, Kentucky; loving son of the late William Vernon Hadden, Sr. and Gertrude Turner Hadden; beloved husband of Eloise Woodward Hadden; loving father of Edna Hadden Hughes; cherished brother of Sybil H. Tinsley and devoted grandfather of Meredith and Sara Hughes. William Vernon Hadden served his community as a member of the Auburn City Council and as Auburn city judge. He was a retired vice president of Auburn Banking Company, an elder of the First Presbyterian Church, USA, an aviation machinist in the United States Navy during World War II and a member of the American Legion. An avid railroad historian, his family had a rich history with the L&N Railroad, leading to his extensive collection of model trains and railroad memorabilia and his membership in the S.H.O.W. Modular Model Railroad Club. We remember his generous and remarkable contributions on this day and offer our sincere condolences to those whose fortune it was to share his life. **Legislative Citation No. 93** was adopted without objection.

The following members filed requests to have their names added as co-sponsors of Bills under rules previously suspended: **HB 13**, Representative Cox; **HB 380**, Representative Marzian; **HB 434**, Representatives Wayne, P. Clark; **HB 457, HB 632**, Representative Cave; **HB 605**, Representative Anderson; **HB 613**, Representative Hoffman; **HB 636**, Representative Maricle; **HB 654**, Representatives Horlander, Alexander, Newsome, Murgatroyd.

Announcements

The following meetings were announced:

Subcommittee Chairs, upon adjournment

Health and Welfare, upon adjournment

Adjournment

Representative Stumbo moved that the House adjourn until 10:00 a.m., February 20, 1998.

On the roll call the vote was **Yeas 75**--J. Adams, R. Adams, Adkins, Alexander, Anderson, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Bowling, Bratcher, Brown, Bruce, D. Butler, D. D. Butler, Callahan, L. Clark, Collins, Colter, Crenshaw, Crimm, Damron, Ford, Gee, Geveden, D. Graham, G. Graham, Gray, Hatcher, Haydon, Hoffman, Hoover, Horlander, Jenkins, Johns, Jordan, Kerr, Lee, Long, Marcotte, Marzian, Mason, McKee, Miller, Miniard, Moberly, Murgatroyd, Newsome, Nunn, Palumbo, Polston, Pope, Rader, Rasche, Reinhardt, Richards, Riggs, Riner, Scott, Siler, Simpson, Sims, Stein, Stine, Stumbo, Treesh, Turner, Vincent, Walton, Wayne, Weaver, Wilkey, Worthington, Yonts. **Nays 4**--P. Clark, Crall, Nesler, Stewart.

The motion to adjourn was adopted.

FRIDAY, FEBRUARY 20, 1998

THIRTIETH LEGISLATIVE DAY

The House was called to order by Speaker Richards.

Prayer by Reverend Mike Routt, Rose Hill Baptist Church, Ashland.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Bowling, Deskins, Heleringer, Hogancamp, Lovell, and Nesler.

Representative Ballard moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative Ballard moved that the reading of the Journal of February 19, 1998, be dispensed with and the same approved. Agreed.

Representative Ballard moved that the Rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Ballard moved that all properly filed co-sponsor requests be approved. Agreed.

Introduction of Bills and Resolutions

HB 666, by Representatives Wilkey, Geveden, and Bowling: AN ACT relating to commerce.

HB 667, by Representative Barrows: AN ACT relating to claims.

HB 668, by Representative Barrows: AN ACT relating to government.

HB 669, by Representative Palumbo: AN ACT relating to revenue and taxation.

HR 83, by Representative A. Arnold: A RESOLUTION adjourning the House of Representatives in loving memory and honor of Billy Amburgey.

Senate Message

Announcing passage of **SB 76, SB 161, SB 207, SB 243, SJR 76,** and **HB 264**. (Time: 10:05 a.m.)

Report On Enrolled Bills

The Committee on Enrollment reported that **HB 56** has been examined and found correctly enrolled. Said Bill was read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -10:10 a.m.)

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolutions:

Agriculture and Small Business: **HB 658**

Appropriations and Revenue: **HB 648**

Banking and Insurance: **HB 650**

Cities: **HB 647**

Counties and Special Districts: **HB 651, HB 660, HB 663, HB 664**

Economic Development: **SB 224**

Health and Welfare: **HB 652, HB 653**

Judiciary: **HB 659, HB 662, HB 665, SB 58, SB 74**

Licensing and Occupations: **HB 649, HB 661**

Natural Resources and Environment: **HB 654, SB 253**

State Government: **HB 646, HB 657, HCR 81, HCR 82, SB 208**

Transportation: **HB 645, HB 655, HB 656, SB 31, SB 106, SB 122, SB 130, SB 259**

Report of Committees

The Committee on Health and Welfare reported **HB 188, HB 249,** with Committee Substitute attached thereto, **HB 333, HB 381,** with Committee Substitute attached thereto, and **HB 406,** with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 188, AN ACT relating to child abuse.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 532.045 is amended to read as follows:

(1) As used in this section:

(a) "Position of authority" means, but is not limited to, the position occupied by a biological parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational staff or volunteer who is an adult, adult athletic manager, adult coach, teacher, ***classified school employee, certified school employee,*** counselor, staff or volunteer for either a residential treatment facility, a holding facility as defined in KRS 600.020, or a detention facility as defined in KRS 520.010(4), staff or volunteer with a youth services organization, religious leader, health care provider, or employer;

(b) "Position of special trust" means a position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the minor; and

(c) "Substantial sexual conduct" means penetration of the vagina or rectum by the penis of the offender or the victim, by any foreign object; oral copulation; or masturbation of either the minor or the offender.

(2) Notwithstanding other provisions of applicable law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provision of this section be stricken for a person convicted of violating KRS 510.040, 510.050, 510.070, 510.080, 529.030 to 529.050, 529.070, 530.020, 531.310, 531.320, 531.370, or criminal attempt to commit any of these offenses under KRS 506.010, and, who meets one (1) or more of the following criteria:

(a) A person who commits any of the offenses enumerated in this subsection against a minor by the use of force, violence, duress, menace, or threat of bodily harm;

(b) A person who, in committing any of the offenses enumerated in this subsection, caused bodily injury to the minor;

(c) A person convicted of any of the offenses enumerated in this subsection and who was a stranger to the minor or made friends with the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection, unless the defendant honestly and reasonably believed the minor was eighteen (18) years old or older;

(d) A person who used a dangerous instrument or deadly weapon against a minor during the commission of any of the offenses enumerated in this subsection;

(e) A person convicted of any of the offenses enumerated in this subsection and who has had a prior conviction of assaulting a minor, with intent to commit an act constituting any of the offenses enumerated in this subsection;

(f) A person convicted of kidnapping a minor in violation of the Kentucky penal code and who kidnapped the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection;

(g) A person who is convicted of committing any of the offenses enumerated in this subsection on more than one (1) minor at the same time or in the same course of conduct;

(h) A person who in committing any of the offenses enumerated in this subsection has substantial sexual conduct with a minor under the age of fourteen (14) years; or

(i) A person who occupies a position of special trust and commits an act of substantial sexual conduct.

(3) If a person is not otherwise prohibited from obtaining probation or conditional discharge under subsection (2), the court may impose on the person a period of probation or conditional discharge. Probation or conditional discharge shall not be granted until the court is in receipt of an evaluation of the offender performed by the sex offender treatment program operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services. The court shall use the evaluation in determining the appropriateness of probation or conditional discharge.

(4) If the court grants probation or conditional discharge, the offender shall be required, as a condition of probation or conditional discharge, to successfully complete a community-based sexual offender treatment program operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services.

(5) The offender shall pay for any evaluation or treatment required pursuant to this section up to the offender's ability to pay but not more than the actual cost of the evaluation or treatment.

(6) Failure to successfully complete the sexual offender treatment program constitutes grounds for the revocation of probation or conditional discharge.

(7) All communications relative to the evaluation and treatment of a sexual offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings.

(8) Before imposing sentence, the court shall advise the defendant or his counsel of the contents and conclusions of any evaluation performed pursuant to this section and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the evaluation. It shall not be necessary to disclose the sources of confidential information.

(9) To the extent that this section conflicts with KRS 533.010, this section shall take precedence.

HB 249, AN ACT relating to emergency medical services for children.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS 211.950 TO 211.956 IS CREATED TO READ AS FOLLOWS:

The Kentucky General Assembly declares that the purpose of Sections 4 and 5 of this Act is to establish and require the development of a comprehensive emergency medical services system for children, as an integral part of Kentucky's overall emergency medical services and trauma care system, in order to provide children with access to comprehensive emergency and critical care medical services, including preventive, prehospital, hospital, rehabilitation, and other posthospital care. The General Assembly finds that coordination of emergency services, additional training of emergency medical services personnel, communication among service providers, and enhanced data collection efforts will provide children with access to skilled emergency care, decrease unnecessary deaths from injury, decrease the overall costs of health care, and provide information as to the quality of emergency medical care for children.

Section 2. KRS 211.950 is amended to read as follows:

As used in KRS 211.952 to ***211.956***[~~211.958~~], unless the context otherwise requires:

(1) "Advisory committee" means the Emergency Medical Services for Children Advisory Committee of the Kentucky Emergency Medical Services Council established under Section 5 of this Act.

(2) "Ambulance" means a vehicle which has been inspected and approved by the cabinet, including a helicopter or fixed wing aircraft, except vehicles or aircraft operated by the United States government, that are specially designed, constructed, or have been modified or equipped with the intent of using the same, for the purpose of transporting any individual who is sick, injured, or otherwise incapacitated who may require immediate stabilization and continued medical response and intervention during transit or upon arrival at the patient's destination to safeguard the patient's life or physical well-being.

(3)[~~(2)~~] "Ambulance provider" means any individual or private or public organization, except the United States government, who is licensed by the Cabinet for Human Resources to provide medical transportation services as either basic life support or advanced life support and who may have a vehicle or vehicles, including ground vehicles, helicopters or fixed wing aircraft. An ambulance provider may be licensed as an air ambulance provider; as a Class I ground ambulance provider; as a Class II ground ambulance provider; or as a Class III ground ambulance provider.

(4) "Department" means the Department for Health Services.

(5) "Emergency medical facility" means a hospital, trauma center, or any other institution licensed by the Cabinet for Human Resources that furnishes emergency medical services.

(6)[~~(3)~~] "Emergency medical services" means the services utilized in responding to the perceived individual need for immediate medical care to protect against loss of life, or aggravation of physiological or psychological illness or injury.

(7) "Emergency Medical Services for Children Program" or "EMSC Program" means the program established under Section 4 of this Act.

(8) "Emergency medical services personnel" means persons, including physicians, certified or licensed, and trained to provide emergency medical services, whether on a paid or volunteer basis, as part of basic life support, advanced life support, prehospital, or hospital emergency care services or in an emergency department or critical care or specialized unit in a licensed hospital or other licensed emergency or critical care medical facility.

(9)[~~(4)~~] "Emergency medical services system" means a coordinated system of health care delivery that responds to the needs of the acutely sick and injured, and includes community education and prevention programs, centralized access and emergency medical dispatch, communications networks, trained ***emergency medical services*** personnel, medical first response, ground and air ambulance services, emergency medical facilities and specialty care hospitals, trauma care systems, mass casualty management, medical direction, and quality control and system evaluation procedures.

(10) "Prehospital care" means the provision of emergency medical services or transportation by trained and certified or licensed emergency medical services personnel at the scene of an emergency or while transporting sick or injured persons to a hospital or other emergency medical facility.

(11)[~~(5)~~] "Regional emergency medical services system" means a system approved by the Cabinet for Human Resources which provides for the arrangement of personnel, facilities, equipment, or any of the above, for the effective and coordinated delivery of health care services in an appropriate geographical area.

(12)[~~(6)~~] "Trauma" means a single or multisystem life-threatening or limb-threatening injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability.

(13)[~~(7)~~] "Trauma care system" means a subsystem within the emergency medical services system consisting of an organized arrangement of personnel, equipment, and facilities designed to manage the treatment of the trauma patient.

Section 3. KRS 211.952 is amended to read as follows:

(1) The Cabinet for Human Resources shall maintain a program for the planning, development, improvement, and expansion of emergency medical services systems and trauma care systems throughout the state.

(2) The Cabinet for Human Resources shall establish and designate a single lead agency under the supervision and direction of the Commissioner of Health which will carry out all administrative functions related to the planning, development, improvement, and expansion of emergency medical services systems throughout the state. This will include:

(a) The training and certification of prehospital personnel;

(b) The promulgation of standards and regulations for emergency medical services personnel;

(c) The promulgation of administrative regulations for the licensing, inspection, and regulation of ambulance and medical first response providers. The administrative regulations shall address specific requirements for:

1. Air ambulance providers which provide basic or advanced life support services;
2. Class I ground ambulance providers, which provide basic life support or advanced life support services to all patients for both emergencies and scheduled ambulance transportation which is medically necessary;
3. Class II ground ambulance providers, which provide only basic life support services but do not provide initial response to the general population with medical emergencies and which are limited to providing scheduled ambulance transportation which is medically necessary;
4. Class III ground ambulance providers, which provide mobile intensive care services at or above the level of advanced life support to patients with critical illnesses or injuries who must be transported between hospitals in vehicles with specialized equipment as an extension of hospital-level care; and
5. Medical first response providers who provide prehospital basic life support services, or advanced life support services, but do not transport patients;

(d) Planning and development of emergency medical services and trauma care systems;

(e) Promulgation of voluntary standards for trauma centers and other specialized emergency medical facilities;

(f) Provision of funding and technical assistance as shall become available; and

(g) Establishing minimum data reporting requirements***, including requirements specifically related to emergency medical services and trauma care of children,*** for ambulance providers and trauma centers and other specialized emergency medical facilities and collection and analysis of data related to the provision of emergency medical services and trauma care***; and***

(h) Establishing the Emergency Medical Services for Children Program with any additional funds that may be appropriated by the General Assembly, or from federal or any other funds that may become available to the cabinet, including gifts, grants, or other sources.

(3) Nothing in this section shall be construed to change or alter the issuance of certificates of need for emergency medical services providers.

(4) The cabinet shall[~~ transfer or otherwise make available to the lead emergency medical services agency necessary staff and funds required to carry out the purposes of this section, including regional emergency medical services advisors for any regional emergency medical services systems which shall be established by the cabinet, and shall~~] promulgate administrative regulations and perform the necessary functions to carry out the purpose of this section including:

(a) Delineation, by administrative order of the secretary, of the geographic boundaries of regional emergency medical services systems.

(b) Promulgation of administrative regulations providing for:

1. Composition of regional emergency medical services advisory boards to serve in an advisory capacity to the Kentucky Emergency Medical Services Council;
2. Terms of office of regional emergency medical services advisory board members;

3. Appointment of regional emergency medical services advisory board members; and

4. Such other matters relating to regional emergency medical services systems as may be necessary.

(c) Provision of technical assistance to regional emergency medical services advisory boards, units of local government, and others in planning for the development, coordination, and monitoring of emergency medical services.

(d) Development of a statewide plan for the implementation of emergency medical services systems and trauma care systems within the Commonwealth of Kentucky which specifically addresses the unique needs of rural areas.

(e) Issuance of a format for the development of regional emergency medical services plans consistent with goals and standards included in the statewide emergency medical services plan.

(f) Application for, receipt of, and disposition of federal, state, or private funds by grant, appropriation, donation, or otherwise for emergency medical services programs, personnel and equipment.

(g) Awarding of funds to regional emergency medical services systems to implement specific objectives delineated in regional emergency medical services plans, including assistance to local governments for their provision of ambulance service.

(h) Development, monitoring, and encouragement of such other projects and programs which may be of benefit to emergency medical services in the Commonwealth.

(i) Conducting verification inspections to ensure compliance with voluntary standards established by the cabinet for trauma centers, emergency departments, and specialized hospital based services for which standards have been established by the cabinet for emergency medical services and trauma care systems.

(5) The cabinet shall establish a Kentucky Emergency Medical Services Council which shall advise the cabinet on issues relating to the development, implementation, regulation, maintenance, and reimbursement of emergency medical services systems and providers. This council shall be broadly representative of individuals, providers, and public officials having expertise in emergency medical services. The council shall consult with the Kentucky Board of Medical Licensure to establish medically appropriate standards and protocols which will be utilized by emergency medical services personnel and to assist the Kentucky Board of Medical Licensure in meeting the requirements of KRS 311.654. The council shall consult with the Kentucky Board of Nursing to establish appropriate standards and protocols to meet the requirements of KRS 314.131 for nurses who practice in emergency medical service settings.

(6) Data and records generated and kept by the single emergency medical services administrative agency***, the Kentucky Emergency Medical Services Council, the Emergency Medical Services for Children Advisory Committee, the Kentucky Emergency Medical Services for Children Program*** or ***their***~~[its]~~ contractors regarding the evaluation of emergency medical care and trauma care in the Commonwealth***, including the identities of patients, emergency medical services personnel, and emergency medical facilities,*** shall be held confidential, ***shall not be subject to disclosure under KRS 61.805 to 61.884,*** shall not be admissible in court for any purpose, and shall not be subject to discovery; provided, however, that nothing in this section shall limit the discoverability or admissibility of patient medical records regularly and ordinarily kept in the course of a patient's treatment which otherwise would be admissible or discoverable.

(7) Nothing in this section shall limit, preclude, or otherwise restrict the practices of licensed personnel in carrying out their duties under the terms of their licenses.

SECTION 4. A NEW SECTION OF KRS 211.950 TO 211.956 IS CREATED TO READ AS FOLLOWS:

(1) There is established within the department's lead agency for emergency medical services an Emergency Medical Services for Children Program.

(2) The cabinet shall hire a coordinator for the EMSC Program who shall be assigned to the department's lead agency for emergency medical services. The authorized personnel cap for the department shall be increased to include the coordinator and other positions for which funding is provided by the General Assembly or through any other sources, including gifts, grants, or federal funds.

(3) The coordinator shall:

(a) Implement and oversee the EMSC Program described in this section, in consultation with the advisory committee established in Section 5 of this Act; and

(b) Serve as liaison for collaboration and coordination between the EMSC Program and other public and private organizations, including the department's lead emergency medical services agency, the state traffic safety office, the maternal and child health program, the Medicaid department, the state and local child fatality review and response teams, state and local professional organizations, private sector voluntary organizations, and consumer and community representatives.

(4) The EMSC Program shall include, but not be limited to, the establishment of the following:

(a) Guidelines for the approval of emergency medical services facilities for pediatric care, and designation of specialized regional pediatric critical care centers and pediatric trauma centers;

(b) Guidelines for referring children to the appropriate emergency medical facility;

(c) Guidelines for necessary prehospital and other pediatric emergency and critical care medical service equipment;

(d) Guidelines for developing a coordinated system that will allow children to receive appropriate initial stabilization and treatment with timely provision of, or referral to, the appropriate level of care, including critical care, trauma care, or pediatric subspecialty care;

(e) Guidelines and protocols for prehospital and hospital facilities encompassing all levels of pediatric emergency medical services, pediatric critical care, and pediatric trauma care;

(f) Guidelines for rehabilitation services for critically ill or injured children;

(g) A system for transferring critically ill or injured children between emergency medical facilities, services, and systems;

(h) Initial and continuing professional education programs for emergency medical services personnel, which shall include training in the emergency care of infants and children;

(i) A public education program concerning the EMSC Program, including information on emergency access telephone numbers;

(j) The collection and analysis of statewide pediatric emergency and critical care medical services data from emergency medical facilities for the purpose of quality improvement by these facilities, subject to the confidentiality requirements of subsection (6) of Section 3 of this Act;

(k) The establishment of cooperative interstate relationships to facilitate the provision of appropriate care for pediatric patients who must cross state borders to receive emergency medical services;

(l) Coordination and cooperation between the EMSC Program and other public and private organizations interested or involved in emergency and critical care for children, including those persons and organizations identified in subsection (3)(b) of this section; and

(m) The scope of activities carried out by the EMSC Program shall be commensurate with the availability of funds.

(5) The department's lead emergency medical services agency shall, upon development of the guidelines and recommendations listed in subsection (4) of this section, promulgate these as administrative regulations under KRS Chapter 13A.

SECTION 5. A NEW SECTION OF KRS 211.950 TO 211.956 IS CREATED TO READ AS FOLLOWS:

(1) There is established an Emergency Medical Services for Children Advisory Committee of the Kentucky Emergency Medical Services Council to advise the council, the department, and the EMSC Program coordinator on all matters concerning emergency medical services for children.

(2) The advisory committee shall consist of thirteen (13) members to be appointed by the secretary of the Cabinet for Human Resources no later than sixty (60) days after the effective date of this Act. The secretary shall solicit nominations from professional medical associations, other associations with expertise and interest in pediatric emergency services, and the public at large. Advisory committee members with medical backgrounds shall have expertise and interest in emergency medical services for children, and preference in appointment shall be given to individuals who are board certified in their respective specialties. Membership of the advisory committee shall include:

(a) A practicing pediatrician;

(b) A family practice physician;

(c) A pediatric emergency physician;

(d) An emergency physician;

(e) A pediatric critical care physician;

(f) A pediatric surgeon;

(g) A pediatric rehabilitation specialist;

(h) An emergency medical technician;

(i) A paramedic;

(j) A registered nurse; and

(k) Three (3) members with nonmedical backgrounds, two (2) of whom shall be parents of a child who has received emergency medical services.

SECTION 6. A NEW SECTION OF KRS 211.950 TO 211.956 IS CREATED TO READ AS FOLLOWS:

The commissioner of the department shall report in writing to the General Assembly every two (2) years regarding the status of the EMSC Program and its implementation. The report shall include a discussion of data collected under Section 4 of this Act, subject to the confidentiality requirements of Section 3 of this Act.

Section 7. KRS 211.964 is amended to read as follows:

(1) The Cabinet for Human Resources shall promulgate administrative regulations relating to emergency medical technicians. The regulations may include the classification and certification of emergency medical technicians, instructors, instructor-trainers, and students and trainees; examinations; standards of training and experience; curricula standards; issuance, renewal, suspension, denial, revocation, probation, and restriction of certificates; hearing of appeals; and other reasonable standards or regulations as may be necessary for the protection of public health and safety in the delivery of emergency medical services. Any administrative hearing conducted under authority of this section shall be conducted in accordance with KRS Chapter 13B. No additional testing or examinations shall be required for recertification, except for proficiency testing of new skills or knowledge, or areas in which there is documented evidence of deterioration of skills.

(2) Recertification programs shall be organized to include continuing education and in-service training approved by the cabinet. The continuing education program shall be subject to the requirements of KRS 214.610(1)***, and shall include the professional education described in subsection (4)(h) of Section 4 of this Act***.

(3) In lieu of the continuing education and in-service training requirement specified by the cabinet for recertification, an emergency medical technician, certified as of July 15, 1996, or within one (1) year of July 15, 1996, may elect to recertify utilizing the continuing education and in-service training required by the National Registry of Emergency Medical Technicians or its successor organization. Upon successful completion of the National Registry recertification requirements, the emergency medical technician shall be recertified for the period of time specified by law.

(4) Emergency medical technicians certifying later than one (1) year after July 15, 1996, shall, in lieu of the certification requirements specified by the cabinet under subsection (1) of this section, successfully complete the National Registry of Emergency Medical Technicians final examination for certification and shall maintain National Registry of Emergency Medical Technicians credentials in order to be recertified.

(5) A person who has chosen to recertify as an emergency medical technician utilizing the National Registry of Emergency Medical Technicians or its successor organization's requirements shall not be permitted to recertify utilizing the cabinet's requirements, unless the National Registry of Emergency Medical Technicians and its successor organization ceases business or there is no successor organization.

(6) Other than the requirements of KRS 214.610(1) ***and the professional education described in subsection (4)(h) of Section 4 of this Act***, the cabinet shall not require any additional course work, in-service training, testing, or examinations of a person who chooses the National Registry of Emergency Medical Technicians or its successor organization for certification or recertification as an emergency medical technician.

(7) Other than the requirements of KRS 214.610(1) ***and the professional education described in subsection (4)(h) of Section 4 of this Act***, any person certified by the State Board of Medical Licensure as a paramedic shall be certified as an emergency medical technician by the cabinet. The certification shall be issued without fee, without additional training, in-service training, testing, or examination. The emergency medical technician certification shall be issued and expire at the same time that paramedic certification is issued or expires, and if a paramedic voluntarily gives up his certification prior to the expiration of his paramedic certification, his emergency medical technician certification shall be unaffected thereby. If a paramedic chooses not to recertify as a paramedic but chooses to retain his emergency medical technician certification, the paramedic shall, prior to the expiration of his paramedic certification, recertify as an emergency medical technician utilizing one (1) of the methods provided for in this section.

(8) A paramedic whose certification as a paramedic is suspended, revoked, or denied by the State Board of Medical Licensure shall have the same action taken automatically by the cabinet with regard to his emergency medical technician certification.

Section 8. KRS 311.601 is amended to read as follows:

(1) The board may adopt reasonable rules and regulations to effectuate and implement the provisions of KRS 311.550 to 311.620, including but not limited to regulations designed to insure the continuing professional competency of present and future licensees. As an adjunct to the power conferred upon the board by this section, the board may require licensees to submit to interrogation as to the nature and extent of their postgraduate medical education and to require licensees found to be deficient in their efforts to keep abreast of new methods and technology, to obtain additional instruction and training therein.

(2) Any continuing medical education requirement which the board may institute by regulation shall include the completion of the course described in KRS 214.610(1)***, and, for emergency medical services personnel as defined in Section 2 of this Act, shall include the professional education described in subsection (4)(h) of Section 4 of this Act***.

Section 9. KRS 311.654 is amended to read as follows:

(1) The Board of Medical Licensure shall promulgate administrative regulations relating to paramedics. The regulations may include, but need not be limited to, the classification and certification of paramedics, instructor-trainers, instructors, and students and trainees; examinations; standards of training and experience; curricula standards; administration of drugs and controlled substances by paramedics under the direction or supervision of licensed physicians; issuance, renewal, suspension, denial, and revocation of certificates, and such other reasonable standards or regulations as may be necessary for the protection of public health and safety in the delivery of emergency medical services.

(2) Any continuing education required by the Board of Medical Licensure shall include a Cabinet for Human Resources approved educational course on the transmission, control, treatment, and prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome with an emphasis on appropriate behavior and attitude change***, and shall include the professional education described in subsection (4)(h) of Section 4 of this Act***.

(3) The Kentucky Board of Medical Licensure shall enter into an agreement with the Cabinet for Human Resources whereby the cabinet's lead agency for emergency medical services shall carry out the day-to-day administration of this section under administrative regulations promulgated by the Board of Medical Licensure. The Kentucky Emergency Medical Services Council will provide advice and recommendations to the Kentucky Board of Medical Licensure related to the provisions of KRS 311.650 to 311.658.

Section 10. KRS 314.073 is amended to read as follows:

(1) Except for the first licensure renewal following the issuance of an original license by the board, as a prerequisite for license renewal, all individuals licensed under provisions of this chapter shall be required to document the completion of continuing education requirements not to exceed thirty (30) contact hours in a given licensure period as prescribed in regulations promulgated by the board. A "contact hour" is defined as fifty (50) minutes of an approved, organized learning experience.

(2) Contact hours required to satisfy the continuing education requirement shall be completed and reported in accordance with board requirements set forth by regulation.

(3) The board shall approve providers of continuing education. The approval may include recognition of providers approved by national organizations and state boards of nursing with comparable standards. Standards for these approvals shall be set by the board in administrative regulations promulgated in accordance with the provisions of KRS Chapter 13A.

(4) The board shall work cooperatively with professional nursing organizations, approved nursing schools, and other potential sources of continuing education programs to assure that adequate continuing education offerings are available statewide. The board may enter into contractual agreements to implement the provisions of this section.

(5) The board shall be responsible for notifying applicants for licensure and licensees applying for license renewal, of continuing education requirements.

(6) The continuing education shall include the completion of the course described in KRS 214.610(1)***, and, for emergency medical services personnel as defined in Section 2 of this Act, shall include the professional education described in subsection (4)(h) of Section 4 of this Act***.

(7) In order to offset administrative costs incurred in the implementation of the mandatory continuing education requirements, the board may charge reasonable fees as established by regulation in accordance with the provisions of KRS Chapter 13A.

(8) The continuing education requirements shall include at least five (5) contact hours in pharmacology for any person registered as an advanced registered nurse practitioner.

Section 11. This Act may be cited as the Emergency Medical Services for Children Act.

The Committee Substitute to **HB 249** is as follows:

AN ACT relating to emergency medical services for children.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS 211.950 TO 211.956 IS CREATED TO READ AS FOLLOWS:

The Kentucky General Assembly declares that the purpose of Sections 4 and 5 of this Act is to establish a comprehensive emergency medical services system for children, as an integral part of Kentucky's overall emergency medical services and trauma care system, in order to provide children with access to comprehensive emergency and critical care medical services, including preventive, prehospital, hospital, rehabilitation, and other posthospital care. The General Assembly recognizes the contributions of the federally funded Emergency Medical Services for Children program in Kentucky and desires to continue and expand the activities initiated by this program. The General Assembly finds that coordination of emergency services, additional training of emergency medical services personnel, communication among service providers, and enhanced data collection efforts will provide children with access to skilled emergency care, decrease unnecessary deaths from injury, decrease the overall costs of health care, and provide information as to the quality of emergency

medical care for children.

Section 2. KRS 211.950 is amended to read as follows:

As used in KRS 211.952 to ***211.956***[~~211.958~~], unless the context otherwise requires:

(1) ***"Advisory committee" means the Emergency Medical Services for Children Advisory Committee of the Kentucky Emergency Medical Services Council established under Section 5 of this Act.***

(2) "Ambulance" means a vehicle which has been inspected and approved by the cabinet, including a helicopter or fixed wing aircraft, except vehicles or aircraft operated by the United States government, that are specially designed, constructed, or have been modified or equipped with the intent of using the same, for the purpose of transporting any individual who is sick, injured, or otherwise incapacitated who may require immediate stabilization and continued medical response and intervention during transit or upon arrival at the patient's destination to safeguard the patient's life or physical well-being.

(3)[~~(2)~~] "Ambulance provider" means any individual or private or public organization, except the United States government, who is licensed by the Cabinet for Human Resources to provide medical transportation services as either basic life support or advanced life support and who may have a vehicle or vehicles, including ground vehicles, helicopters or fixed wing aircraft. An ambulance provider may be licensed as an air ambulance provider; as a Class I ground ambulance provider; as a Class II ground ambulance provider; or as a Class III ground ambulance provider.

(4) "Department" means the Department for Health Services.

(5) "Emergency medical facility" means a hospital, trauma center, or any other institution licensed by the Cabinet for Human Resources that furnishes emergency medical services.

(6)[~~(3)~~] "Emergency medical services" means the services utilized in responding to the perceived individual need for immediate medical care to protect against loss of life, or aggravation of physiological or psychological illness or injury.

(7) "Emergency Medical Services for Children Program" or "EMSC Program" means the program established under Section 4 of this Act.

(8) "Emergency medical services personnel" means persons, including physicians, certified or licensed, and trained to provide emergency medical services, whether on a paid or volunteer basis, as part of basic life support, advanced life support, prehospital, or hospital emergency care services or in an emergency department or critical care or specialized unit in a licensed hospital or other licensed emergency or critical care medical facility.

(9)[~~(4)~~] "Emergency medical services system" means a coordinated system of health care delivery that responds to the needs of [~~the~~] acutely sick and injured ***adults and children***, and includes community education and prevention programs, centralized access and emergency medical dispatch, communications networks, trained ***emergency medical services*** personnel, medical first response, ground and air ambulance services, emergency medical facilities and specialty care hospitals, trauma care systems, mass casualty management, medical direction, and quality control and system evaluation procedures.

(10) "Prehospital care" means the provision of emergency medical services or transportation by trained and certified or licensed emergency medical services personnel at the scene of an emergency or while transporting sick or injured persons to a hospital or other emergency medical facility.

(11)[~~(5)~~] "Regional emergency medical services system" means a system approved by the Cabinet for Human Resources which provides for the arrangement of personnel, facilities, equipment, or any of the above, for the effective and coordinated delivery of health care services in an appropriate geographical area.

(12)[~~(6)~~] "Trauma" means a single or multisystem life-threatening or limb-threatening injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability.

(13)[~~(7)~~] "Trauma care system" means a subsystem within the emergency medical services system consisting of an organized arrangement of personnel, equipment, and facilities designed to manage the treatment of the trauma patient.

Section 3. KRS 211.952 is amended to read as follows:

(1) The Cabinet for Human Resources shall maintain a program for the planning, development, improvement, and expansion of emergency medical services systems and trauma care systems throughout the state.

(2) The Cabinet for Human Resources shall establish and designate a single lead agency under the supervision and direction of the Commissioner of Health which will carry out all administrative functions related to the planning, development, improvement, and expansion of emergency medical services systems throughout the state. This will include:

  (a) The training and certification of prehospital personnel;

  (b) The promulgation of standards and regulations for emergency medical services personnel;

  (c) The promulgation of administrative regulations for the licensing, inspection, and regulation of ambulance and medical first response providers. The administrative regulations shall address specific requirements for:

1. Air ambulance providers which provide basic or advanced life support services;

2. Class I ground ambulance providers, which provide basic life support or advanced life support services to all patients for both emergencies and scheduled ambulance transportation which is medically necessary;

3. Class II ground ambulance providers, which provide only basic life support services but do not provide initial response to the general population with medical emergencies and which are limited to providing scheduled ambulance transportation which is medically necessary;

4. Class III ground ambulance providers, which provide mobile intensive care services at or above the level of advanced life support to patients with critical illnesses or injuries who must be transported between hospitals in vehicles with specialized equipment as an extension of hospital-level care; and

5. Medical first response providers who provide prehospital basic life support services, or advanced life support services, but do not transport patients;

(d) Planning and development of emergency medical services and trauma care systems;

(e) Promulgation of voluntary standards for trauma centers and other specialized emergency medical facilities;

(f) Provision of funding and technical assistance as shall become available; and

(g) Establishing minimum data reporting requirements***, including requirements specifically related to emergency medical services and trauma care of children,*** for ambulance providers and trauma centers and other specialized emergency medical facilities and collection and analysis of data related to the provision of emergency medical services and trauma care***; and***

(h) Establishing the Emergency Medical Services for Children Program with federal funds so designated plus any additional funds that may be appropriated by the General Assembly, or any other funds that may become available to the cabinet, including gifts, grants, or other sources.

(3) Nothing in this section shall be construed to change or alter the issuance of certificates of need for emergency medical services providers.

(4) The cabinet shall[~~ transfer or otherwise make available to the lead emergency medical services agency necessary staff and funds required to carry out the purposes of this section, including regional emergency medical services advisors for any regional emergency medical services systems which shall be established by the cabinet, and shall~~] promulgate administrative regulations and perform the necessary functions to carry out the purpose of this section including:

(a) Delineation, by administrative order of the secretary, of the geographic boundaries of regional emergency medical services systems.

(b) Promulgation of administrative regulations providing for:

1. Composition of regional emergency medical services advisory boards to serve in an advisory capacity to the Kentucky Emergency Medical Services Council;

2. Terms of office of regional emergency medical services advisory board members;

3. Appointment of regional emergency medical services advisory board members; and

4. Such other matters relating to regional emergency medical services systems as may be necessary.

(c) Provision of technical assistance to regional emergency medical services advisory boards, units of local government, and others in planning for the development, coordination, and monitoring of emergency medical services.

(d) Development of a statewide plan for the implementation of emergency medical services systems and trauma care systems within the Commonwealth of Kentucky which specifically addresses the unique needs of rural areas.

(e) Issuance of a format for the development of regional emergency medical services plans consistent with goals and standards included in the statewide emergency medical services plan.

(f) Application for, receipt of, and disposition of federal, state, or private funds by grant, appropriation, donation, or otherwise for emergency medical services programs, personnel and equipment.

(g) Awarding of funds to regional emergency medical services systems to implement specific objectives delineated in regional emergency medical services plans, including assistance to local governments for their provision of ambulance service.

(h) Development, monitoring, and encouragement of such other projects and programs which may be of benefit to emergency medical services in the Commonwealth.

(i) Conducting verification inspections to ensure compliance with voluntary standards established by the cabinet for trauma centers, emergency departments, and specialized hospital based services for which standards have been established by the cabinet for emergency medical services and trauma care systems.

(5) The cabinet shall establish a Kentucky Emergency Medical Services Council which shall advise the cabinet on issues

relating to the development, implementation, regulation, maintenance, and reimbursement of emergency medical services systems and providers. This council shall be broadly representative of individuals, providers, and public officials having expertise in emergency medical services. The council shall consult with the Kentucky Board of Medical Licensure to establish medically appropriate standards and protocols which will be utilized by emergency medical services personnel and to assist the Kentucky Board of Medical Licensure in meeting the requirements of KRS 311.654. The council shall consult with the Kentucky Board of Nursing to establish appropriate standards and protocols to meet the requirements of KRS 314.131 for nurses who practice in emergency medical service settings.

(6) Data and records generated and kept by the single emergency medical services administrative agency***, the Kentucky Emergency Medical Services Council, the Emergency Medical Services for Children Advisory Committee, the Kentucky Emergency Medical Services for Children Program*** or ***their***~~[its]~~ contractors regarding the evaluation of emergency medical care and trauma care in the Commonwealth***, including the identities of patients, emergency medical services personnel, ambulance providers, medical first response providers, and emergency medical facilities,*** shall be held confidential, ***shall not be subject to disclosure under KRS 61.805 to 61.884,*** shall not be admissible in court for any purpose, and shall not be subject to discovery; provided, however, that nothing in this section shall limit the discoverability or admissibility of patient medical records regularly and ordinarily kept in the course of a patient's treatment which otherwise would be admissible or discoverable.

(7) Nothing in this section shall limit, preclude, or otherwise restrict the practices of licensed personnel in carrying out their duties under the terms of their licenses.

SECTION 4. A NEW SECTION OF KRS 211.950 TO 211.956 IS CREATED TO READ AS FOLLOWS:

(1) There is established within the department's lead agency for emergency medical services an Emergency Medical Services for Children Program.

(2) The cabinet may hire a coordinator for the EMSC Program who shall be assigned to the department's lead agency for emergency medical services. The authorized personnel cap for the department may be increased to include the coordinator and other positions for which funding is provided by the General Assembly or through any other sources, including gifts, grants, or federal funds.

(3) The coordinator shall:

- ***(a) Implement and oversee the EMSC Program described in this section, in consultation with the advisory committee established in Section 5 of this Act; and***
- ***(b) Serve as liaison for collaboration and coordination between the EMSC Program and other public and private organizations, including the department's lead emergency medical services agency, the state traffic safety office, the maternal and child health program, the Medicaid department, the state and local child fatality review and response teams, state and local professional organizations, private sector voluntary organizations, and consumer and community representatives.***

(4) The EMSC Program may include, but not be limited to, the establishment of the following:

- ***(a) Guidelines for the approval of emergency medical services facilities for pediatric care, and designation of specialized regional pediatric critical care centers and pediatric trauma centers;***
- ***(b) Guidelines for referring children to the appropriate emergency medical facility;***
- ***(c) Guidelines for necessary prehospital and other pediatric emergency and critical care medical service equipment;***
- ***(d) Guidelines for developing a coordinated system that will allow children to receive appropriate initial stabilization and treatment with timely provision of, or referral to, the appropriate level of care, including critical care, trauma care, or pediatric subspecialty care;***
- ***(e) Guidelines and protocols for prehospital and hospital facilities encompassing all levels of pediatric emergency medical services, pediatric critical care, and pediatric trauma care;***
- ***(f) Guidelines for rehabilitation services for critically ill or injured children;***
- ***(g) A system for transferring critically ill or injured children between emergency medical facilities, services, and systems;***
- ***(h) Initial and continuing professional education programs for emergency medical services personnel, which shall include training in the emergency care of infants and children;***
- ***(i) A public education program concerning the EMSC Program, including information on emergency access telephone numbers;***
- ***(j) The collection and analysis of statewide pediatric emergency and critical care medical services data from emergency medical facilities for the purpose of quality improvement by these facilities, subject to the confidentiality requirements of subsection (6) of Section 3 of this Act;***

(k) The establishment of cooperative interstate relationships to facilitate the provision of appropriate care for pediatric patients who must cross state borders to receive emergency medical services;

(l) Coordination and cooperation between the EMSC Program and other public and private organizations interested or involved in emergency and critical care for children, including those persons and organizations identified in subsection (3)(b) of this section; and

(m) The scope of activities carried out by the EMSC Program shall be commensurate with the availability of funds.

SECTION 5. A NEW SECTION OF KRS 211.950 TO 211.956 IS CREATED TO READ AS FOLLOWS:

(1) There is established an Emergency Medical Services for Children Advisory Committee of the Kentucky Emergency Medical Services Council to advise the council, the department, and the EMSC Program coordinator on all matters concerning emergency medical services for children.

(2) The advisory committee shall be broadly representative of individuals and providers having expertise in pediatrics and emergency medical services for children, and shall also include members with nonmedical backgrounds who are parents of children who have received emergency medical services.

SECTION 6. A NEW SECTION OF KRS 211.950 TO 211.956 IS CREATED TO READ AS FOLLOWS:

The commissioner of the department shall report in writing to the General Assembly every two (2) years regarding the status of the EMSC Program and its implementation. The report shall include a discussion of data collected under Section 4 of this Act, subject to the confidentiality requirements of Section 3 of this Act.

Section 7. This Act may be cited as the Emergency Medical Services for Children Act.

HB 333, AN ACT relating to the Substance Abuse, Pregnancy and Women of Childbearing Age Work Group.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 222.021 is amended to read as follows:

(1) There is hereby created within the Cabinet for Human Resources a Substance Abuse***, Pregnancy and Women of Childbearing Age***[~~ and Pregnancy~~] Work Group. The work group shall carry out the planning and coordinating activities of the Commonwealth with regard to substance dependency and abuse ***among pregnant women and other women of childbearing age***[~~during pregnancy~~].

(2) The work group shall be appointed by the Secretary for Human Resources and be composed of, but not restricted to, a representative of the Cabinet for Human Resources, Department for Health Services, Division of Maternal and Child Health Services; Department for Social Services; ***Department for Social Insurance;*** Department for Mental Health and Mental Retardation Services, Division of Substance Abuse and Division of Mental Health; Department for Medicaid Services; Justice Cabinet, Department of State Police, Drug Enforcement, Special Investigations Unit; Department of Education, Division of Program Resources; Office of the Attorney General; Office for a Drug Free Kentucky; ***Kentucky Commission on Women;*** Regional Community Mental Health and Mental Retardation System; ***University of Kentucky Institute on Women and Substance Abuse;*** University of Louisville, School of Medicine, Department of Pediatrics; University of Kentucky Medical Center, Department of Obstetrics and Gynecology; local or district health department; Kentucky Psychological Association; Kentucky Pharmacists Association; Kentucky Hospital Association; Kentucky Nurses Association; and the Kentucky Medical Association***; Kentucky Chapter of the National Association of Social Workers; Kentucky Association of Addiction Professionals; Kentucky Prevention Network; Coalition for Women's Substance Abuse Services; Kentucky Women's Advocates; Kentucky Youth Advocates; Kentucky Chapter of the March of Dimes; Foster Parent Association; Homeless Coalition; a member of the state Senate; and a member of the House of Representatives***.[~~The Director of the Division of Substance Abuse shall serve as chairperson.~~]

(3) The ***Substance Abuse, Pregnancy and Women of Childbearing Age*** Work Group shall ***be chaired jointly by the Director of the Division of Substance Abuse and another member of the work group who has been elected by the membership of the work group. The*** work group shall meet at least quarterly and shall periodically assess the extent of alcohol and other substance dependency and abuse among Kentucky women who are pregnant ***and other women of childbearing age***; identify, develop, and coordinate resources available and needed within the Commonwealth for any ***woman***[~~person~~] who is pregnant ***or of childbearing age*** and at risk of alcohol and substance dependency or abuse; and identify, develop, and coordinate resources available and needed for infants and children exposed to alcohol or drugs ***inutero or through alcohol or drug abuse in the home***[~~during pregnancy~~].

(4) The work group shall make ***a biennial***[~~an annual~~] report, no later than January 1 of each ***odd numbered*** year, of its activities and any recommendations to the Secretary of the Cabinet for Human Resources and the Legislative Research Commission.

(5) The provisions of subsections (1) to (4) of this section, creating a Substance Abuse***, Pregnancy and Women of***

Childbearing Age[~~ and Pregnancy~~] Work Group shall expire on July 15, ***2002***[~~1998~~]. As of that date, the Substance Abuse***, Pregnancy and Women of Childbearing Age***[~~ and Pregnancy~~] Work Group shall cease to exist.

HB 381, AN ACT relating to youth access to tobacco products.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 438.300 is amended to read as follows:

It is the intent of the Legislature that KRS 438.305 to 438.340 ***establish minimum requirements to***[~~shall~~] be enforced[~~ in an equitable and uniform manner~~] throughout the Commonwealth.[~~ For the purpose of equitable and uniform enforcement,~~] The provisions of KRS 438.305 to 438.340 shall supersede any subsequently enacted local law, ordinance, or regulation which relates to the use[~~, display, sale, or distribution~~] of tobacco products***, to the extent that the local law, ordinance, or regulation does not meet the threshold requirements in KRS 438.305 to 438.340. The provisions of KRS 438.305 to 438.340 shall establish a threshold of requirements to be used in the Commonwealth, but shall not be interpreted as preempting or preventing any city, county, urban-county, or charter county from adopting more stringent standards or penalties regulating the display, sale, or distribution of tobacco products***. It is the intent of the Legislature that ***any city, county, urban-county, or charter county may enact by ordinance more stringent standards or penalties that relate to the sale and distribution of single cigarettes, cigarette vending machines, self-service displays, or licensure of tobacco retailers, and that*** KRS 438.305 to 438.340 be enforced so as to ensure the eligibility for and receipt of any federal funds or grants that the Commonwealth of Kentucky now receives or may receive relating to the provisions of KRS 438.305 to 438.340.

The Committee Substitute to **HB 381** is as follows:

AN ACT relating to youth access to tobacco products.

WHEREAS, the General Assembly recognizes that the use of tobacco by youth under the age of eighteen (18) is a serious problem; and

WHEREAS, the General Assembly has attempted to address this problem with legislation in past legislative sessions; and

WHEREAS, the General Assembly seeks to determine the effectiveness of these legislative efforts, and how they may be improved; and

WHEREAS, some recent studies have shown that youth smoking and use of tobacco products by teens may be increasing; and

WHEREAS, the General Assembly deems it necessary to investigate the cause of the increases in smoking and the continued high use of tobacco by youth; and

WHEREAS, the General Assembly wishes to determine the best way to address the problem of youth tobacco use and youth access to tobacco products, and to explore possible programs and legislation that could achieve reductions in youth tobacco use;

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Legislative Research Commission is directed to establish a Task Force on Teens and Tobacco.

Section 2. The Task Force shall study the problem of access to and use of tobacco and tobacco products by youth (under the age of 18), the effectiveness of present programs to address teen tobacco use and access, and possible program improvements, new programs, and legislation necessary to effectively address teen tobacco use and access to tobacco products.

Section 3. The Task Force on Teens and Tobacco shall have fourteen (14) members which shall include four (4) legislative members to include one (1) member from the House Committee on Health and Welfare, one (1) member of the House Committee on Agriculture and Small Business, one (1) member from the Senate Committee on Health and Welfare, and one (1) member from the Senate Committee on Agriculture and Natural Resources; the Commissioner of the Department of Agriculture or the commissioner's designee; the Director of the Alcoholic Beverage Control Commission or the director's designee; a representative of the agricultural community; a representative of the retail community; a person between the ages of fifteen (15) and eighteen (18) years of age; a member of a parents' organization; the commissioner of the Department of Health or the commissioner's designee; and three (3) representatives of health organizations concerned with youth smoking and tobacco use.

Section 4. Co-chairs shall be appointed by the Legislative Research commission from the legislative members of the group.

Section 5. The Task Force on Teens and Tobacco shall report to the LRC no later than September 30, 1999.

Section 6. Staff services to be utilized in completing this study are estimated to cost twenty-five thousand dollars ($25,000). These staff services shall be provided from the regular Commission budget and are subject to the limitations and other research responsibilities of the Commission.

HB 406, AN ACT relating to medical assistance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 211.461 is amended to read as follows:

As used in KRS 211.461 to 211.466, unless the context otherwise requires:

(1) "Cabinet" means the Cabinet for Human Resources;

(2) "Private review agent" means a person or entity performing utilization review that is either affiliated with, under contract with, or acting on behalf of any person providing or administering health benefits to citizens of this Commonwealth;

(3) "Registration" means an authorization issued by the cabinet to a private review agent to conduct utilization review;

(4) "Secretary" means the secretary of the Cabinet for Human Resources or his designee;

(5) "Utilization review" means a review of the medical necessity and appropriateness of hospital resources and medical services given or proposed to be given to a patient or group of patients for purposes of determining the availability of payment; and

(6) "Utilization review plan" means a description of the procedures governing utilization review activities performed by a private review agent***;***

(7) "Independent physician" means a physician who has contracted with the cabinet to reassess adverse determinations of the utilization review agent; and

(8) "Independent physician review" means a reassessment of an adverse determination of the utilization review agent, conducted by an independent physician.

Section 2. KRS 211.462 is amended to read as follows:

(1) Effective January 1, 1991, no private review agent who approves or denies payment or who recommends approval or denial of payment for hospital or medical services or whose review results in the approval or denial of hospital or medical services on a case by case basis shall conduct utilization review in this state unless the private review agent has been issued a registration by the cabinet.

(2) No registration shall be required for private review agents conducting general in-house utilization review for hospitals, home health agencies, preferred provider organizations, or other managed care entities, clinics, private offices, or any other health facility so long as the review does not result in the approval or denial of payment for hospital or medical services for a particular case.

(3) No registration shall be required for a private review agent that operates solely under contract with the federal government for utilization review of patients eligible for hospital services under Title XVIII of the Social Security Act.

(4) The Cabinet for Human Resources may revoke the registration of a private review agent if the cabinet determines that the provisions of the agent's contract have not been fulfilled.

Section 3. KRS 211.463 is amended to read as follows:

(1) A private review agent shall:

- (a) Have available the services of sufficient numbers of registered nurses, medical records technicians, or similarly qualified persons supported by licensed physicians with access to consultation with other appropriate physicians to carry out its utilization review activities;
- (b) Have available the services of sufficient numbers of practicing physicians in appropriate specialty areas to assure the adequate review of medical and surgical specialty and subspecialty cases;
- (c) Not disclose or publish individual medical records or any other confidential medical information in the performance of utilization review activities except that private review agents may, if otherwise permitted by law, provide patient information to a third party on whose behalf the private review agent is performing utilization review;
- (d) Be reasonably accessible to patients and providers for forty (40) hours a week during normal business hours;
- (e) Provide responses to patients***, their family members, next of kin or guardians***, hospitals, and physicians on reconsiderations or appeals of adverse determinations of the private review agent within thirty (30) days of the request for reconsideration or filing of an appeal;
- (f) Provide a decision on a request for utilization review within twenty-four (24) hours of a request for preadmission review of a hospital admission, unless additional information is needed, or provide a decision to approve or deny a patient's continued hospital stay within twenty-four (24) hours of the review and prior to the time upon which a previous authorization for hospital care will expire;
- (g) Comply with its own policies and procedures on file with the cabinet;
- (h) Comply with all provisions of KRS 211.461 to 211.466 and regulations.

(2) A private review agent shall submit a copy of any changes to policies, or procedures to the cabinet. No change to policies

and procedures shall be effective until thirty (30) days after it has been filed with the cabinet ***and approved by the cabinet***.

(3) A private review agent shall notify the cabinet of any additions or deletions to the listing of third party payors for which the private review agent is performing utilization review in this state. Notice shall be provided within thirty (30) days of the change.

(4) A private review agent shall cooperate with all independent physician reviews of adverse determinations and make available to all independent physicians copies of the documentation on which the determinations of the appropriate level of care were based.

Section 4. KRS 211.464 is amended to read as follows:

(1) Within ninety (90) days of July 13, 1990, the cabinet shall promulgate administrative regulations to implement the provisions of this chapter including the following:

(a) The establishment of fees for applications and renewals in an amount sufficient to pay for the administrative costs of the program and any other costs associated with carrying out the provisions of KRS 211.461 to 211.466 not to exceed five hundred dollars ($500).

(b) Specification of information required of applicants for registrations and renewals, which shall include, at a minimum:

1. A utilization review plan that includes:

a. Utilization review policies and procedures to be used in evaluating proposed or delivered hospital care;

b. Those instances, if any, under which utilization review may be delegated to a hospital utilization review program;

c. The procedures by which patients***, their family members, next of kin or guardians***, physicians, or hospitals may seek timely reconsideration or appeal of adverse decisions by the private review agent;

d. The manner in which the private review agent shall notify the patient***, family members, next of kin or guardians***, hospital, and physician when payment for hospital or medical care is denied including the reasons for the denial;

2. The type and qualifications of the personnel either employed or under contract to perform utilization review;

3. Assurances that a toll-free line will be provided for patients***, their family members, next of kin or guardians***, hospitals, and physicians to contact the private review agent and policies and procedures to insure that a representative of the private review agent shall be reasonably accessible to patients and providers at least forty (40) hours per week during normal business hours;

4. The policies and procedures to insure that all applicable state and federal laws to protect the confidentiality of individual medical records are followed;

5. A copy of the materials designed to inform applicable patients and providers of the requirements of the utilization review plan;

6. A list of the third-party payors for which the private review agent is performing utilization review in this state; and

7. Evidence of compliance or ability to comply with the requirements of KRS 211.461 to 211.466 and the regulations;

(c) A process for the review of applications for registrations and renewals, including application procedures, procedures for supplementing the application on the request of the secretary, reasonable timetables for review and decision, and notice procedures;

(d) A process for the revocation of registration, which shall include notice provisions, and reasonable timetables for decision on a revocation;

(e) A process for the appeal of a denial of a registration or renewal or of a revocation of a registration, which shall include the right to an administrative hearing conducted in accordance with KRS Chapter 13B;

(f) A process for reviewing any written complaints that a private review agent has failed to perform review in accordance with the utilization review plan submitted pursuant to KRS 211.461 to 211.466 or to comply with any requirements of KRS 211.461 to 211.466 or regulations promulgated thereunder which shall require the secretary to:

1. Within ten (10) days of the receipt, send a copy of the complaint to the private review agent and require that any written reply be sent to the secretary within ten (10) days;

2. Upon review of a complaint, make a recommendation to the insurer or private review agent and the insured; and

3. Consider complaints before issuing or renewing any registration to a private review agent; and

(g) The establishment of an appeal process to resolve disputes between private review agents and health care providers and patients.

(2) The cabinet may establish reporting requirements to:

(a) Evaluate the effectiveness of private review agents; and

(b) Determine if the utilization review programs are in compliance with the provisions of KRS 211.461 to 211.466 and applicable regulations.

(3) On request of any health facility, physician, or patient***, family member, next of kin or guardians on behalf of a patient*** whose care is subject to review, the cabinet shall provide copies of policies or procedures of any private review agent which has been issued a registration to conduct review in this state.

(4) The cabinet shall, on a bimonthly basis, compile a list of registered private review agents along with the renewal dates of their registrations and the date upon which any private review agents submitted changes to their policies or procedures. This information shall be made available upon request.

(5) The Cabinet for Human Resources shall report to the General Assembly by July 1, 1991, and each ***July 1 of each*** year thereafter on the number of private review agents conducting utilization review, the type of criteria used to perform utilization review, and the feasibility of adopting uniform standards for one (1) or more aspects of utilization review including standardized forms for data collection and the medical procedures for which preauthorization and second surgical opinion would be required.

SECTION 5. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

When the cabinet contracts with any private peer review organization to conduct utilization reviews of the levels of care of the state's Medicaid program recipients, the following shall apply:

(1) If the level of care is changed for a Medicaid beneficiary who is a resident or patient in a nursing facility setting, and the change makes that beneficiary ineligible for continued medical assistance, the peer review organization shall notify the commissioner of Medicaid in the cabinet, who, after implementing the procedures as outlined in subsection (2) of this section, shall provide a thirty (30) day notification to the affected Medicaid beneficiary, the beneficiary's family member, available next of kin, or guardian.

(a) All benefits which the affected Medicaid recipient is eligible for shall be continued during that thirty (30) day notification; and

(b) As long as the affected Medicaid recipient is engaged in an appeal of an adverse determination from a peer review organization, all benefits for which the affected Medicaid recipient is eligible shall be continued until a final determination is made by a hearing officer or an officer of the court.

(2) (a) If the level of care is lowered for a Medicaid beneficiary who is a resident or patient in a nursing facility setting, an independent examination shall be conducted by the resident's attending physician or by a physician under contract with the cabinet. The physician shall evaluate the affected recipient and make a recommendation of the appropriate level of care to the commissioner of Medicaid in the cabinet.

(b) The commissioner shall then make a determination and notify the affected recipient within thirty (30) days.

(3) All available appeal processes available for the affected Medicaid beneficiary shall be undertaken by the recipient or by the family member, next of kin or guardian who is authorized to attend to the affairs of the Medicaid beneficiary, in order to ensure that there is a continuation of benefits for the recipient until the final decision of a hearing officer or officer of the courts is rendered.

Section 6. KRS 216.535 is amended to read as follows:

As used in KRS 216.537 to 216.590:

(1) "Long-term care facilities" means those health care facilities in the Commonwealth which are defined by the Cabinet for Human Resources to be family care homes, personal care homes, intermediate care facilities, skilled nursing facilities, nursing facilities as defined in Public Law 100-203, nursing homes, and intermediate care facilities for the mentally retarded and developmentally disabled.

(2) "Cabinet" means the Cabinet for Human Resources.

(3) "Resident" means any person admitted to a long-term care facility as defined by this section.

(4) "Licensee" in the case of a licensee who is an individual means the individual, and in the case of a licensee who is a corporation, partnership, or association means the corporation, partnership, or association.

(5) "Secretary" means the secretary of the Cabinet for Human Resources.

(6) "Long-term care ombudsman" means the person responsible for the operation of a long-term care ombudsman program which investigates and resolves complaints made by or on behalf of residents of long-term care facilities.

(7) "Willful interference" means an intentional, knowing, or purposeful act or omission which hinders or impedes the lawful performance of the duties and responsibilities of the ombudsman as set forth in this chapter.

(8) "Orientation manual" means the following materials provided by licensed long-term care facilities:

- ***(a) Names, addresses, and telephone numbers of owners, operators, and managers of the facility;***
- ***(b) Names, addresses, and telephone numbers of staff physicians and staff registered nurses;***
- ***(c) All policies and procedures of the facility with respect to admission and discharge;***
- ***(d) Staffing complements for each of the work shifts of the operations of the facility, and the appropriate staff contact during each;***
- ***(e) Payment policies and procedures for all types of payors;***
- ***(f) Procedures for implementation of all peer review organizations' utilization reviews and appropriate appeal processes;***
- ***(g) Eligibility criteria for the state's Medical Assistance Program, including circumstances when eligibility may be denied; and***
- ***(h) Names and telephone numbers for case managers and all available long-term care ombudsmen.***

SECTION 7. A NEW SECTION OF KRS 216.537 TO 216.590 IS CREATED TO READ AS FOLLOWS:

All long-term care facilities which are licensed in the Commonwealth shall make available an orientation manual as defined in Section 6 of this Act to all applicants for and residents admitted to the facility. These manuals shall become available ninety (90) days after the effective date of this Act.

Section 8. KRS 216B.015 is amended to read as follows:

Except as otherwise provided, for purposes of this chapter, the following definitions shall apply:

(1) "Administrative regulation" means a regulation adopted and promulgated pursuant to the procedures in KRS Chapter 13A.

(2) "Affected persons" means the applicant; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health facilities within that geographic area; health facilities located in the health service area in which the project is proposed to be located which provide services similar to the services of the facility under review; health facilities which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future; the cabinet and third-party payors who reimburse health facilities for services in the health service area in which the project is proposed to be located.

(3) "Applicant" means any physician's office requesting a major medical equipment expenditure of one million five hundred thousand dollars ($1,500,000) or more after July 15, 1996, adjusted annually, or any person, health facility, or health service requesting a certificate of need or license.

(4) "Cabinet" means the Cabinet for Human Resources.

(5) "Capital expenditure" means an expenditure made by or on behalf of a health facility which:

- (a) Under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance or is not for investment purposes only; or
- (b) Is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part thereof.

(6) "Capital expenditure minimum" means one million five hundred thousand dollars ($1,500,000) beginning with July 15, 1994, and as adjusted annually thereafter. In determining whether an expenditure exceeds the expenditure minimum, the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the improvement, expansion, or replacement of any plant or any equipment with respect to which the expenditure is made shall be included. Donations of equipment or facilities to a health facility which if acquired directly by the facility would be subject to review under this chapter shall be considered a capital expenditure, and a transfer of the equipment or facilities for less than fair market value shall be considered a capital expenditure if a transfer of the equipment or facilities at fair market value would be subject to review.

(7) "Certificate of need" means an authorization by the cabinet to acquire, to establish, to offer, to substantially change the bed capacity, or to substantially change a health service as covered by this chapter.

(8) "Formal review process" means the ninety (90) day certificate-of-need review conducted by the cabinet.

(9) "Health facility" means any institution, place, building, agency, or portion thereof, public or private, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care and includes alcohol abuse, drug abuse, and mental health services. This shall include, but shall not be

limited to, health facilities and health services commonly referred to as hospitals, psychiatric hospitals, physical rehabilitation hospitals, chemical dependency programs, tuberculosis hospitals, skilled nursing facilities, nursing facilities, nursing homes, personal care homes, intermediate care facilities, family care homes, primary care centers, rural health clinics, outpatient clinics, ambulatory care facilities, ambulatory surgical centers, emergency care centers and services, ambulance providers, hospices, community mental health and mental retardation centers, home health agencies, kidney disease treatment centers and freestanding hemodialysis units, facilities and services owned and operated by health maintenance organizations directly providing health services subject to certificate of need, and others providing similarly organized services regardless of nomenclature.

(10) "Health services" means clinically related services provided within the Commonwealth to two (2) or more persons, including, but not limited to, diagnostic, treatment, or rehabilitative services, and includes alcohol, drug abuse, and mental health services.

(11) "Major medical equipment" means equipment which is used for the provision of medical and other health services and which costs in excess of the medical equipment expenditure minimum. For purposes of this subsection, "medical equipment expenditure minimum" means one million five hundred thousand dollars ($1,500,000) beginning with July 15, 1994, and as adjusted annually thereafter. In determining whether medical equipment has a value in excess of the medical equipment expenditure minimum, the value of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of the equipment shall be included.

(12) "Nonsubstantive review" means an expedited review conducted by the cabinet of an application for a certificate of need as authorized under KRS 216B.095.

(13) "Nonclinically-related expenditures" means expenditures for:

(a) Repairs, renovations, alterations, and improvements to the physical plant of a health facility which do not result in a substantial change in beds, a substantial change in a health service, or the addition of major medical equipment, and do not constitute the replacement or relocation of a health facility; or

(b) Projects which do not involve the provision of direct clinical patient care including, but not limited to, the following:

1. Parking facilities;
2. Telecommunications or telephone systems;
3. Management information systems;
4. Ventilation systems;
5. Heating or air conditioning, or both;
6. Energy conservation; or
7. Administrative offices.

(14) ***"Orientation manual" means the following materials provided by licensed long-term care facilities:***

(a) Names, addresses, and telephone numbers of owners, operators, and managers of the facility;

(b) Names, addresses, and telephone numbers of staff physicians and staff registered nurses;

(c) All policies and procedures of the facility with respect to admission and discharge;

(d) Staffing complements for each of the work shifts of the operations of the facility, and the appropriate staff contact during each;

(e) Payment policies and procedures for all types of payors;

(f) Procedures for implementation of all peer review organizations' utilization reviews and appropriate appeal processes;

(g) Eligibility criteria for the state's Medical Assistance Program, including circumstances when eligibility may be denied; and

(h) Names and telephone numbers for case managers and all available long-term care ombudsmen.

(15) "Party to the proceedings" means the applicant for a certificate of need and any affected person who appears at a hearing on the matter under consideration and enters an appearance of record.

(16)[~~(15)~~] "Person" means an individual, a trust or estate, a partnership, a corporation, an association, a group, state, or political subdivision or instrumentality including a municipal corporation of a state.

(17)[~~(16)~~] "Record" means, as applicable in a particular proceeding:

(a) The application and any information provided by the applicant at the request of the cabinet;

(b) Any information provided by a holder of a certificate of need or license in response to a notice of revocation of a certificate of need or license;

(c) Any memoranda or documents prepared by or for the cabinet regarding the matter under review which were introduced at any hearing;

(d) Any staff reports or recommendations prepared by or for the cabinet;

(e) Any recommendation or decision of the cabinet;

(f) Any testimony or documentary evidence adduced at a hearing;

(g) The findings of fact and opinions of the cabinet or the findings of fact and recommendation of the hearing officer; and

(h) Any other items required by administrative regulations promulgated by the cabinet.

(18)[~~(17)~~] "Secretary" means the secretary of the Cabinet for Human Resources.

(19)[~~(18)~~] "State health plan" means the document prepared triennially, updated annually, and approved by the Governor.

(20)[~~(19)~~] "Substantial change in a health service" means:

(a) The addition of a health service for which there are review criteria and standards in the state health plan;

(b) The addition of a health service subject to licensure under this chapter; or

(c) The reduction or termination of a health service which had previously been provided in the health facility.

(21)[~~(20)~~] "Substantial change in bed capacity" means the addition, reduction, relocation, or redistribution of beds by licensure classification within a health facility.

(22)[~~(21)~~] "Substantial change in a project" means a change made to a pending or approved project which results in:

(a) A substantial change in a health service, except a reduction or termination of a health service;

(b) A substantial change in bed capacity, except for reductions;

(c) A change of location; or,

(d) An increase in costs greater than the allowable amount as prescribed by regulation.

(23)[~~(22)~~] "To acquire" means to obtain from another by purchase, transfer, lease, or other comparable arrangement of the controlling interest of a capital asset or capital stock, or voting rights of a corporation. An acquisition shall be deemed to occur when more than fifty percent (50%) of an existing capital asset or capital stock or voting rights of a corporation is purchased, transferred, leased, or acquired by comparable arrangement by one person from another person.

(24)[~~(23)~~] "To batch" means to review in the same review cycle and, if applicable, give comparative consideration to all filed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area.

(25)[~~(24)~~] "To establish" means to construct, develop, or initiate a health facility.

(26)[~~(25)~~] "To obligate" means to enter any enforceable contract for the construction, acquisition, lease, or financing of a capital asset. A contract shall be considered enforceable when all contingencies and conditions in the contract have been met. An option to purchase or lease which is not binding shall not be considered an enforceable contract.

(27)[~~(26)~~] "To offer" means, when used in connection with health services, to hold a health facility out as capable of providing, or as having the means of providing, specified health services.

SECTION 9. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

All long-term care facilities which require a certificate of need shall make available an orientation manual as defined under Section 9 of this Act to all applicants for and residents admitted to the facility. These manuals shall become available ninety (90) days after the effective date of this Act.

The Committee Substitute to **HB 406** is as follows:

AN ACT relating to medical assistance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

When the cabinet contracts with any private peer review organization to conduct utilization reviews of the levels of care of the state's Medicaid program recipients, the following shall apply:

(1) In determining the appropriate level of care of a Medicaid beneficiary who is a patient in a nursing facility setting, and prior to any change that reduces a Medicaid beneficiary's eligibility for covered services, the contracted peer review organization shall assure that:

(a) An in-person assessment of the Medicaid beneficiary is made; and

(b) A licensed physician has reviewed the written documentation of the peer review organization's evaluation and provided a written review of the evaluation to be a part of the patient's record.

(2) If the level of care is changed for a Medicaid beneficiary who is a resident or patient in a nursing facility setting or a Medicaid beneficiary who receives community-based waiver services, and the change makes that beneficiary ineligible for the Medicaid covered service, the peer review organization shall notify the commissioner of Medicaid in the cabinet, and shall provide a written notification sent by registered return receipt mail to the affected Medicaid beneficiary, nursing facility, affected Medicaid beneficiary's attending physician, and the affected beneficiary's responsible party.

(3) If the level of care for a Medicaid beneficiary results in an adverse determination, the affected Medicaid beneficiary, or the responsible person or party, may appeal through an application for reconsideration to be filed with the cabinet within ten (10) days from the date of receipt of the registered return receipt written notification. If the responsible party's registered return receipt mail is undeliverable, the attending physician may initiate the appeal on behalf of the affected Medicaid beneficiary.

- *(a) All benefits which the affected Medicaid recipient, and the nursing facility are eligible for shall be continued during that ten (10) day time frame; and*
- *(b) As long as the affected Medicaid recipient is engaged in an appeal of an adverse determination from a peer review organization, all benefits for which the affected Medicaid recipient and nursing facility are eligible shall be continued until an appropriate residential setting is secured, in any event, not to exceed ninety (90) days from the date of the request for a hearing, or until a final determination is made by a hearing officer.*

(4) (a) If the level of care is lowered for a Medicaid beneficiary who is a resident or patient in a nursing facility setting, an independent examination may be conducted by the resident's attending physician.

- *(b) If the resident's attending physician conducts an independent examination, the attending physician shall make a recommendation concerning the appropriate level of care and forward, in writing, the results of the examination and the recommendation to the peer review organization, the affected recipient, the nursing facility, and the responsible party.*

(5) For the purposes of this section, "responsible person or party" shall mean an individual authorized by the resident of the facility to act for the resident as an official delegate or agent. The responsible person may be a guardian, payee, family member, or any other individual who has arranged for the care of the resident and assumed this responsibility. The responsible party may or may not be related to the resident. A responsible person or party is not a guardian unless so appointed by the court.

(6) The peer review organization shall:

- *(a) Inform the patient and guardian, responsible party, or family member, upon initial qualification for Medicaid covered services, and with the written notification of an adverse determination from a peer review organization:*
  - *1. Of the manner in which notification of any adverse decision will be made;*
  - *2. Of the process for securing a timely review of any adverse decision;*
  - *3. That a request for reconsideration must be postmarked no later than ten (10) days after receipt of the initial written notification of any adverse decision;*
  - *4. Of the toll-free line that will be provided for questions regarding reviews; and*
  - *5. Of the process for appealing an adverse reconsideration to the cabinet;*
- *(b) Provide a written peer review organization physician review of all adverse determinations;*
- *(c) Provide for an attending physician review of all adverse determinations as outlined in subsection (4) of this section;*
- *(d) Inform the commissioner of all information related to an appeal of an adverse action; and*
- *(e) Provide the information identified in paragraph (a) of this subsection, at the time of an adverse determination notification, to any affected nursing facility in which a Medicaid beneficiary resides.*

Section 2. KRS 216.535 is amended to read as follows:

As used in KRS 216.537 to 216.590:

(1) "Long-term care facilities" means those health care facilities in the Commonwealth which are defined by the Cabinet for Human Resources to be family care homes, personal care homes, intermediate care facilities, skilled nursing facilities, nursing facilities as defined in Public Law 100-203, nursing homes, and intermediate care facilities for the mentally retarded and developmentally disabled.

(2) "Cabinet" means the Cabinet for Human Resources.

(3) "Resident" means any person admitted to a long-term care facility as defined by this section.

(4) "Licensee" in the case of a licensee who is an individual means the individual, and in the case of a licensee who is a

corporation, partnership, or association means the corporation, partnership, or association.

(5) "Secretary" means the secretary of the Cabinet for Human Resources.

(6) "Long-term care ombudsman" means the person responsible for the operation of a long-term care ombudsman program which investigates and resolves complaints made by or on behalf of residents of long-term care facilities.

(7) "Willful interference" means an intentional, knowing, or purposeful act or omission which hinders or impedes the lawful performance of the duties and responsibilities of the ombudsman as set forth in this chapter.

(8) The following information shall be available upon request of the affected Medicaid recipient or responsible party:

- *(a) Business names, business addresses, and business telephone numbers of operators and administrators of the facility; and*
- *(b) Business names, business addresses, and business telephone numbers of staff physicians and the directors of nursing.*

(9) The following information shall be provided to the nursing facility patient upon admission:

- *(a) Admission and discharge policies of the facility;*
- *(b) Payment policies relevant to patients for all payor types; and*
- *(c) Information developed and distributed to the nursing facility by the Department for Medicaid Services, including, but not limited to:*
  - *1. Procedures for implementation of all peer review organizations' reviews and appeals processes;*
  - *2. Eligibility criteria for the state's Medical Assistance Program, including circumstances when eligibility may be denied; and*
  - *3. Names and telephone numbers for case managers and all state long term care ombudsmen.*

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills and Resolutions have been posted for Committee consideration:

Health and Welfare: **HB 617, HB 618, HCR 79, HB 637, HB 601**

Counties and Special Districts: **SB 182, HB 624**

Licensing and Occupations: **HB 583, HB 602, HB 609, HB 611, HB 566**

State Government: **HB 207, HB 332, HB 337, HB 377, HB 423, HB 427, HB 439, HB 440, HB 451, HB 453, HB 460, HB 470, HB 503, HB 528, HB 549, HB 592, SCR 2, SB 149, SB 150, SB 152, SB 153, SB 155, SB 156, SB 158, SB 162, SB 173, SB 174, SB 175, SB 176, SB 178**

Calendar

HB 327, HB 487, HB 401, HB 414, HB 457, HB 491, HB 493, HB 515, HB 14, HB 444, HB 504, HB 542, HJR 61, HJR 75, SB 101, SB 102, SB 141, HB 49, HB 323, HB 526, HB 531, HJR 72, and **HB 85** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Representative Barrows moved that the rules be suspended to grant floor privileges and to act upon Legislative Citations. Agreed. Representative Barrows moved the adoption of the following **Legislative Citation No. 100**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby adjourns this legislative day in reverence and honor of Lt. John Suter of the Franklin County Fire Department, for his extraordinary and heroic actions when Carol Ann MacSwords, a young Franklin County woman, became the victim of a carjacking and was found injured and terrified on the doorstep of the fire department. This exceptional Samaritan, along with fellow firefighter, Robby Parrish, carried Ms. MacSwords inside and kindly consoled and comforted her until further assistance could arrive. In a time when the world is so fraught with danger and when the care and safekeeping of our children must be entrusted to the public servants of our community, our hearts are eased by the kindness and competency that has been demonstrated by Lt. Suter. On this occasion, he has truly earned the respect and admiration of parents and citizens throughout this Commonwealth. The members of the Kentucky House of Representatives join Representative Gippy Graham, Representative Charlie Walton and Representative Joe Barrows to extend most sincere sentiments of gratitude and regard to Lt. John Suter and to adjourn this legislative day in honor of the valued service he has rendered the citizens of Franklin County and the Commonwealth of Kentucky. **Legislative Citation No. 100** was adopted without objection.

Representative Barrows moved the adoption of the following **Legislative Citation No. 101**. Agreed.

It is the intent of the House of Representatives of the Commonwealth of Kentucky to hereby adjourn this legislative day in recognition of Firefighter Robby Parrish for the protection and solace he offered Carol Ann MacSwords when, on January 30th, she fell victim to a vicious crime of carjacking and, though lost and terrified, found her way to the back door of the Franklin County Fire Department. Mr. Parrish assisted fellow firefighter, Lt. John Suter, in bringing Ms. MacSwords inside the fire station and offering her both clothing to wear and comforting words to calm her until police and medical personnel could be notified. Parents and citizens of this Commonwealth stand greatly indebted to this esteemed public servant for the kind and able manner in which he cared for this young woman, thereby reflecting the honor and capableness which all servants of the public persevere to attain. Representative Gippy Graham, Representative Charlie Walton and Representative Joe Barrows join the members of this august body to recognize with reverence and admiration the efforts of Firefighter Robby Parrish to serve and protect the citizens of his community and to hereby adjourn this legislative day in tribute to this distinguished member of the Commonwealth of Kentucky. **Legislative Citation No. 101** was adopted without objection.

Representative Barrows moved the adoption of the following **Legislative Citation No. 102**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby honors and applauds Carol Ann MacSwords for the extraordinary bravery and quick-thinking that she demonstrated while under extreme duress when she was attacked in her car by a man while on her way home from a high school basketball game. This exceptional young lady struggled for her very life, and because of her strength and good judgment, she escaped her attacker and was able to reach the safety of the Franklin County Fire Department where she was aided by two exceptional firefighters, Lt. John Suter and Robby Parrish, who carried her inside, notified authorities and cared for and comforted her until authorities could arrive. Carol Ann MacSwords demonstrated such phenomenal courage and such tremendous will to live by her struggle to escape her attacker and then to seek out safety and protection that she stands as an inspiration to all. The members of the Kentucky House of Representatives are pleased to join with Representative Gippy Graham, Representative Charlie Walton and Representative Joe Barrows in applauding the determination and endurance of this brave young woman and in extending to her best wishes for a bright and hopeful future. **Legislative Citation No. 102** was adopted without objection.

Floor Amendments

Floor Amendment No. 1 to **HB 200**, by Representative Yonts:

On page 2, after line 8 by adding the following:

"***(c) The penalties imposed under paragraph (b) of this subsection shall apply only to unsolicited contact of a person sixty (60) years of age or older by another party either directly or by telephone. They shall not apply to any contact initiated by a person sixty (60) years of age or older either directly or by telephone in the normal course of business or social activities.***".

Floor Amendment No. 1 to **HB 50**, by Representative Yonts:

On page 1, line 8, after "***trips.***", by adding the following:

"***The nonfaculty coach or nonfaculty assistant shall be responsible for supervising the students and shall have the same authority and responsibility as is granted to and imposed by law upon teachers in the performance of the same or similar duties. School bus drivers shall have their responsibilities assigned by administrative regulations promulgated by the Kentucky Board of Education.***"

Report On Enrolled Bills (Continued)

The Committee on Enrollment reported that **SB 187** and **HB 264** have been examined and found correctly enrolled. Said Bills were read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time - 10:30 a.m.)

Recess

Representative Stumbo moved to suspend the rules to allow the House to recess for a Committee on Rules meeting in the Speaker's Office. Agreed. At the appointed hour, the Speaker resumed the Chair and called the House to order.

Floor Amendments (Continued)

Floor Amendment No. 2 Title to **HB 84**, by Representative A. Arnold:

Amend title to read, "An Act relating to fiscal court reorganization.".

Floor Amendment No. 1 to the Committee Substitute to **HB 146**, by Representative G. Graham:

On page 1, line 10, after "***The***", by deleting "***rate of***"; and

On page 3, line 7, after "***their***", by deleting "***rate of***".

Representative Stumbo moved that the rules be suspended for a Committee on Rules Report. Agreed.

Report of Committees (Continued)

The Committee on Rules reported that **SB 70, HB 311, HB 426, SB 20, HB 126, HB 127, HB 515, HB 526, HB 531, HB 542, HJR 61, HJR 72,** and **HJR 75** have been posted for passage in the Orders of the Day for February 23, 1998.

The Committee on Rules reported that the following Bills have been recommitted:

State Government: **HB 164**

Appropriations and Revenue: **HB 487, HB 504**

Orders of the Day

HB 62, with Committee Substitute and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative P. Clark moved the adoption of the Committee Substitute to **HB 62**. Agreed.

Representative Stumbo moved the adoption of Floor Amendment No. 1 to the Committee Substitute to **HB 62**. Agreed.

Representative P. Clark moved that **HB 62**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 89, Nays 1 (See February 20, 1998 roll call on **HB 62** - Appendix.) **HB 62**, by way of Committee Substitute as amended, was passed and the title agreed to. Representative P. Clark moved that the vote by which **HB 62**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 160, with Committee Substitute and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative P. Clark moved that Floor Amendment No. 1 to the Committee Substitute and Floor Amendment No. 2 to the Committee Substitute to **HB 160** be withdrawn. Agreed.

Representative P. Clark moved the adoption of the Committee Substitute to **HB 160**. Agreed.

Representative P. Clark moved that **HB 160**, by way of Committee Substitute, be passed.

Representative DeWeese moved the adoption of Floor Amendment No. 4 to the Committee Substitute to **HB 160**. Agreed.

Representative P. Clark moved that **HB 160**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 88, Nays 1 (See February 20, 1998 roll call on **HB 160** - Appendix.) **HB 160**, by way of Committee Substitute as amended, was passed and the title agreed to. Representative P. Clark moved that the vote by which **HB 160**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 141 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that the motion that **HB 141** be taken from the Orders of the Day and ordered read at length for the third time be withdrawn. Agreed.

Representative Stumbo moved that **HB 160** be reconsidered to act upon a Floor Title Amendment. Agreed.

Representative DeWeese moved that Floor Amendment No. 3 Title to the Committee Substitute to **HB 160** be adopted. Agreed; and the title was agreed to. Representative DeWeese moved that the vote by which **HB 160**, by way of Committee

Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 141 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative L. Clark moved that **HB 141** be passed.

On the roll call the vote was: Yeas 87, Nays 1 (See February 20, 1998 roll call on **HB 141** - Appendix.) **HB 141** was passed and the title agreed to. Representative L. Clark moved that the vote by which **HB 141** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 254, with Committee Substitute and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Marzian moved the adoption of the Committee Substitute to **HB 254**. Agreed.

Representative Marzian moved that **HB 254**, by way of Committee Substitute, be passed.

Representative Collins moved the adoption of Floor Amendment No. 2 to the Committee Substitute to **HB 254**.

Representative Marzian moved that **HB 254** be laid on the Clerk's Desk. The motion that **HB 254**, by way of Committee Substitute, be laid on the Clerk's Desk was adopted. (See February 20, 1998 roll call on Motion to Lay **HB 254** on the Clerk's Desk - Appendix.)

Representative Stumbo moved that **HB 421** and **HB 36** be recommitted to Appropriations and Revenue. Agreed.

HB 338 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Gooch moved that **HB 338** be passed.

On the roll call the vote was: Yeas 91, Nays 0 (See February 20, 1998 roll call on **HB 338** - Appendix.) **HB 338** was passed and the title agreed to. Representative Gooch moved that the vote by which **HB 338** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 448 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Gooch moved that **HB 448** be passed.

On the roll call the vote was: Yeas 90, Nays 0 (See February 20, 1998 roll call on **HB 448** - Appendix.) **HB 448** was passed and the title agreed to. Representative Gooch moved that the vote by which **HB 448** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 431, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Coleman moved the adoption of the Committee Substitute to **HB 431**. Agreed.

Representative Coleman moved that **HB 431**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 89, Nays 0 (See February 20, 1998 roll call on **HB 431** - Appendix.) **HB 431**, by way of Committee Substitute, was passed and the title agreed to. Representative Coleman moved that the vote by which **HB 431**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 475 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Riggs moved that **HB 475** be passed.

On the roll call the vote was: Yeas 93, Nays 0 (See February 20, 1998 roll call on **HB 475** - Appendix.) **HB 475** was passed and the title agreed to. Representative Riggs moved that the vote by which **HB 475** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 90 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Cave moved that **HB 90** be passed.

On the roll call the vote was: Yeas 83, Nays 7 (See February 20, 1998 roll call on **HB 90** - Appendix.) **HB 90** was passed and the title agreed to. Representative Cave moved that the vote by which **HB 90** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 280 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Adkins moved that **HB 280** be passed.

On the roll call the vote was: Yeas 91, Nays 0 (See February 20, 1998 roll call on **HB 280** - Appendix.) **HB 280** was passed and the title agreed to. Representative Adkins moved that the vote by which **HB 280** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 215, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Collins moved the adoption of the Committee Substitute to **HB 215**. Agreed.

Representative Collins moved that **HB 215**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 84, Nays 7 (See February 20, 1998 roll call on **HB 215** - Appendix.) **HB 215**, by way of Committee Substitute, was passed and the title agreed to. Representative Collins moved that the vote by which **HB 215**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 293, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Kerr moved the adoption of the Committee Substitute to **HB 293**. Agreed.

Representative Kerr moved that **HB 293**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 83, Nays 5 (See February 20, 1998 roll call on **HB 293** - Appendix.) **HB 293**, by way of Committee Substitute, was passed and the title agreed to. Representative Kerr moved that the vote by which **HB 293**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 486 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Weaver moved that **HB 486** be passed.

On the roll call the vote was: Yeas 89, Nays 0 (See February 20, 1998 roll call on **HB 486** - Appendix.) **HB 486** was passed and the title agreed to. Representative Weaver moved that the vote by which **HB 486** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 396, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Coleman moved the adoption of the Committee Substitute to **HB 396**. Agreed.

Representative Coleman moved that **HB 396**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 93, Nays 0 (See February 20, 1998 roll call on **HB 396** - Appendix.) **HB 396**, by way of Committee Substitute, was passed and the title agreed to. Representative Coleman moved that the vote by which **HB 396**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 417 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Clarke moved that **HB 417** be passed.

On the roll call the vote was: Yeas 92, Nays 0 (See February 20, 1998 roll call on **HB 417** - Appendix.) **HB 417** was passed and the title agreed to. Representative Clarke moved that the vote by which **HB 417** was passed be reconsidered and said motion be placed on the table. Agreed.

SB 17 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Bruce moved that **SB 17** be passed.

On the roll call the vote was: Yeas 92, Nays 0 (See February 20, 1998 roll call on **SB 17** - Appendix.) **SB 17** was passed and the title agreed to. Representative Bruce moved that the vote by which **SB 17** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 505 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Barrows moved that **HB 505** be passed.

On the roll call the vote was: Yeas 90, Nays 0 (See February 20, 1998 roll call on **HB 505** - Appendix.) **HB 505** was passed and the title agreed to. Representative Barrows moved that the vote by which **HB 505** was passed be reconsidered and said motion be placed on the table. Agreed.

Representative Stumbo moved that **HB 237** be taken from Appropriations and Revenue and posted for passage in the Orders of the Day. Agreed.

HB 393, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved the adoption of the Committee Substitute to **HB 393**. Agreed.

Representative Long moved that **HB 393**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 94, Nays 0 (See February 20, 1998 roll call on **HB 393** - Appendix.) **HB 393**, by way of Committee Substitute, was passed and the title agreed to. Representative Long moved that the vote by which **HB 393**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 50, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Vincent moved the adoption of the Committee Substitute to **HB 50**. Agreed.

Representative Vincent moved that **HB 50**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 87, Nays 4 (See February 20, 1998 roll call on **HB 50** - Appendix.) **HB 50**, by way of Committee Substitute, was passed and the title agreed to. Representative Vincent moved that the vote by which **HB 50**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 84, with Committee Substitute and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative A. Arnold moved the adoption of the Committee Substitute to **HB 84**. Agreed.

Representative A. Arnold moved that **HB 84**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 93, Nays 0 (See February 20, 1998 roll call on **HB 84** - Appendix.) **HB 84**, by way of Committee Substitute, was passed. Representative A. Arnold moved that the rules be suspended to act upon Floor Amendment No. 2 Title to the Committee Substitute to **HB 84**.

The motion to suspend the rules to act on Floor Amendment No. 2 Title to the Committee Substitute to **HB 84** was adopted. (See February 20, 1998 roll call on Motion to Suspend the Rules to Act on Floor Amendment No. 2 Title to the Committee Substitute to **HB 84** - Appendix.)

Representative A. Arnold moved the adoption of Floor Amendment No. 2 Title to the Committee Substitute to **HB 84**. Agreed; and the title was agreed to. Representative A. Arnold moved that the vote by which **HB 84**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 146, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative G. Graham moved the adoption of the Committee Substitute to **HB 146**. Agreed. Representative Stumbo moved that **HB 146** be placed back in the Orders of the Day and retain its position. Agreed.

Motions, Petitions and Communications

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions, Report of Committees and Posting of Bills and Resolutions for Consideration. Agreed.

Introduction of Bills and Resolutions

HB 670, by Representatives Thomas, Heleringer, Ratliff, Burch, Siler, Brown, D. D. Butler, Nunn, Crall, McKee, Damron, D. Graham, R. Adams, Ford, Cox, Rader, Zimmerman, Baugh, Gee, Vincent, Treesh, Bratcher, Wilkey, Long, J. Adams, Collins, Murgatroyd, G. Graham, Crenshaw, Weaver, Miller, Anderson, Stine, Maricle, Brandstetter, Allen, Turner, Hoffman, Jordan, Wayne, Hoover, Lee, Richards, Stumbo, Newsome, Nesler, Reinhardt, Colter, Cave, Walton, Crimm, Cox, Sims, L. Clark, Bruce, Marcotte, Stewart, DeWeese, Polsten, Miniard, Pope, Coleman, Haydon, Ballard, Johns, Yonts, Marzian, and Gray: AN ACT relating to real estate.

HB 671, by Representatives DeWeese, L. Clark, Bratcher, Marzian, Heleringer, Crimm, Wayne, Jenkins, and Zimmerman: AN ACT relating to planning commissions in counties with populations over three hundred thousand.

HB 672, by Representatives Thomas, Richards and Stumbo: AN ACT relating to retirement.

HB 673, by Representative Barrows: AN ACT relating to wireless enhanced emergency 911 systems.

HB 674, by Representative Adkins: AN ACT relating to annual permits.

HB 675, by Representatives Wilkey, Richards, Thomas, and Nunn: AN ACT relating to sales and use tax and declaring an emergency.

HB 676, by Representative Gooch: AN ACT relating to title pledge lenders.

HB 677, by Representative Long: AN ACT relating to reimbursement of nonprofit child-caring and child-placing facilities.

HB 678, by Representatives Ratliff and Stumbo: AN ACT relating to coal severance tax and declaring an emergency.

HB 679, by Representatives Johns, Bratcher, Coleman, Mason, Nunn, Callahan, D. Butler, J. Arnold, A. Arnold, Sims, Riggs, Crenshaw, Hoffman, Wayne, D. D. Butler, Stein, Jenkins, Palumbo, Burch, Scott, and Jordan: AN ACT relating to long-term care facility reform.

HR 84, by Representative Stacy: A RESOLUTION adjourning the House of Representatives in loving memory and honor of William Russell "Bill" Mahaney.

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Cities: **HB 48, HB 107, HB 610**

Tourism Development and Energy: **HB 521, HB 572, HB 573, HB 577, HB 582**

Motions, Petitions and Communications (Continued)

Representative Miller moved that the rules be suspended to grant floor privileges and to act upon a Legislative Citation. Agreed. Representative Miller moved the adoption of the following **Legislative Citation No. 99**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby honors Beth Haven Christian School as an outstanding educational institution dedicated to the academic success of its students. Demonstrating a keen interest in the legislative process, these exemplary young scholars are commended for their efforts to broaden their understanding of democracy and government. The members of this honorable body are pleased to join with Representative Charles Miller in applauding the initiative of the students and teachers of Beth Haven Christian School and in extending our warmest welcome as they join us to witness the proceedings of the Kentucky General Assembly. **Legislative Citation No. 99** was adopted without objection.

Representative G. Graham moved the adoption of the following **Legislative Citation No. 98**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes and honors the Members of Delta Sigma Theta Sorority participating in "Delta Day at the Capitol," whereupon these members of this outstanding national public service organization founded in 1913 at Howard University in Washington, D. C. sit in on sessions of state legislatures in order to observe their legislators at work. Inasmuch as this exemplary sorority has long been committed to public service, sisterhood and scholarship, and does not support any political party line but is ever-vigilant regarding awareness of laws, programs and practices that affect the health, education and welfare of the citizens, especially African-Americans; therefore, the members of this honorable body are pleased to join with Representative Gippy Graham in welcoming them into these Chambers. Further, expressions of gratitude are extended to these citizens for their interest and involvement in the legislative process. **Legislative Citation No. 98** was adopted without objection.

Representative Scott moved the adoption of the following **Legislative Citation No. 97**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes and honors the students of Casey County High School for demonstrating an exemplary interest in the democratic process and in the daily actions of our Kentucky legislature. These outstanding young scholars have endeavored to broaden their understanding of democracy and government and are commended for their efforts to do so. The members of the Kentucky House of Representatives are pleased to join Representative William Scott in applauding the initiative of the students of Casey County High School and in extending a welcoming hand to them as they join us to witness a day of the 1998 Regular Session of the Kentucky General Assembly. **Legislative Citation No. 97** was adopted without objection.

Representative Coleman moved the adoption of the following **Legislative Citation No. 103**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes and honors the members of the Anderson County High School Political Science Classes for demonstrating an exemplary interest in the democratic process and in the daily actions of our Kentucky legislature. These outstanding young scholars have endeavored to broaden their understanding of democracy and government and are commended for their efforts to do so. The members of the Kentucky House of Representatives are pleased to join with Representative Jack Coleman in applauding the initiative of the Anderson County High School political science classes and in extending a welcoming hand to them as they join us to witness a day of the 1998 Regular Session of the Kentucky General Assembly. **Legislative Citation No. 103** was adopted without objection.

Representative Thomas moved the adoption of the following **Legislative Citation No. 104**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby offers its sincerest congratulations to Delilah Mae Smith upon the auspicious occasion of her 95th Birthday In celebration of this memorable event the entire membership joins Representative Roger Thomas in commending Delilah Mae Smith, loving wife of the late Clarence Smith and cherished mother of Okla, Bronvil, Henry, Lo-Eva, Helen, Clarence Wayne, Imogene and Wanda, for a life lived to the fullest and for the vitality of heart which has brought her thus far. This distinguished body hereby extends best wishes on this meaningful occasion of her 95th birthday. **Legislative Citation No. 104** was adopted without objection.

Representative Thomas moved the adoption of the following **Legislative Citation No. 105**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby offers its sincerest congratulations to Helen M. Thomas upon the auspicious occasion of her 70th Birthday In celebration of this memorable event the entire membership joins Representative Roger Thomas in commending Helen M. Thomas, loving wife of James L. Thomas; cherished mother of Roger, Peggy and Patty and devoted grandmother of Kim, Kathryn, Roger C., Joseph and Lee Michael, for a life lived to the fullest and for the vitality of heart which has brought her thus far. This distinguished body hereby extends best wishes on this meaningful occasion of her 70th birthday. **Legislative Citation No. 105** was adopted without objection.

Representative Stumbo moved that the rules be suspended to reassign a Bill. Agreed. Representative Stumbo moved that **HB 425** be reassigned to Cities. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 3 to **HB 564**, by Representative Miller:

On page 3, lines 18 through 27, by deleting lines in their entirety;

On page 4, lines 1 through 9, by deleting the lines in their entirety;

On page 4, line 10, after "Section" by deleting "4" and inserting "3" in lieu thereof;

On page 4, line 27, after "Section" by deleting "5" and inserting "4" in lieu thereof;

On page 5, line 22, after "Section" by deleting "6" and inserting "5" in lieu thereof;

On page 6. line 10, after "Section" by deleting "7" and inserting "6" in lieu thereof;

On page 6, line 17, after "Section" by deleting "8" and inserting "7" in lieu thereof;

On page 7, line 4, after "Section" by deleting "9" and inserting "8" in lieu thereof;

On page 7, line 24, after "purchase;" by adding "***and***";

On page 7, line 27, by bracketing and striking through the semicolon and deleting "***and***" and inserting "." in lieu thereof;

On page 8, lines 1 and 2, by deleting lines in their entirety;

On page 10, lines 12 through 21, by deleting the lines in their entirety;

On page 10, line 22, after "Section" by deleting "11" and inserting "9" in lieu thereof.

Motions, Petitions and Communications (Continued)

Representative Barrows moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Barrows moved that he be recorded as voting "yea" on **HB 62, HB 160,** and **HB 431**. Agreed.

Representative Crenshaw moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Crenshaw moved that he be recorded as voting "yea" on **HB 141**. Agreed.

Representative R. Adams moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative R. Adams moved that his vote be changed from "yea" to "nay" on **HB 50**. Agreed.

Representative Johns moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Johns moved that she be recorded as voting "yea" on **HB 338** and **HB 448**. Agreed.

Representative Colter moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Colter moved that she be recorded as voting "yea" on **HB 90**. Agreed.

Representative Wilkey moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Wilkey moved that he be recorded as voting "yea" on **HB 429**. Agreed.

The following members filed requests to have their names added as co-sponsors of Bills under rules previously suspended: **HB 240, HB 484, HB 648**, Representative Riggs; **HB 90**, Representative D. Graham; **HB 215**, Representative Palumbo; **HB 380**, Representative Crimm; **HB 434**, Representative Crenshaw; **HB 582**, Representative R. Adams; **HB 639**, Representatives Worthington, Geveden, Barrows; **HB 648**, Representative Murgatroyd; **HB 654**, Representative Callahan; **HB 670**, Representative Napier; **HB 678**, Representative Anderson; **HCR 81**, Representative Walton.

The following member filed a request to have his name withdrawn as co-sponsor to a Bill under the rules previously suspended: **HB 469**, Representative Yonts.

Adjournment

Representative Stumbo moved that the House adjourn until 4:00 p.m., February 23, 1998.

On the roll call the vote was **Yeas 76**--J. Adams, R. Adams, Adkins, Alexander, Allen, Anderson, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Brandstetter, Bratcher, Brown, Bruce, D. Butler, D. D. Butler, Callahan, L. Clark, Collins, Colter, Crenshaw, Crimm, Damron, Ford, Gee, Geveden, Gooch, G. Graham, Hatcher, Haydon, Hoffman, Hoover, Jenkins, Johns, Jordan, Kerr, Lee, Lindsay, Long, Marcotte, Marzian, Mason, McKee, Miller, Moberly, Murgatroyd, Napier, Newsome, Palumbo, Pope, Rader, Rasche, Reinhardt, Richards, Riggs, Riner, Scott, Siler, Simpson, Sims, Stacy, Stein, Stine, Stumbo, Thomas, Treesh, Turner, Vincent, Walton, Wayne, Weaver, Wilkey, Worthington, Yonts, Zimmerman. **Nays 3**--Crall, Nunn, Stewart.

The motion to adjourn was adopted.

MONDAY, FEBRUARY 23, 1998

THIRTY-FIRST LEGISLATIVE DAY

The House was called to order by Speaker Richards.

Prayer by Reverend K. L. Moore, First Baptist Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Crall and Lovell.

Representative Ballard moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative Ballard moved that the reading of the Journal of February 20, 1998, be dispensed with and the same approved. Agreed.

Representative Ballard moved that the Rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Ballard moved that all properly filed co-sponsor requests be approved. Agreed.

Floor Amendments

Floor Amendment No. 1 to **HB 542**, by Representative Damron:

On page 1, line 2, after the word "buys" and before the word "or" insert "***, leases,***" and after the word "buy" and before the word "a" insert "***or lease***"; and

On page 1, line 21, after the word "valid" and before the word "sales" insert "***lease agreement or***"; and

On page 1, line 22, after the first time the word "the" appears and before the word "sale" insert "***lease or***".

Senate Message

Announcing passage of **SB 18, HB 109, HB 110**, and **HB 135**. Message received on **HB 195**: The Senate has passed **HB 195** by way of Senate Committee Substitute and Senate Committee No. 1 Title and respectfully requests concurrence of this Honorable Body. (Time: 4:05 p.m.)

Introduction of Bills

HB 680, by Representatives McKee, Weaver, Coleman, Haydon, L. Clark, Stein, J. Adams, Thomas, A. Arnold, Worthington, Sims, Hoffman, Scott, Bruce, R. Adams, D. Graham, Turner, Gee, and Crimm: AN ACT relating to sales and use tax exemptions for agriculture.

HB 681, by Representatives Miniard, Napier, Maricle, and Rader: AN ACT relating to community colleges.

HB 682, by Representative Clarke: AN ACT relating to counties and making an appropriation therefor.

HB 683, by Representative Cox: AN ACT relating to a school voucher program.

HB 684, by Representative Riggs: AN ACT relating to insurance.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolution:

Appropriations and Revenue: **HB 669, HB 675, HB 678**

Banking and Insurance: **HB 676**

Cities: **HB 671**

Economic Development: **HB 666**

Education: **SB 243**

Health and Welfare: **HB 677, HB 679**

Judiciary: **HB 667, HB 668, SB 76, SB 207**

Licensing and Occupations: **HB 670**

State Government: **HB 672, SB 161**

Tourism Development and Energy: **HB 673**

Transportation: **HB 674, SJR 76**

The Clerk reported that the Committee on Committees has referred the following Resolutions:

House Floor: **HR 83, HR 84**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

State Government: **SB 190**

Licensing and Occupations: **HB 649**

Report of Committees

The Committee on Education reported **HCR 8, HCR 12, HCR 21, HCR 22, HCR 23, HCR 24, HCR 25, HCR 26, HCR 27, HCR 28, HCR 29, HCR 30,** and **HCR 41** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HCR 8, A CONCURRENT RESOLUTION confirming the appointment of Lee T. Todd, Jr. to the Council on Postsecondary Education.

WHEREAS, pursuant to KRS 164.011, the Governor has appointed Lee T. Todd, Jr. as a member of the Council on Postsecondary Education for a term expiring December 31, 2002; and

WHEREAS, appointments to the Council on Postsecondary Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, the Governor has submitted the name of Lee T. Todd, Jr. for confirmation as a member of the council, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Lee T. Todd, Jr. meets the requirements established in KRS 164.011 for membership on the Council on Postsecondary Education;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the House of Representatives and Senate hereby confirm the appointment of Lee T. Todd, Jr. to the Council on Postsecondary Education for a term ending December 31, 2002.

Section 2. That the Clerk of the House of Representatives, pursuant to KRS 11.160(2) shall notify Governor Paul E. Patton, Room 100, State Capitol and Lee T. Todd, Jr., 2101 Hawksbury Way, Lexington, Kentucky 40515, in writing, of the General Assembly's action.

HCR 12, A CONCURRENT RESOLUTION confirming the appointment of Walter A. Baker to the Council on Postsecondary Education.

WHEREAS, pursuant to KRS 164.011, the Governor has appointed Walter A. Baker as a member of the Council on Postsecondary Education for a term expiring December 31, 2001; and

WHEREAS, appointments to the Council on Postsecondary Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, the Governor has submitted Walter A. Baker's name for confirmation as a member of the council, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Walter A. Baker. meets the requirements established in KRS 164.011 for membership on the Council on Postsecondary Education;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the House of Representatives and Senate hereby confirm the appointment of Walter A. Baker to the Council on Postsecondary Education for a term ending December 31, 2001.

Section 2. That the Clerk of the House of Representatives, pursuant to KRS 11.160(2) shall notify Governor Paul E. Patton, Room 100, State Capitol and Walter A. Baker, 917 South Green Street, Glasgow, Kentucky 42141, in writing, of the General Assembly's action.

HCR 21, A CONCURRENT RESOLUTION confirming the appointment of Leonard V. Hardin to the Council on Postsecondary Education.

WHEREAS, pursuant to KRS 164.011, the Governor has appointed Leonard V. Hardin as a member of the Council on Postsecondary Education for a term expiring December 31, 1999; and

WHEREAS, appointments to the Council on Postsecondary Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, the Governor has delivered Leonard V. Hardin's name for confirmation as a member of the council, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Leonard V. Hardin meets the requirements established in KRS 164.011 for membership on the Council on Postsecondary Education;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and Senate hereby confirm the appointment of Leonard V. Hardin as a member of the Council on Postsecondary Education for a term expiring December 31, 1999.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol, Frankfort, Kentucky 40601, and Leonard V. Hardin, 6300 Glen Hill Road, Louisville, Kentucky 40222, in writing, of the General Assembly's action.

HCR 22, A CONCURRENT RESOLUTION confirming the appointment of Marlene M. Helm to the Council on Postsecondary Education.

WHEREAS, pursuant to KRS 164.011, the Governor has appointed Marlene M. Helm as a member of the Council on Postsecondary Education for a term ending December 31, 2000; and

WHEREAS, appointments to the Council on Postsecondary Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of July 25, 1997, the Governor has delivered Marlene M. Helm's name for confirmation as a member of the council, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Marlene M. Helm meets the requirements established in KRS 164.011 for membership on the Council on Postsecondary Education;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and Senate hereby confirm the appointment of Marlene M. Helm to the Council on Postsecondary Education for a term ending December 31, 2000.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160, shall notify Governor Paul E. Patton, Room 100, State Capitol, Frankfort, Kentucky 40601, and Marlene M. Helm, 193 Old Coach Road, Nicholasville, Kentucky 40356, in writing, of the General Assembly's action.

HCR 23, A CONCURRENT RESOLUTION confirming the appointment of Ronald Greenberg to the Council on Postsecondary Education.

WHEREAS, pursuant to KRS 164.011, the Governor has appointed Ronald Greenberg as a member of the Council on Postsecondary Education for a term expiring December 31, 2000; and

WHEREAS, appointments to the Council on Postsecondary Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, the Governor has delivered Ronald Greenberg's name for confirmation as a member of the council, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Ronald Greenberg meets the requirements established in KRS 164.011 for membership on the Council on Postsecondary Education;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and Senate hereby confirm the appointment of Ronald Greenberg as a member of the Council on Postsecondary Education for a term expiring December 31, 2000.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol, Frankfort, Kentucky 40601, and Ronald Greenberg, 1416 Willow Avenue, Louisville, Kentucky 40204, in writing, of the General Assembly's action.

HCR 24, A CONCURRENT RESOLUTION confirming the appointment of Shirley Ann Menendez to the Council on Postsecondary Education.

WHEREAS, pursuant to KRS 164.011, the Governor has appointed Shirley Ann Menendez as a member of the Council on Postsecondary Education for a term ending December 31, 2001; and

WHEREAS, appointments to the Council on Postsecondary Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of July 25, 1997, the Governor has delivered Shirley Ann Menendez's name for confirmation as a member of the council, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Shirley Ann Menendez meets the requirements established in KRS 164.011 for membership on the Council on Postsecondary Education;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and Senate hereby confirm the appointment of Shirley Ann Menendez to the Council on Postsecondary Education for a term ending December 31, 2001.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160, shall notify Governor Paul E. Patton, Room 100, State Capitol, Frankfort, Kentucky 40601, and Shirley Ann Menendez, 3901 Primrose Place, Paducah, Kentucky 42001, in writing, of the General Assembly's action.

HCR 25, A CONCURRENT RESOLUTION confirming the appointment of Marcia Milby Ridings to the Council on Postsecondary Education.

WHEREAS, pursuant to KRS 164.011, the Governor has appointed Marcia Milby Ridings as a member of the Council on Postsecondary Education for a term ending December 31, 1999; and

WHEREAS, appointments to the Council on Postsecondary Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of July 25, 1997, the Governor has delivered Marcia Milby Ridings' name for confirmation as a member of the council, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Marcia Milby Ridings meets the requirements established in KRS 164.011 for membership on the Council on Postsecondary Education;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and Senate hereby confirm the appointment of Marcia Milby Ridings to the Council on Postsecondary Education for a term ending December 31, 1999.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160, shall notify Governor Paul E. Patton, Room 100, State Capitol, Frankfort, Kentucky 40601, and Marcia Milby Ridings, 120 North Main Street, London, Kentucky 40741, in writing, of the General Assembly's action.

HCR 26, A CONCURRENT RESOLUTION confirming the appointment of Peggy M. Bertelsman to the Council on Postsecondary Education.

WHEREAS, pursuant to KRS 164.011, the Governor has appointed Peggy M. Bertelsman as a member of the Council on

Postsecondary Education for a term ending December 31, 2002; and

WHEREAS, appointments to the Council on Postsecondary Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of July 25, 1997, the Governor has delivered Peggy M. Bertelsman's name for confirmation as a member of the council, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Peggy M. Bertelsman meets the requirements established in KRS 164.011 for membership on the Council on Postsecondary Education;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and Senate hereby confirm the appointment of Peggy M. Bertelsman to the Council on Postsecondary Education for a term ending December 31, 2002.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160, shall notify Governor Paul E. Patton, Room 100, State Capitol, Frankfort, Kentucky 40601, and Peggy M. Bertelsman, 25 Mt. Pleasant Lane, Fort Thomas, Kentucky 41075, in writing, of the General Assembly's action.

HCR 27, A CONCURRENT RESOLUTION confirming the appointment of Charles Whitehead to the Council on Postsecondary Education.

WHEREAS, pursuant to KRS 164.011, the Governor has appointed Charles Whitehead as a member of the Council on Postsecondary Education for a term expiring December 31, 1998; and

WHEREAS, appointments to the Council on Postsecondary Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, the Governor has delivered Charles Whitehead's name for confirmation as a member of the council, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Charles Whitehead meets the requirements established in KRS 164.011 for membership on the Council on Postsecondary Education;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and Senate hereby confirm the appointment of Charles Whitehead as a member of the Council on Postsecondary Education for a term expiring December 31, 1998.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol, Frankfort, Kentucky 40601, and Mr. Charles Whitehead, 4877 Richardson Road, Ashland, Kentucky 41101, in writing, of the General Assembly's action.

HCR 28, A CONCURRENT RESOLUTION confirming the appointment of Steve Barger to the Council on Postsecondary Education.

WHEREAS, KRS 164.011 requires the Governor to appoint the thirteen (13) citizen members of the Council on Postsecondary Education, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, in accordance with KRS 164.011, the Governor has appointed Mr. Barger as a citizen member of the Council on Postsecondary Education for a term expiring December 31, 1998; and

WHEREAS, the Senate and the House of Representatives find that Mr. Barger meets the requirements of KRS 164.011;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House and Senate, in accordance with KRS 164.011, confirm the appointment of Mr. Steve Barger to the Council on Postsecondary Education for a term expiring December 31, 1998.

Section 2. The Clerk of the House shall forward a copy of this Resolution, and written notification of its adoption, to Mr. Steve Barger, 2623 Byron Avenue, Louisville, Kentucky 40205, and to Governor Paul Patton, Room 100, State Capitol, Frankfort, Kentucky 40601.

HCR 29, A CONCURRENT RESOLUTION confirming the appointment of Norma B. Adams to the Council on

Postsecondary Education.

WHEREAS, KRS 164.011 requires the Governor to appoint the thirteen (13) citizen members of the Council on Postsecondary Education, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, in accordance with KRS 164.011, the Governor has appointed Ms. Adams as a citizen member of the Council on Postsecondary Education for a term expiring December 31, 2003; and

WHEREAS, the Senate and the House of Representatives find that Ms. Adams meets the requirements of KRS 164.011;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House and Senate, in accordance with KRS 164.011, confirm the appointment of Ms. Norma B. Adams to the Council on Postsecondary Education for a term expiring December 31, 2003.

Section 2. The Clerk of the House shall forward a copy of this Resolution, and written notification of its adoption, to Ms. Norma B. Adams, 3507 Lakeside Ct., Somerset, Kentucky 42503, and to Governor Paul Patton, Room 100, State Capitol, Frankfort, Kentucky 40601.

HCR 30, A CONCURRENT RESOLUTION confirming the appointment of Lois Combs Weinberg to the Council on Postsecondary Education.

WHEREAS, KRS 164.011 requires the Governor to appoint the thirteen (13) citizen members of the Council on Postsecondary Education, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, in accordance with KRS 164.011, the Governor has appointed Ms. Weinberg as a citizen member of the Council on Postsecondary Education for a term expiring December 31, 1998; and

WHEREAS, the Senate and the House of Representatives find that Ms. Weinberg meets the requirements of KRS 164.011;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House and Senate, in accordance with KRS 164.011, confirm the appointment of Ms. Lois Combs Weinberg to the Council on Postsecondary Education for a term expiring December 31, 1998.

Section 2. The Clerk of the House shall forward a copy of this Resolution, and written notification of its adoption, to Ms. Lois Combs Weinberg, 727 Main Street, Hindman, Kentucky 41822, and to Governor Paul Patton, Room 100, State Capitol, Frankfort, Kentucky 40601.

HCR 41, A CONCURRENT RESOLUTION confirming the appointment of Phillip Irl Huddleston to the Council on Postsecondary Education.

WHEREAS, in accordance with KRS 164.011, the Governor has appointed Phillip Irl Huddleston as a member of the Council on Postsecondary Education for a term expiring December 31, 2003; and

WHEREAS, appointments to the Council on Postsecondary Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, the Governor has delivered Phillip Irl Huddleston's name for confirmation as a member of the council, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Phillip Irl Huddleston meets the requirements established in KRS 164.011 for membership on the Council on Postsecondary Education;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and Senate hereby confirm the appointment of Phillip Irl Huddleston as a member of the Council on Postsecondary Education for a term expiring December 31, 2003.

Section 2. The Clerk of the House of Representatives, in accordance with KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol and Phillip Irl Huddleston, 1288 Hayes Court, Bowling Green, Kentucky 42103, in writing, of the General Assembly's action.

Calendar

HB 188, HB 249, HB 333, HB 381 and **HB 406** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Recess

Representative Stumbo moved to suspend the rules to allow the House to recess for a Committee on Rules meeting in the Speaker's Office. Agreed. At the appointed hour, the Speaker resumed the Chair and called the House to order.

Report On Enrolled Bills

The Committee on Enrollment reported that **HB 56** and **SB 17** have been examined and found correctly enrolled. Said Bills were read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time - 4:30 p.m.) **HB 56** delivered to the Senate and signed by the President. Delivered to the Governor on February 23 at 4:45 p.m.

Representative Stumbo moved that the rules be suspended for a Committee on Rules Report. Agreed.

Report of Committees (Continued)

The Committee on Rules reported that **HB 32, SB 169, HB 14, HB 49, HB 323, HB 491, HB 493, HB 333,** and **HB 381** have been posted for passage in the Orders of the Day for February 24, 1998.

The Committee on Rules reported that the following Bills have been recommitted:

Judiciary: **HB 480, HB 483**

Appropriations and Revenue: **HB 444**

Report on Enrolled Bills (Continued)

HB 264 delivered to the Senate and signed by the President. Delivered to the Governor on February 23, 1998 at 4:20 p.m.

Floor Amendments (Continued)

Floor Amendment No. 1 to the House Committee Substitute to **SB 20**, by Representative Thomas:

On page 1, line 15, after the word "***person's***" and before the word "***issued***" delete "***I-94 card, I-551 card, or I-766 card***" and insert in lieu thereof "***employment authorization card, visa card to enter the United States, or permanent residency card***"; and

On page 3, line 10, before the word "***issued***" delete "***I-94 card, I-551 card, or I-766 card***" and insert in lieu thereof "***employment authorization card, visa card to enter the United States, or permanent residency card***".

Floor Amendment No. 3 to the Committee Substitute to **HB 254**, by Representative Marzian:

Beginning on page 1 and ending on page 6, line 23, By deleting everything after the enacting clause and inserting the following in lieu thereof:

"Section 1. KRS 189.287 is amended to read as follows:

(1) A person under the age of fourteen (14) shall not operate or ride as a passenger on any bicycle on any public road unless the person is wearing a helmet that meets or exceeds the standards of the American National Standards Institute, the standards of the Snell Memorial Foundation, or the standards of the American Society of Testing and Measurements for Protective Headgear for use in bicycling.

(2) The Transportation Cabinet may promulgate bicycle safety regulations and standards. Bicycle riders and bicycles complying with such regulations and standards are exempt from the provisions of KRS 189.040(9), 189.050(1), 189.050(5), and 189.080. Such bicycles and riders are also exempt from municipal and other local government regulations concerning safety equipment but not method of operation. In promulgating regulations and standards the Transportation Cabinet shall permit use of lightweight modern technological substitutes for lights, reflectors, and bells. The purpose of this section is to encourage bicycling and bicycle touring in this state by enabling bicycle riders to make use of modern technology to make their presence known to other users of the road. The Transportation Cabinet may consult with organizations of bicycle riders to aid it in the search for bicycle safety equipment and rules convenient for long distance bicycle riders.".

Floor Amendment No. 3 to the Committee Substitute to **HB 327**, by Representative Johns:

On page 4, line 15, following "person to" to insert "***complete***" and to place brackets around and strike through "attend"; and;

On page 4, line 15, following "alcohol" to insert "***and other drug***"; and

On page 4, line 15, to place brackets around and strike through "or substance abuse"; and

On page 4, line 18, to place brackets around and strike through "treatment or"; and

On page 4, line 18, following "education" to insert "***or treatment***"; and

On page 4, line 19, following "alcohol" to insert "***and***" and to bracket and strike through "or"; and

On page 4, line 20, at the beginning of the line to insert "***drug***" and to bracket and strike through "substance"; and

On page 4, line 21, following "program" to insert "***A treatment program may be an inpatient or residential type program.***"; and

On page 4, line 23, following "cost of the" to insert "***education or***"; and

On page 4, line 26, following "the defendant, the" to insert "***court may issue an order to release the***"; and

On page 4, line 26, to place brackets around and strike through "may be released"; and

On page 5, line 1, following "pay" to insert "***for the education or treatment in accordance with paragraph (b) of this subsection***"; and

On page 5, lines 1 and 2, to place brackets around and strike through "the amount specified by the court for education or treatment"; and

On page 5, line 7, following "the person to" to insert "***complete***"; and

On page 5, line 7, following "alcohol" to insert "***and other drug***" and to bracket and strike through "or substance"; and

On page 5, line 10, following "alcohol" to insert "***and other drug***" and to bracket and strike through "or substance; and

On page 5, line 11, following "program." to insert "***The treatment program may be an inpatient or residential type program.***"; and

On page 5, line 16, following "the defendant, the" to insert "***court may issue an order to release the***"; and

On page 5, lines 16, to place brackets around and strike through "may be released"; and

On page 5, line 18, following "or to pay" to insert " ***for the treatment in accordance with paragraph (b) of this subsection***"; and

On page 5, lines 18 and 19, to place brackets around and strike through " the amount specified by the court for treatment" ; and

On page 5, line 24, following "the person to" to insert "***complete***"; and

On page 5, line 24, following "alcohol" to insert "***and other drug***" and to place brackets around and strike through "or substance abuse"; and

On page 6, line 1, following "alcohol" to insert "***and other drug***" and to place brackets around and strike through "or substance abuse"; and

On page 6, line 2, following the last "The" on the line, to insert "***treatment***"; and

On page 6, line 5, to place brackets around and strike through "program"; and

On page 6, lines 6 and 7, following "defendant" to place brackets around and strike through ", upon written recommendation to the court by the administrator of the program,"; and

On page 6, line 10, following "or to pay" to insert "***for the treatment in accordance with paragraph (b) of this subsection***" and

On page 6, lines 10 and 11, to place brackets around and strike through "***the amount specified by the court for treatment***"; and

On page 6, line 15, to place brackets around and strike through "treatment or" and

On page 6, line 15, following "education" to insert "***or treatment***"; and

On page 6, line 18, following "section," to insert "***education and***"; and

On page 6, lines 18 and 19, following "alcohol" to insert "***and other drug***" and to place brackets around and strike through "or substance abuse"; and

On page 6, line 23, following "licensure" to insert "***and certification***"; and

On page 7, line 3, following "other" to insert "***education and***"; and

On page 7, line 15, following "Cabinet" to insert "***, the court, and the Division of Substance Abuse of the Cabinet for Human Resources within five (5) calendar days of completion***"; and

On page 7, line 16, following "offenders" to insert "***receiving education or treatment***"; and

On page 7, line 17, to place brackets around and strike through "being treated"; and

On page 7, line 18, following " licensure" to insert "***and certification***"; and

On page 7, between lines 20 and 21, to insert the following:

"Section 3. KRS 189A.045 is amended to read as follows:

(1) When a court requires a defendant to ***complete*** [~~enroll in~~] an alcohol ***and other*** [~~or~~]drug education or treatment program pursuant to this chapter, it shall require the defendant to ***select a program from a directory provided to the court by the Division of Substance Abuse of the Cabinet for Human Resources on the day of conviction and to*** accomplish the enrollment within ten (10) ***calendar*** days of the entry of judgment of conviction. ***The court shall send copies of the conviction order and the uniform citation to the program selected by the defendant within five (5) working days of the entry of judgment of conviction.***

(2) When a defendant enrolls in ***an alcohol and other drug education or treatment*** [~~the~~]program ordered by the court, the administrator of the program or his authorized representative shall transmit to the court a certificate of enrollment within five (5) working days of the enrollment.

(3) If the court does not receive a certificate of enrollment from the administrator of a program to which the defendant has been ***referred*** [~~assigned~~]within twenty (20) ***calendar*** days of the entry of judgment of conviction, the court shall hold a hearing requiring the defendant to show cause why he did not enroll.

(4) If a defendant enrolled in ***an alcohol and other drug*** [~~a drug or alcohol~~] education or treatment program drops out of the program or does not maintain satisfactory attendance at the program, the administrator of the program or his authorized representative shall transmit to the court ***and the Division of Substance Abuse of the Cabinet for Human Resources within ten (10) calendar days*** a notice describing the defendant's failure to attend.

(5) Upon receipt of a notice of failure to attend a required alcohol ***and other*** [~~or~~] drug education or treatment program***,*** the court shall hold a hearing requiring the defendant to show cause why he should not be held in contempt of court and be subject to the reinstatement of any penalties which may have been withheld pending completion of ***education or*** treatment.

(6) When a defendant completes the required alcohol ***and other*** [~~or~~] drug education or treatment program***,*** the administrator of the program shall notify the court***,*** [~~and the~~] Transportation Cabinet***, and the Division of Substance Abuse of the Cabinet for Human Resources within five (5) calendar days*** of the defendant's completion of the program."; and

To renumber the ensuing sections accordingly.

Orders of the Day

HB 514, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Thomas moved the adoption of the Committee Substitute to **HB 514**. Agreed.

Representative Thomas moved that **HB 514**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 89, Nays 2 (See February 23, 1998 roll call on **HB 514** - Appendix.) **HB 514**, by way of Committee Substitute, was passed and the title agreed to. Representative Thomas moved that the vote by which **HB 514**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 516, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Thomas moved the adoption of the Committee Substitute to **HB 516**. Agreed.

Representative Thomas moved that **HB 516**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 89, Nays 1 (See February 23, 1998 roll call on **HB 516** - Appendix.) **HB 516**, by way of Committee Substitute, was passed and the title agreed to. Representative Thomas moved that the vote by which **HB 516**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 129, with Committee Amendment and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Burch moved the adoption of Committee Amendment No. 1 to **HB 129**. Agreed.

Representative Barrows moved the adoption of Floor Amendment No. 1 to **HB 129**. Agreed.

Representative Burch moved that **HB 129**, as amended, be passed.

On the roll call the vote was: Yeas 94, Nays 1 (See February 23, 1998 roll call on **HB 129** - Appendix.) **HB 129**, as amended, was passed and the title agreed to. Representative Burch moved that the vote by which **HB 129**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 387, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Moberly moved the adoption of Committee Amendment No. 1 to **HB 387**. Agreed.

Representative Moberly moved that **HB 387**, as amended, be passed.

On the roll call the vote was: Yeas 91, Nays 0 (See February 23, 1998 roll call on **HB 387** - Appendix.) **HB 387**, as amended, was passed and the title agreed to. Representative Moberly moved that the vote by which **HB 387**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

SB 93 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Clarke moved that **SB 93** be passed.

On the roll call the vote was: Yeas 93, Nays 0 (See February 23, 1998 roll call on **SB 93** - Appendix.) **SB 93** was passed and the title agreed to. Representative Clarke moved that the vote by which **SB 93** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 352 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 352** be passed.

On the roll call the vote was: Yeas 92, Nays 0 (See February 23, 1998 roll call on **HB 352** - Appendix.) **HB 352** was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 352** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 355 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 355** be passed.

On the roll call the vote was: Yeas 93, Nays 1 (See February 23, 1998 roll call on **HB 355** - Appendix.) **HB 355** was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 355** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 359 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 359** be passed.

On the roll call the vote was: Yeas 85, Nays 4 (See February 23, 1998 roll call on **HB 359** - Appendix.) **HB 359** was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 359** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 361 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 361** be passed.

On the roll call the vote was: Yeas 91, Nays 1 (See February 23, 1998 roll call on **HB 361** - Appendix.) **HB 361** was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 361** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 363 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 363** be passed.

On the roll call the vote was: Yeas 93, Nays 0 (See February 23, 1998 roll call on **HB 363** - Appendix.) **HB 363** was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 363** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 366 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 366** be passed.

On the roll call the vote was: Yeas 91, Nays 1 (See February 23, 1998 roll call on **HB 366** - Appendix.) **HB 366** was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 366** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 375 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Adkins moved that **HB 375** be passed.

On the roll call the vote was: Yeas 93, Nays 0 (See February 23, 1998 roll call on **HB 375** - Appendix.) **HB 375** was passed and the title agreed to. Representative Adkins moved that the vote by which **HB 375** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 394 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Damron moved that **HB 394** be passed.

On the roll call the vote was: Yeas 90, Nays 1 (See February 23, 1998 roll call on **HB 394** - Appendix.) **HB 394** was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 394** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 438 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Geveden moved that **HB 438** be passed.

On the roll call the vote was: Yeas 91, Nays 0 (See February 23, 1998 roll call on **HB 438** - Appendix.) **HB 438** was passed and the title agreed to. Representative Geveden moved that the vote by which **HB 438** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 419, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved the adoption of Committee Amendment No. 1 to **HB 419**. Agreed.

Representative Long moved that **HB 419**, as amended, be passed.

On the roll call the vote was: Yeas 86, Nays 1 (See February 23, 1998 roll call on **HB 419** - Appendix.) **HB 419**, as amended, was passed and the title agreed to. Representative Long moved that the vote by which **HB 419**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 311 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Lee moved that **HB 311** be passed.

On the roll call the vote was: Yeas 94, Nays 0 (See February 23, 1998 roll call on **HB 311** - Appendix.) **HB 311** was passed and the title agreed to. Representative Lee moved that the vote by which **HB 311** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 426 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Murgatroyd moved that **HB 426** be passed.

On the roll call the vote was: Yeas 94, Nays 0 (See February 23, 1998 roll call on **HB 426** - Appendix.) **HB 426** was passed and the title agreed to. Representative Murgatroyd moved that the vote by which **HB 426** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 126 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Brandstetter moved that **HB 126** be passed.

On the roll call the vote was: Yeas 89, Nays 2 (See February 23, 1998 roll call on **HB 126** - Appendix.) **HB 126** was passed and the title agreed to. Representative Brandstetter moved that the vote by which **HB 126** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 526 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Wayne moved that **HB 526** be passed.

On the roll call the vote was: Yeas 94, Nays 0 (See February 23, 1998 roll call on **HB 526** - Appendix.) **HB 526** was passed and the title agreed to. Representative Long moved that the vote by which **HB 526** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 531 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative L. Clark moved that **HB 531** be passed.

On the roll call the vote was: Yeas 89, Nays 0 (See February 23, 1998 roll call on **HB 531** - Appendix.) **HB 531** was passed and the title agreed to. Representative L. Clark moved that the vote by which **HB 531** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 168, with Committee Substitute and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Marcotte moved the adoption of the Committee Substitute to **HB 168**. Agreed.

Representative Brandstetter moved the adoption of Floor Amendment No. 2 to the Committee Substitute to **HB 168**. Agreed.

Representative Marcotte moved that **HB 168**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 91, Nays 4 (See February 23, 1998 roll call on **HB 168** - Appendix.) **HB 168**, by way of Committee Substitute as amended, was passed and the title agreed to. Representative Marcotte moved that the vote by which **HB 168**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Report On Enrolled Bills (Continued)

The Committee on Enrollment reported that **HB 109, HB 110**, and **HB 135** have been examined and found correctly enrolled. Said Bills were read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -5:15 p.m.)

Orders of the Day (Continued)

HJR 61 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HJR 61** be adopted.

On the roll call the vote was: Yeas 96, Nays 0 (See February 23, 1998 roll call on **HJR 61** - Appendix.) **HJR 61** was adopted. Representative Stumbo moved that the vote by which **HJR 61** was adopted be reconsidered and said motion be placed on the table. Agreed.

HJR 75 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Ratliff moved that **HJR 75** be adopted.

On the roll call the vote was: Yeas 95, Nays 0 (See February 23, 1998 roll call on **HJR 75** - Appendix.) **HJR 75** was adopted. Representative Ratliff moved that the vote by which **HJR 75** was adopted be reconsidered and said motion be placed on the table. Agreed.

HJR 72, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved the adoption of the Committee Substitute to **HJR 72**. Agreed.

Representative Stumbo moved that **HJR 72**, by way of Committee Substitute, be adopted.

On the roll call the vote was: Yeas 93, Nays 0 (See February 23, 1998 roll call on **HJR 72** - Appendix.) **HJR 72**, by way of Committee Substitute, was adopted. Representative Stumbo moved that the vote by which **HJR 72**, by way of Committee Substitute, was adopted be reconsidered and said motion be placed on the table. Agreed.

HB 237, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Clarke moved the adoption of Committee Amendment No. 1 to **HB 237**. Agreed.

Representative Clarke moved that **HB 237**, as amended, be passed.

On the roll call the vote was: Yeas 95, Nays 0 (See February 23, 1998 roll call on **HB 237** - Appendix.) **HB 237**, as amended, was passed and the title agreed to. Representative Clarke moved that the vote by which **HB 237**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Stumbo moved that **HB 146** be recommitted to Appropriations and Revenue. Agreed.

Representative Stumbo moved that **HB 651** be reassigned to Cities. Agreed.

Representative Stumbo moved that **HB 657** be reassigned to Health and Welfare. Agreed.

Representative Stumbo moved that **HB 342** and **HB 344** be taken from Committee and posted for passage in the Orders of the Day. Agreed.

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions, Report of Committees and Posting of Bills and Resolutions for Consideration. Agreed.

Introductions of Bills and Resolutions

HB 685, by Representative D. Butler: AN ACT relating to U-Drive-It Permit holders.

HB 686, by Representative D. Butler: AN ACT relating to pari-mutuel wagering.

HB 687, by Representative Heleringer: AN ACT relating to the practice of pharmacy.

HB 688, by Representatives Coleman and Barrows: AN ACT relating to pawnbrokers.

HB 689, by Representatives Lovell and Geveden: AN ACT relating to juvenile justice.

HB 690, by Representatives Lovell and Geveden: AN ACT relating to juvenile justice.

HB 691, by Representatives Jordan and Heleringer: AN ACT relating to the Kentucky Unified Juvenile Code.

HB 692, by Representatives Lovell and Wilkey: AN ACT relating to sex offenders.

HB 693, by Representative Long: AN ACT relating to abandoned property.

HB 694, by Representative D. Butler: AN ACT relating to the taxation of racing associations.

HB 695, by Representatives Johns, Marzian, Bratcher, Palumbo, Stein, and Hoffman: AN ACT relating to drug dealer liability.

HB 696, by Representatives Johns and Long: AN ACT relating to income taxation.

HB 697, by Representatives Lovell and Haydon: AN ACT relating to local government code enforcement boards.

HR 85, by Representative Ford: A RESOLUTION adjourning the House of Representatives in loving memory and honor of Manuel Dewey Clark, Jr., affectionately known to his many fans as "Old Joe Clark".

HR 86, by Representative Gray: AN ACT relating to naming the new bridge on US 641 over the East Fork of the Clarks River in north Benton the "Coy B. Creason Bridge".

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills and Resolutions have been posted for Committee consideration:

Cities: **HB 647, HB 425, HB 651**

Judiciary: **HB 537, HB 563, HB 21**

Natural Resources and Environment: **HB 636, HB 498, HB 488, HB 598, HB 211, HB 654, HB 593, HB 510**

Education: **SB 5, SB 202, HB 216, HB 386**

Tourism Development and Energy: **HCR 77**

Elections and Constitutional Amendments: **HB 235**

Tourism Development and Energy: **HB 631, HB 404, HB 643, HB 644, HB 673**

Banking and Insurance: **HB 496, HB 614, HJR 50, HJR 60**

Judiciary: **HB 667, HB 668**

Licensing and Occupations: **HB 634**

Floor Amendments (Continued)

Floor Amendment No. 4 to **HB 564**, by Representative Miller:

On page 7, line 27, by deleting "*and*"; and
On page 8, lines 1 and 2, by deleting lines in their entirety.

Floor Amendment No. 1 to **HB 624**, by Representative Heleringer:

On Page 4, lines 7 through 15, by deleting them in their entirety and inserting and underlining in lieu thereof "*(4) Upon the renewal of a cooperative compact as provided by Section 1 of this Act, and for a period of two (2) years from the effective date of a renewed cooperative compact, cities of the fourth, fifth, and sixth classes in a county containing a city of the first class may annex unincorporated areas according to KRS Chapter 81A. Upon the expiration of this two (2) year period, there shall be a moratorium on annexations within the county until the expiration of the cooperative compact which has been renewed according to Section 1 of this Act. The authority for cities of the fourth, fifth, and sixth classes to annex shall supersede any annexation priorities given to a city of the first class prior to the effective date of this Act.*".

Floor Amendment No. 2 to **HB 624**, by Representative Heleringer:

On Page 1, line 20, after "*79.300.*" by inserting and underlining "*Any negotiations to renew a cooperative compact may only be undertaken after the formation of a compact negotiations task force. The membership of the task force shall be in proportion to the ratio of city to county residents within the county. The city representatives shall include representatives of the fourth, fifth, and sixth classes of cities within the county in proportion to the number of residents within those cities. Appointments to the task force shall also be representative of the political parties within the county and shall be in proportion to the ratio of their membership within the county. The task force shall be involved in all negotiations to renew the cooperative compact as provided by this subsection.*"

Floor Amendment No. 3 to **HB 624**, by Representative Heleringer:

On Page 4, lines 16 through 25, by deleting them in their entirety; and
On Page 4, line 26, by renumbering Section 4 as "Section 3".

Floor Amendment No. 4 to **HB 624**, by Representative Heleringer:

On Page 4, lines 26 and 27, by deleting them in their entirety; and

On Page 5, line 1, by deleting it in its entirety.

Floor Amendment No. 5 to **HB 624**, by Representative Heleringer:

On Page 4, after line 25, by adding the following new section,

"Section 4. KRS 79.325 is amended to read as follows:

(1) Effective the year the compact between the city and the county is entered into pursuant to KRS 79.310 to 79.330, the sinking fund of the city of the first class shall calculate the distribution of the combined collections from the occupational license fees in accordance with the formula established by this section instead of in accordance within which jurisdiction the situs of the person or business subject to the tax is located. This section shall not change the manner in which such license fees are levied or collected by such city and county and the fees therefor, but merely directs that the combined collections from such license fees be apportioned between the two (2) local governments better to reflect the sharing of responsibilities and obligations agreed to by such city and the county in the cooperative compact under KRS 79.310 to 79.330.

(2) If combined collections from occupational license fees in any calendar year are less than or equal to the base year collections, fifty-eight and seven hundred thirty-five thousandths percent (58.735%) of such combined collections shall be apportioned to the city of the first class and forty-one and two hundred sixty-five thousandths percent (41.265%) of such combined collections shall be apportioned to the county.

(3) If combined collections are greater than the base year collections but less than the combined inflation-adjusted base, the amount equal to the base year collections shall be divided between such city and county in accordance with subsection (2) of this section, and the remainder of combined collections shall be divided so that the city shall be apportioned fifty-nine and seven-tenths percent (59.7%) of such remainder and the county shall be apportioned forty and three-tenths percent (40.3%) of such remainder.

(4) If combined collections in any calendar year exceed the combined inflation-adjusted base, the amount of combined collections equal to the combined inflation-adjusted base shall be divided between the city and the county in accordance with subsection (3) of this section, ten percent (10%) of the combined collections in excess of the combined inflation-adjusted base shall be apportioned in accordance with subsection (5) of this section, and the remaining ninety percent (90%) shall be apportioned so that fifty-seven and two-tenths percent (57.2%) of the remainder shall be apportioned to the city of the first class and forty-two and eight-tenths percent (42.8%) of the remainder shall be apportioned to the county.

(5) Ten percent (10%) of the combined collections in excess of the combined inflation adjusted base shall be apportioned to the city of the first class or the county in accordance within which jurisdiction the growth in combined collections occurred. If the increase in combined collections is attributable to increased collections in both jurisdictions, the city and the county shall each be apportioned a percentage of the ten percent (10%) equal to the percentage of the increase in combined collections that is attributable to the increase in collections in its jurisdiction.

(6) All occupational license fees collected after the renewal of a cooperative compact as provided in section 1 of this Act shall be distributed according to the ratio of city to county population as determined by the most recent estimates of city and county population as provided by the United States Bureau of the Census. The distribution ratio shall be re-evaluated and, if necessary, adjusted every two (2) years."; and

On Page 4, line 26, by renumbering "Section 4" as "Section 5".

Floor Amendment No. 6 to **HB 624**, by Representative Heleringer:

On Page 1, beginning with line 1 and continuing through Page 5, line 1, by deleting all language in the bill and inserting in lieu thereof,

"SECTION 1. A NEW SECTION OF KRS CHAPTER 79 IS CREATED TO READ AS FOLLOWS:

Upon the expiration or termination of a cooperative compact entered into according to KRS 79.310, a city of the first class and a county containing a city of the first class may take action to merge the city and county according to KRS Chapter 67 or 67A.

Section 2. KRS 67A.010 is amended to read as follows:

In order to facilitate the operation of local government, to prevent duplication of services, and to promote efficient and economical management of the affairs of local government, the voters in any county ~~[except a county containing a city of the first class]~~ may merge all units of city and county government into an urban-county form of government. Such merger shall take place only after compliance with the procedures set forth in KRS 67A.020.

Section 3. KRS 67.825 is amended to read as follows:

In order to facilitate the operation of local government, to prevent duplication of services, and to promote efficient and economical management of the affairs of local government, the citizens of any county, except~~[in a county containing a city of the first class or]~~ an urban-county government, may vote to merge all units of city and county government into a charter county form of government or to consolidate any agency, subdivision, department, or subdistrict providing any services or performing any functions for a city or county. The merger or consolidation shall take place only after compliance with the procedures set forth in KRS 67.830.".

Floor Amendment No. 7 to **HB 624**, by Representative Heleringer:

On Page 1, line 21, by deleting "***ten (10)***" and inserting and underlining in lieu thereof "***six (6)***".

Floor Amendment No. 8 to **HB 624**, by Representative Heleringer:

On Page 2, line 1, after "***county.***" by inserting and underlining "***Under no circumstances shall an annexation action require the approval of a fiscal court.***".

Floor Amendment No. 9 Title to **HB 624**, by Representative Heleringer:

By amending the title to read, "An ACT relating to a compact between a city of the first class and a county containing a city of the first class."

Motions, Petitions and Communications (Continued)

Representative Ford moved that the rules be suspended to act upon a Resolution. Agreed.

Representative Ford moved the adoption of the following **HR 85**:

HR 85, A RESOLUTION adjourning the House of Representatives in loving memory and honor of Manuel Dewey Clark, Jr., affectionately known to his many fans as "Old Joe Clark."

With deepest respect and admiration, we pay homage and tribute to Old Joe Clark and we pause in silent reverence for his soul.

WHEREAS, Old Joe Clark was born on August 6, 1922, a native of Erwin, Tennessee, and longtime resident of Berea, Kentucky, and crossed that final bourne from which no traveler returns on February 20, 1998; and

WHEREAS, Old Joe Clark was the loving son of the late Manuel D. Clark, Sr. and Sarah Ann Rice; he was the devoted husband of Jean Clark; he was the loving father of three sons, Terry Clark, George Clark and Lewis Clark, all of Madison County; a daughter, Sara Miracle of Mount Vernon; and he was the proud grandfather of a grandson, Gary Lee Miracle and a great-grandson, Christopher Dale Miracle, both of Mount Vernon, Kentucky; and

WHEREAS, Old Joe Clark, the grizzled, leg-slapping, foot-stomping, story-telling, banjo plucking, country music genius was the epitome of country music and humor through the traditional characters he portrayed to a conventional world audience for well over a half century; and

WHEREAS, Old Joe Clark's entertainment included authentic American folk music with the humor of nineteenth century medicine and vaudeville shows that led him to performing at the Renfro Valley in Rockcastle County, the Grand Ole Opry in Nashville, Tennessee, Madison Square Garden in New York City, many New York City nightclubs, CBS, NBC, Mutual Radio, and hundreds of engagements throughout the South; and

WHEREAS, he captivated audiences with his outlandish mountain-folk dialect that he so fluently kept alive during his performances, always repetitive in such phrases as "pon my word n' honor," "plum wore out," "tuckered" and "bodacious;" and throughout a career that spanned nearly fifty years, he was awarded millions of laughs and chuckles following his repertoire filled with country humor and quick wit; and

WHEREAS, the passing of Old Joe Clark has left a void that will be difficult to fill, and he is mourned across the length and breadth of the Commonwealth;

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. The House of Representatives of the General Assembly does hereby express its profound sense of sorrow at the passing of Old Joe Clark and it does extend to his family its most heartfelt sympathy.

Section 2. When the House of Representatives adjourns this day, it does so in loving memory and honor of Old Joe Clark.

Section 3. The Clerk of the House of Representatives is hereby directed to transmit a copy of this Resolution to Mrs. Jean Clark, 160 Franklin Drive, Richmond, Kentucky 40475.

There being no objection **HR 85** was adopted. (See February 23, 1998 roll call to co-sponsor **HR 85** - Appendix.)

Representative A. Arnold moved the adoption of the following **HR 83**:

HR 83, A RESOLUTION adjourning the House of Representatives in loving memory and honor of Billy Amburgey.

With deepest respect and admiration, we pay homage and tribute to Billy Amburgey, and we pause in silent reverence for his soul.

WHEREAS, Billy Amburgey was born on November 27, 1928, a native of Jeffersonville, Montgomery County, Kentucky, and traversed these earthly bounds on February 7, 1998; and

WHEREAS, Billy Amburgey was the loving son of the late William Isaac and Lizzie Montgomery Amburgey; he was the caring brother of a sister, Betty Amburgey, of Mt. Sterling, and of three brothers, Frankie Amburgey of Germantown, Ohio, and Bob C. Amburgey and Roger Amburgey, both of Jeffersonville; and

WHEREAS, Billy Amburgey was the devoted husband of Maxine Montgomery Amburgey; he was the loving father of a daughter, Judy Prater; and he was the proud grandfather of one grandson, William "Hoss" Prater; and

WHEREAS, Billy Amburgey was a pillar of the Jeffersonville and Montgomery County communities where he was the private business owner of Amburgey Service and Supply Store that allowed people to gather daily to chat and meet friends; his friends were many and his dedication to serve his community was great; he was always there when a crisis appeared, and always ready to lend a helping hand to his neighbors anytime they needed him which afforded him the reputation of reliability and stability; and

WHEREAS, the untimely passing of Billy Amburgey has left a void that will be difficult to fill, and he is mourned across the length and breadth of the Commonwealth;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. The House of Representatives does hereby express its profound sense of sorrow upon the untimely passing of Billy Amburgey and does extend to his family and many friends its most heartfelt sympathy.

Section 2. When the House of Representatives adjourns this day, it does so in loving memory and honor of Billy Amburgey.

Section 3. The Clerk of the House of Representatives is hereby directed to transmit a copy of this Resolution to Representative Adrian Arnold for presentation to the family of Billy Amburgey.

There being no objection **HR 83** was adopted.

Representative Burch moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Burch moved that his vote be changed from "yea" to "nay" on **HB 293**. Agreed.

Representative Barrows moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Barrows moved that he be recorded as voting "yea" on **HB 394,** and **HB 438**. Agreed.

Representative Colter moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Colter moved that she be recorded as voting "yea" on **HB 531**. Agreed.

Representative R. Adams moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative R. Adams moved that he be recorded as voting "yea" on **HB 387, HB 352, HB 355, HB 359, HB 361, HB 363, HB 366, HB 375,** and **SB 93**. Agreed.

Representative Johns moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Johns moved that her vote be changed from "yea" to "nay" on **HB 293**. Agreed.

Representative J. Adams moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative J. Adams moved that he be recorded as voting "yea" on **HB 394**. Agreed. Representative J. Adams moved that his vote be changed from "yea" to "nay" on **HB 293**. Agreed.

Representative Hogancamp moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Hogancamp moved that she be recorded as voting "yea" on **HB 293**. Agreed.

Representative Marcotte moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Marcotte moved that he be recorded as voting "yea" on **HB 516**. Agreed.

The following members filed requests to have their names added as co-sponsors of Bills under rules previously suspended: **HB 13**, Representative Bratcher; **HB 293**, Representative Baugh; **HB 318**, Representative Stine; **HB 419**, Representatives Horlander, P. Clark; **HB 434**, Representative Marzian; **HB 519**, Representative Cave; **HB 532**, Representatives Collins, R. Adams, Alexander; **HB 612**, Representative Hoffman; **HB 654**, Representative Scott; **HB 676**, Representative Vincent; **HB 691**, Representatives Hatcher, Colter, Wayne.

Announcements

The following meetings were announced:

Natural Resources and Environment, February 24, 1998, 10:00 a.m.

Budget Review Subcommittee on Human Resources, February 24, 1998, Room 129, 12:30 p.m.

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., February 24, 1998.

On the roll call the vote was **Yeas 77**--J. Adams, R. Adams, Adkins, Alexander, Allen, Anderson, A. Arnold, J. Arnold, Barrows, Baugh, Bowling, Brandstetter, Bratcher, Bruce, D. Butler, D. D. Butler, Callahan, Cave, L. Clark, P. Clark, Coleman, Collins, Colter, Cox, Crenshaw, Crimm, Damron, Ford, Gee, Geveden, Gooch, D. Graham, G. Graham, Gray, Haydon, Hoffman, Hoover, Horlander, Jenkins, Johns, Jordan, Kerr, Lee, Lindsay, Marcotte, Marzian, Mason, McKee, Miller, Moberly, Murgatroyd, Napier, Nesler, Palumbo, Polston, Pope, Rader, Reinhardt, Richards, Riner, Scott, Siler, Simpson, Sims, Stacy, Stein, Stine, Thomas, Treesh, Turner, Vincent, Walton, Wayne, Weaver, Wilkey, Yonts, Zimmerman. **Nays 3**--Maricle, Nunn, Stewart.

The motion to adjourn was adopted.

TUESDAY, FEBRUARY 24, 1998

THIRTY-SECOND LEGISLATIVE DAY

The House was called to order by Speaker Richards.

Prayer by Reverend Chuck Ellestad, Church of the Ascension, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Lovell and Hoover.

Representative Ballard moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative Ballard moved that the reading of the Journal of February 23, 1998, be dispensed with and the same approved. Agreed.

Representative Ballard moved that the Rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Ballard moved that all properly filed co-sponsor requests be approved. Agreed.

Senate Message

Announcing passage of **SB 34, SB 75, SB 121, SB 142, SB 186, SB 221, SB 264** and **HB 172**. Message received on **HB 171**: The Senate has passed **HB 171** by way of Senate Committee Substitute and respectfully requests concurrence of this Honorable Body. (Time: 2:10 p.m.)

Representative Murgatroyd moved that the rules be suspended to grant floor privileges and to act upon a Legislative Citation. Agreed. Representative Murgatroyd moved the adoption of the following **Legislative Citation No. 106**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby honors Harold Ries as he retires after an extraordinary thirteen-year tenure as Mayor of Crestview Hills, Kentucky. This World War II veteran, a native of Campbell County and graduate of Newport High School, is a former longtime employee of Cincinnati Bell. Prior to his election as Mayor, he served for eight years as a member of the Fort Mitchell City Council and for three years on the Crestview Hills City Council, working diligently on behalf of the his constituents. As Mayor, Harold Ries attained many noteworthy accomplishments, reducing property taxes for nine consecutive years while increasing revenue by 300%, receiving an $800,000 grant for sidewalks, initiating a tree board program in the city as well as obtaining the only comprehensive tornado warning system in Northern Kentucky. His other distinctions include earning Crestview Hills' Hall of Fame honors from the Kentucky Chamber of Commerce and being elected to the National Mayor's Hall of Fame. His achievements are applauded both by the members of this body and by the citizens he served with such competence and integrity. The members of the Kentucky House of Representatives are honored to join Representative Richard Murgatroyd in paying tribute to Mayor Harold Ries for the outstanding service he has rendered the citizens of Crestview Hills and in extending to him sincere best wishes for a prosperous and fulfilling retirement. **Legislative Citation No. 106** was adopted without objection.

Representative D. Graham moved that the rules be suspended to grant floor privileges and to act upon Legislative Citations. Agreed. Representative D. Graham moved the adoption of the following **Legislative Citation No. 107**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes and honors Cody Nash for his outstanding efforts thus far as the 1997-98 National FFA Western Region Vice President. A freshman Agricultural Services and Development major at Tarleton University, this exceptional young citizen of the Commonwealth has worked with great diligence and honor as a member of the Future Farmers of America, serving as the 1996-97 Texas FFA Association First Vice President and as a member of the New Horizons Editorial Board. He attained the American FFA Degree, the organization's highest level of achievement for his supervised agricultural experience program in beef cattle, market swine and market goats. The members of this distinguished body are honored to join with Speaker Jody Richards in commending Cody Nash for his ambition and effort and in extending to him best wishes throughout his term as he travels over 100,000 miles promoting agricultural education and the FFA. **Legislative Citation No. 107** was adopted without objection.

Representative D. Graham moved the adoption of the following **Legislative Citation No. 108**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby honors and commends Hillary Smith 1997-98 National Future Farmers of America President. A junior Agricultural Economics major at the University of Georgia, Hillary Smith has been a long-standing officer of the FFA, serving as 1995-96 Georgia Association Vice President, and named a recipient of the American FFA Degree for her hands-on production of ferns and swine, as well as her placement experience in cotton production. This exemplary young citizen of the Commonwealth has received many high accolades reflecting her talent and ambition. She was the national winner in prepared public speaking, the state's winner in extemporaneous speaking, a member of the national winning nursery/landscape career development event team and earned a silver emblem in the national meats evaluation and technology career development event. The hard work and dedication that has been put forth by Hillary Smith is hereby applauded by Speaker Jody Richards and the members of this august body and furthermore, she is extended the very best of luck as she continues her efforts in office to promote agricultural education and the FFA. **Legislative Citation No. 108** was adopted without objection.

Representative D. Graham moved the adoption of the following **Legislative Citation No. 110**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby applauds Matthew Ingram son of Wendell and Sherry Ingram of Blevins Valley, Kentucky. The first state FFA officer from the Bath County chapter in fifteen years and the first state FFA President from Eastern Kentucky in nearly forty years, Matt Ingram has indeed attained a great honor with his election as state President. An exceptional student at Bath County High School, he has served as both regional and local president of his chapters for the past year and has attended many state conventions as an active member of the Licking River Region FFA chapter. Speaker Jody Richards and Representative Jim Lovell and the members of this distinguished body are pleased to join in recognizing the significant achievements of Matt Ingram and in wishing for him continued success as he carries out the duties of his post. **Legislative Citation No. 110** was adopted without objection.

Representative Nunn moved that the rules be suspended to grant floor privileges and to act upon a Legislative Citation. Agreed. Representative Nunn moved the adoption of the following **Legislative Citation No. 109**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes and honors Matt London son of Mr. and Mrs. Randy London of Cave City, Kentucky. Currently, the State Future Farmers of America Vice President, Matt London is a student at the University of Kentucky, College of Agriculture and has striven with great diligence throughout the course of his tenure to promote agricultural education and the FFA. This outstanding young farmer grew up on a diverse farm which raised tobacco, cattle and beef in Northern Barren County and has utilized the knowledge he acquired early on to better serve his peers and the officers and members of the FFA. The members of the Kentucky House of Representatives are pleased on this day to join Representative Stephen Nunn and Speaker Jody Richards in welcoming Matt London to the Capitol in Frankfort and in extending to him best wishes for success as he continues to ably serve the youth of this Commonwealth. **Legislative Citation No. 109** was adopted without objection.

Introduction of Bills and Resolutions

HB 698, by Representatives Jordan, Jenkins, Callahan, D. Butler, L. Clark, Hoffman, Marzian, and Palumbo: AN ACT relating to curfew violations.

HB 699, by Representatives R. Adams, Anderson, Nesler, A. Arnold, Brown, Stewart, Stumbo, Deskins, Adkins, Colter, Scott, and Collins: AN ACT relating to dogs.

HB 700, by Representative Kerr: AN ACT relating to the Public Service Commission.

HB 701, by Representative Clarke: AN ACT relating to local government insurance premium taxes and declaring an emergency.

HB 702, by Representative DeWeese: AN ACT relating to marriage.

HB 703, by Representatives DeWeese, L. Clark, and Cave: AN ACT relating to regulation of athlete agents.

HB 704, by Representative Damron: AN ACT relating to lease of real property for state use.

HB 705, by Representatives Wayne, Jordan and Heleringer: AN ACT relating to crimes and punishments.

HR 87, by Representative Rader: A RESOLUTION adjourning the House of Representatives in honor of Sergeant Randy Keith Brumback, law enforcement officer for the Kentucky Department of Fish and Wildlife Resources.

HR 88, by Representative Long: A RESOLUTION adjourning the House of Representatives in honor of Leadership Kentucky.

HJR 89, by Representative Brown: A JOINT RESOLUTION creating a Task Force on Utility Tax Policy to direct a comprehensive study of the taxation of public service companies that supply utility service to citizens of the Commonwealth, and making an appropriation therefor.

HR 90, by Representatives Mason, Deskins, and Rader: A RESOLUTION adjourning the House of Representatives in honor of the East Kentucky Youth Leadership Program.

Floor Amendments

Floor Amendment No. 2 to **SB 20**, by Representative Colter:

On page 6, after line 7, by adding the following section:

"Section 3. Whereas, the six month waiting period required for an instruction permit poses an undue hardship on individuals over the age of 21, especially when attempting to obtain employment, an emergency is declared to exist, and this Act shall become effective upon its passage and approval by the Governor, or upon its otherwise becoming a law."

Floor Amendment No. 3 Title to **SB 20**, by Representative Colter:

On page 1, by amending the title to read as follows:

"AN ACT relating to instruction permits and declaring an emergency."

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolution:

Agriculture and Small Business: **HB 680**

Appropriations and Revenue: **HB 685, HB 696**

Banking and Insurance: **HB 684, HB 688**

Cities: **HB 697**

Education: **HB 681, HB 683**

Health and Welfare: **HB 687**

Judiciary: **HB 689, HB 690, HB 691, HB 692, HB 693, HB 695**

Licensing and Occupations: **HB 686, HB 694**

Natural Resources and Environment: **SB 18**

State Government: **HB 682**

Transportation: **HR 86**

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bill has been posted for Committee consideration:

Labor and Industry: **SB 177**

Report of Committees

The Committee on Health and Welfare reported **HB 189**, with Committee Substitute and Committee Amendment attached thereto, **HB 410**, **HB 449**, with Committee Substitute attached thereto, **HB 468**, **HB 518**, and **HB 617** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 189, AN ACT relating to public health.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Employee" means any person employed by, or permitted to work for, a board of education, superintendent of schools, or a family resource center or youth services center as defined in KRS 156.497.

(b) "Health care services" means all procedures, tasks, and duties that relate to the diagnosis, treatment, medication, therapy, or rehabilitation of any physical or mental ailment, disease, injury, infirmity, impairment, disorder, or disability, which may be performed pursuant to licenses, certificates, or permits issued by an agency or board of the Commonwealth of Kentucky.

(c) "Person" means any individual, firm, organization, committee, partnership, association, corporation, company, trust, governmental unit, or other legal entity.

(2) No board of education, superintendent of schools, or school administrator shall require, direct, authorize, or allow

an employee to perform health care services unless and until that employee has been properly licensed, certified, or permitted to perform those health care services by an appropriate licensing agency or board of the Commonwealth of Kentucky; however, a licensed registered nurse may teach, delegate, and supervise the provision of health care services by an unlicensed person if, in the judgment of the delegating nurse, the service may be properly and safely performed by the delegated person.

Section 2. KRS 211.990 is amended to read as follows:

(1) Any owner or occupant who fails to comply with an order made under the provisions of KRS 211.210 shall be guilty of a violation, and each day's continuance of the nuisance, source of filth, or cause of sickness, after the owner or occupant has been notified to remove it, shall be a separate offense.

(2) Except as otherwise provided by law, anyone who fails to comply with the provisions of the rules and regulations adopted pursuant to this chapter or who fails to comply with an order of the cabinet issued pursuant thereto shall be guilty of a violation. Each day of such violation or noncompliance shall constitute a separate offense.

(3) Any person who violates any provision of KRS 211.182 shall, upon first offense, be guilty of a Class A misdemeanor. Each subsequent violation of any provision of KRS 211.182 shall constitute a Class D felony.

(4) Any person who violates any provision of KRS 211.842 to 211.852 or any regulation adopted hereunder or any order issued by the Cabinet for Human Resources to comply with any provision of KRS 211.842 to 211.852 or the regulations adopted thereunder shall be guilty of a Class A misdemeanor. Each day of violation or noncompliance shall constitute a separate offense.

(5) Any person who violates KRS 211.962 or any rule or regulation of the Cabinet for Human Resources adopted pursuant to KRS 211.962 to 211.968 shall be guilty of a Class A misdemeanor.

(6) A private review agent which performs utilization review without proper registration pursuant to KRS 211.461 to 211.466 shall be guilty of a Class A misdemeanor.

(7) Any properly registered private review agent which willfully violates any provision of KRS 211.461 to 211.466 or of the regulations shall be guilty of a Class D felony.

(8) A person who performs or offers to perform lead-hazard detection or lead-hazard abatement services in target housing or child-occupied facilities who is not certified as required by KRS 211.9063 or 211.9069 shall be guilty of a Class A misdemeanor.

(9) Any person who performs lead-hazard detection or lead-hazard abatement services in target housing or child-occupied facilities, who willfully violates the standards for performing lead-hazard detection or lead-hazard abatement procedures included in the administrative regulations promulgated pursuant to KRS 211.9075 shall be guilty of a Class D felony.

(10) The penalties provided in subsections (6), (7), (8), and (9) of this section are cumulative and are in addition to any other penalties, claims, damages, or remedies available at law or in equity.

(11) Any person who violates any provisions of KRS 211.760 shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100). Each day of violation or noncompliance shall constitute a separate offense.

(12) Any person who violates any provision of Section 1 of this Act shall, upon first offense, be guilty of a Class A misdemeanor. Each subsequent violation of any provision of Section 1 of this Act shall constitute a Class D felony.

The Committee Substitute to **HB 189** is as follows:

AN ACT relating to public health.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Legislative Research Commission is directed to establish a seven (7) member task force to study the nature and extent of the provision of health care services to children in public elementary and secondary schools by school personnel who are not licensed, certified, or permitted to perform those health care services. The Legislative Research Commission shall appoint one (1) member of the House of Representatives and one (1) member of the Senate to serve as members and co-chairs of the task force.

Section 2. The task force shall submit an interim report to the Legislative Research Commission no later than August 1, 1999, and a final report of any findings and recommendations to the year 2000 Regular Session of the General Assembly, at which time the task force shall cease to exist.

Section 3. Staff services to be utilized in completing the work of the task force are estimated to cost $12,500. These staff services shall be provided from the regular Commission budget and are subject to the limitations and other research responsibilities of the Commission.

The Committee Amendment No. 1 Title to **HB 189** is as follows:

By amending the title to read as follows: "AN ACT relating to the establishment of a task force to study the nature and extent of the provision of health care services to children in school by school personnel who are not licensed, certified, or permitted to perform those health care services."

HB 410, AN ACT relating to warranties for new assistive devices.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 151B IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 8 of this Act, unless the context indicates otherwise:

(1) "Individual with disabilities" means any individual who is considered to have a mental or physical disability, impairment, or handicap for purposes of any other law of this state or of the United States, including any rules or regulations thereunder.

(2) "Assistive device" means any item, device, piece of equipment, or product system or component thereof, including a demonstrator, that is designed and used to increase, maintain, or improve functional capabilities of individuals with disabilities in the areas of seeing, hearing, speaking, walking, breathing, performing manual tasks, learning, caring for oneself, or working. The term includes, but is not limited to:

(a) Manual wheelchairs;

(b) Motorized wheelchairs;

(c) Motorized scooters;

(d) Other aids that enhance the mobility of an individual;

(e) Hearing aids;

(f) Assistive listening devices;

(g) Other aids that enhance an individual's ability to hear or communicate;

(h) Voice-synthesized computer modules;

(i) Optical scanners;

(j) Talking software;

(k) Braille printers;

(l) Large print materials;

(m) Other devices that enhance an individual's ability to access print or communicate;

(n) Other devices such as environmental controls;

(o) Adaptive transportation aids;

(p) Communication boards; and

(q) Modified environments.

(3) "Assistive device dealer" means a person who is in the business of selling new assistive devices.

(4) "Assistive device lessor" means a person who leases new assistive devices to consumers, or who holds the lessor's rights, under a written lease.

(5) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the cost of sales tax and of obtaining an alternative assistive device.

(6) "Consumer" means any person, including a public agency or other private organization, who acquires an assistive device on behalf of or for the benefit of an individual with a disability who:

(a) Purchases an assistive device from an assistive device manufacturer, its agent, or authorized dealer for purposes other than resale;

(b) Obtains or otherwise receives an assistive device for purposes other than resale, provided the transfer occurs before the expiration of an express warranty applicable to the assistive device;

(c) Possesses the right to enforce the express warranty; or

(d) Leases an assistive device from an authorized assistive device lessor under a written lease.

(7) "Demonstrator" means an assistive device used primarily for the purpose of demonstration to the public.

(8) "Early termination cost" means an expense or obligation that an assistive device lessor incurs as a result of both the termination of a written lease before the termination date set forth in that lease, and the return of an assistive device to the manufacturer. The term includes any penalty for prepayment under a finance arrangement.

(9) "Early termination savings" means an expense or obligation that an assistive device lessor avoids as a result of both

the termination of a written lease before the termination date set forth in that lease and the return of an assistive device to the manufacturer. The term includes an interest charge that the assistive device lessor would have paid to finance the assistive device or, if the assistive device lessor does not finance the assistive device, the difference between the total period of the lease remaining after the early termination and the present value of that amount at the date of the early termination.

(10) "Manufacturer" means a person who manufactures or assembles assistive devices including agents of that person, an importer, a distributor, a factory branch, distributor branch, and any warrantors of the manufacturer's assistive device, but does not include an assistive device dealer or an assistive device lessor.

(11) "Nonconformity" means a specific condition or generic defect or malfunction, or a defect or condition of a component of the assistive device that substantially impairs the use, value, or safety of an assistive device, and that is covered by an express warranty applicable to the assistive device or to a component of the assistive device, but does not include:

(a) A condition of the device that is the result of abuse, neglect, unauthorized modification, or alteration of the assistive device by the consumer.

(b) A condition of the device that is the result of normal use which may be resolved through a fitting or other routine adjustment, proper preventative maintenance, or care in accordance with written instructions provided with the assistive device.

(12) "Reasonable attempt to repair" means any of the following occurring within the term of an express warranty applicable to a new assistive device:

(a) The new assistive device has been subject to repair two (2) or more times, for the same nonconformity, by the manufacturer, its agent, or authorized assistive device dealer or lessor, and the nonconformity continues; or

(b) The assistive device is out of service for an aggregate of at least thirty (30) cumulative calendar days because of warranty nonconformities. The thirty (30) days shall begin upon the day the consumer first makes the assistive device available for repair to the manufacturer, its agent, or authorized dealer or lessor.

SECTION 2. A NEW SECTION OF KRS CHAPTER 151B IS CREATED TO READ AS FOLLOWS:

(1) A manufacturer who sells or leases a new assistive device to a consumer, either directly or through an assistive device dealer or lessor, shall expressly warrant that the assistive device shall be free of any condition, defect, or malfunction which substantially impairs the use, value, or safety of the assistive device for a period of one (1) year after first possession of the assistive device by the consumer.

(2) If a manufacturer fails to furnish an express warranty as required by this section, the assistive device shall be covered by an express warranty as if the manufacturer had furnished an express warranty to the consumer as required by this section.

(3) Nothing in Sections 1 to 8 of this Act shall limit the ability of the manufacturer or any dealer or lessor from providing additional warranties on assistive devices nor limit or affect any other warranties applicable to assistive devices, whether implied or expressed.

SECTION 3. A NEW SECTION OF KRS CHAPTER 151B IS CREATED TO READ AS FOLLOWS:

If a new assistive device does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, its agent, or authorized dealer or lessor within one (1) year after first possession of the assistive device by the consumer, the manufacturer, its agent, or authorized dealer or lessor shall make repairs necessary to conform the assistive device to the warranty, whether or not the repairs are made after one (1) year from the date of first possession of the assistive device by the consumer. Repairs made under warranty shall be made at no charge to the consumer.

SECTION 4. A NEW SECTION OF KRS CHAPTER 151B IS CREATED TO READ AS FOLLOWS:

(1) If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall carry out, at the option of the consumer, the requirements under paragraph (a) or (b) of this subsection.

(a) To provide for refunds, at the request of the consumer, the manufacturer shall do one (1) of the following:

1. Accept return of the assistive device and refund to the consumer and to any holder of a perfected security interest in the consumer's assistive device, as the interest may appear, the full purchase price including any finance charge paid by the consumer at the point of sale, plus collateral costs, less a reasonable allowance for use; or

2. Accept return of the assistive device, refund to the assistive device lessor and to any holder of a perfected security interest in the assistive device, as the interest may appear, the current value of the written lease and refund to the consumer the amount that the consumer paid under the written lease plus collateral costs, less a reasonable allowance for use.

(b) To receive a comparable new assistive device to that having the nonconformity or a refund, the consumer

shall offer to transfer possession of the nonconforming assistive device to its manufacturer. No later than thirty (30) days after that offer, the manufacturer shall provide the consumer with the comparable assistive device or a refund. When the manufacturer provides the comparable new assistive device or the refund, the consumer shall return the assistive device having the nonconformity to the manufacturer, along with any endorsements necessary to transfer legal possession to the manufacturer.

(2) If, after a reasonable attempt to repair, the nonconformity is not repaired, an assistive device lessor shall receive a refund from the manufacturer. To receive a refund, the assistive device lessor shall offer to transfer possession of a nonconforming assistive device to its manufacturer. No later than thirty (30) days after that offer, the manufacturer shall provide the refund to the assistive device lessor. When the manufacturer provides the refund, the assistive device lessor shall provide to the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.

(3) Under this section, the current value of the written lease equals the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the assistive device dealer's early termination costs and the value of the assistive device at the lease expiration date, if the lease sets forth that value, less the assistive device lessor's early termination savings.

(4) Under this section, a reasonable allowance for use may not exceed the amount obtained by multiplying the total amount paid by the consumer under a purchase or for which the consumer is obligated under a written lease by a fraction, the denominator of which is one thousand eight hundred twenty-five (1,825), which is the number of days in a five (5) year period, and the numerator of which is the number of days that the consumer used the assistive device before first reporting the nonconformity to the manufacturer, assistive device lessor, or assistive device dealer.

(5) No person may enforce the lease against the consumer after the consumer receives a refund.

SECTION 5. A NEW SECTION OF KRS CHAPTER 151B IS CREATED TO READ AS FOLLOWS:

No assistive device returned by a consumer or assistive device lessor in this state or returned in another state as a result of a nonconformity to a warranty may be sold or leased in this state unless full disclosure of the reason for return is made to a prospective buyer or lessee.

SECTION 6. A NEW SECTION OF KRS CHAPTER 151B IS CREATED TO READ AS FOLLOWS:

(1) Whenever an assistive device covered by a manufacturer's express warranty is tendered by a consumer to the dealer from whom it was purchased or exchanged for the repair of a defect, malfunction, or nonconformity to which the warranty is applicable, and at least one (1) of the following conditions exists, the manufacturer shall provide directly to the consumer for the duration of the repair period, a comparable replacement assistive device or a rental assistive device reimbursement to pay for the cost incurred by the consumer for renting a comparable replacement assistive device. The applicable conditions are as follows:

(a) The repair period exceeds ten (10) working days, including the day on which the device is tendered to the dealer for repair; or

(b) The defect, malfunction, or nonconformity is the same one for which the assistive device has been tendered to the dealer for repair on at least two (2) previous occasions.

(2) This section applies for the period of the manufacturer's express warranty or the period prescribed in subsection (2) of Section 2, whichever is greater, whether or not the repairs extend beyond that period.

SECTION 7. A NEW SECTION OF KRS CHAPTER 151B IS CREATED TO READ AS FOLLOWS:

(1) In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of Sections 1 to 8 of this Act in a court of appropriate jurisdiction in the county where the consumer resides or where the manufacturer resides or has its principal place of business. The court shall award a consumer who prevails in such an action the amount of any pecuniary loss, together with costs, disbursements, and reasonable attorney's fees, and any equitable relief the court determines is appropriate.

(2) Sections 1 to 8 of this Act shall not be construed to limit rights or remedies available to the consumer under any other law, and the remedies provided under Sections 1 to 8 of this Act are inclusive and in addition to any other remedies provided by law.

(3) Any agreement entered into by a consumer which waives, limits, or disclaims the rights set forth in Sections 1 to 8 of this Act shall be void as contrary to public policy.

SECTION 8. A NEW SECTION OF KRS CHAPTER 151B IS CREATED TO READ AS FOLLOWS:

Sections 1 to 8 of this Act may be cited as the "Kentucky New Assistive Device Warranty Act."

HB 449, AN ACT relating to children in placement.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "State agency child" or "state agency children" means "state agency children" defined in KRS 158.135;

(b) "School or educational facility" means any public school, private school, day treatment center, or any other public or private entity that provides educational services to state agency children; and

(c) "Educational passport" means a standard form completed by a school or educational facility which a state agency child is leaving which provides a receiving school or facility with basic demographic and academic information about the state agency child.

(2) When the placement of a state agency child is changed and the state agency child must transfer from one school or educational facility to a different school or educational facility, the school or educational facility that the state agency child is leaving shall, within two (2) days of the state agency child leaving, prepare an educational passport for the child, which shall be delivered to the Cabinet for Human Resources or the Department of Juvenile Justice. The Cabinet for Human Resources or the Department of Juvenile Justice shall, within two (2) days of enrolling a state agency child in a new school or educational facility, present the educational passport to the receiving school or educational facility.

(3) A standard educational passport form shall be developed by the Kentucky Department of Education in consultation with the Cabinet for Human Resources and the Department of Juvenile Justice. The Kentucky Department of Education shall make the form available to all schools or educational facilities serving state agency children.

SECTION 2. A NEW SECTION OF KRS CHAPTER 600 IS CREATED TO READ AS FOLLOWS:

(1) For the purposes of this section:

(a) A child is deemed to need extraordinary services if the child is mentally or emotionally ill or has symptoms of mental or emotional illness and requires medical attention, and the child's parent, guardian, or other person exercising custodial control or supervision over the child is unable to provide for the required treatment, care, or supervision of the child, and:

1. The inability is due primarily to the lack of financial means of the child's parent, guardian, or other person exercising custodial control or supervision unless assistance has been offered and rejected;

2. The child's parent, guardian, or other person exercising custodial control or supervision has made a reasonable effort under the circumstances to meet the needs of the child;

3. The inability is not due to a willful act of commission or act of omission by the child's parent, guardian, or other person exercising custodial control or supervision ; and

4. Commitment is not opposed by the parent, guardian, or other person exercising custodial control or supervision ; and

(b) A child is deemed to need protection if the court determines the child is a dependent, abused, or neglected child and the needs of the child do not meet the definition of a child in need of extraordinary services.

(2) For children committed under KRS 620.140 after the effective date of this Act, the court shall designate in the court order of commitment and the cabinet shall document in the official case file records showing whether the commitment is due to the child needing protection or the child needing extraordinary services.

SECTION 3. A NEW SECTION OF KRS CHAPTER 605 IS CREATED TO READ AS FOLLOWS:

(1) The cabinet, the Department of Juvenile Justice, and the Kentucky Department of Education shall provide information to the individuals and entities contracting with the cabinet and the Department of Juvenile Justice to provide services and care to children committed to the cabinet or the Department of Juvenile Justice necessary to provide adequate care and services to the committed children they are serving. The cabinet, the Department of Juvenile Justice, and the Kentucky Department of Education shall develop a process that will result in the provision and transfer of information as required by Sections 1, 5, 6, 7, 16, and 17 of this Act and this section in a timely and efficient manner, including:

(a) Medical passport or history;

(b) Educational passport;

(c) Treatment history; and

(d) Current case plan.

If action by a court is necessary to obtain or release information that the cabinet or the Department of Juvenile Justice deems necessary for the provision of care or services to a committed child, then the cabinet or Department of Juvenile Justice, as the case may be, shall promptly petition the court for permission to receive or release the

necessary information.

(2) If the cabinet, the Department of Juvenile Justice, or a school or educational facility as defined in Section 1 of this Act fails to provide necessary information within the time frames established by Sections 1, 4, 5, and 6 of this Act and this section, the person, agency, or entity providing care or services to a child may petition the court having jurisdiction over the child to hold a hearing, at which time the court, if the request for hearing is granted, shall require the cabinet, the Department of Juvenile Justice, or the school or educational facility as defined in Section 1 of this Act to show cause as to why it has not provided the necessary information in a timely manner.

Section 4. KRS 605.110 is amended to read as follows:

(1) Unless provided otherwise, when any child committed to the Department of Juvenile Justice or the cabinet requires medical or surgical care or treatment, the Department of Juvenile Justice or the cabinet may provide the same or arrange for the furnishing thereof by other public or private agencies, and may give consent to the medical or surgical treatment. For this purpose, the services and facilities of local health officers and departments shall be made available to the Department of Juvenile Justice or the cabinet, and as far as practicable, any publicly-owned hospital shall provide hospitalization without charge for any such child who is a resident of the political subdivision by which the hospital is owned or operated. This section does not authorize nor shall permission be granted for abortion or sterilization.

(2) Any child placed in a foster home by an agency duly authorized in KRS Chapter 620 to place a child in a foster home shall receive a complete medical, visual, and dental examination by a professional authorized by the Kentucky Revised Statutes to conduct such examinations. Arrangements for a child placed in a foster home to receive such examinations shall be made within two (2) weeks of his placement in a foster home and not less than every twelve (12) months thereafter.

(3) Children maintained in any of the facilities and programs operated or contracted by the Department of Juvenile Justice or the cabinet shall, so far as possible, receive a common school education.

(a) The Kentucky Educational Collaborative for State Agency Children shall be established to serve children in facilities and programs operated or contracted by the Department of Juvenile Justice or the Cabinet for Human Resources Residential, Day Treatment, Clinical, and Group Home programs. All policies and procedures necessary to educate state agency children shall be approved by the Kentucky Board of Education. All duties, responsibilities, rights, and privileges specifically imposed on or granted to the local education administration units shall be imposed on or granted to the Department of Juvenile Justice or the Cabinet for Human Resources and contracted agencies with regard to educating agency children. Classrooms for the Kentucky Educational Collaborative for State Agency Children shall be within or near the facilities and programs operated or contracted by the Department of Juvenile Justice or the cabinet. The Kentucky Department of Education, the Department of Juvenile Justice, and the Cabinet for Human Resources, Department for Social Services, shall develop a biennial plan regarding the educational needs and provisions of educational programs, with emphasis on the coordination of all treatment services and funds available to provide for the education of state agency children.

(b) Teachers and other staff shall be hired on contract through a local school district or if the local school district is not willing to participate, teachers shall be hired by the Kentucky Educational Cooperative for State Agency Children. All certified educational staff of the Kentucky Educational Cooperative for State Agency Children shall be members of the Kentucky Teachers' Retirement System.

(c) Beginning July 1, 1993, the Kentucky Education Collaborative for State Agency Children shall be financed through:

1. The amount generated by state agency children under the Support Education Excellence in Kentucky program as provided in KRS 157.360 for the guaranteed base and adjustments for the number of at-risk students, exceptional students, and transportation costs;
2. A per pupil distribution of professional development funds with the collaborative serving as a consortium for state agency children pursuant to KRS 156.0951;
3. A per pupil distribution of technology funds in accordance with the state education technology plan pursuant to KRS 156.670 and the formula for the distribution of funds to local school districts;
4. A per pupil distribution of textbook funds pursuant to KRS 157.100 and 157.190;
5. The funding for school services for state agency children authorized by KRS 158.135; and
6. Other grants and entitlements, including federal funds, identified in the implementation plan developed pursuant to paragraph (e) of this subsection for the education of Kentucky's children.

(d) The commissioner of Juvenile Justice and the secretary of the Cabinet for Human Resources shall promulgate administrative regulations, pursuant to KRS Chapter 13A, with the assistance of the Kentucky Department of Education and upon recommendation of the Kentucky Board of Education regarding the governance, curriculum, and other topics necessary to educate state agency children. The regulations shall:

1. Provide for the development and implementation of interagency agreements that:

a. Define the financial responsibility of each state and local agency for providing services to state agency children;

b. Establish procedures for resolving interagency disputes among agencies that are parties to the agreements; and

2. Provide procedures for the implementation of the Kentucky statutes regarding school-based decision making, student outcomes, accountability, assessment, rewards and sanctions, technology, staff development, salaries, and the development of coordinated individual treatment, education, and transition plans to ensure compliance with present education and treatment laws and regulations specific to the needs of children in the programs of the Cabinet for Human Resources.

(e) ***When the placement of a state agency child is changed so that the state agency child must transfer from one school or educational facility to a different school or educational facility, the school or educational facility that the state agency child is leaving shall, within two (2) days of the state agency child leaving, prepare an educational passport for the child, which shall be delivered to the cabinet or the Department of Juvenile Justice. The cabinet or the Department of Juvenile Justice shall, within two (2) days of enrolling a state agency child in a new school or educational facility, present the educational passport to the receiving school or educational facility.***

(f) The commissioner of Juvenile Justice and the secretary of the Cabinet for Human Resources and the commissioner of the state Department of Education shall initiate development of a plan for implementation of the Kentucky Educational Collaborative for State Agency Children.

Section 5. KRS 605.090 is amended to read as follows:

(1) Unless precluded by law, any child committed to the Department of Juvenile Justice or the cabinet may by the decision of the Department of Juvenile Justice or the cabinet or its designee, at any time during the period of his commitment, be:

(a) Upon fourteen (14) days' prior written notice to the court, discharged from commitment. Written notice of discharge shall be given to the committing court and to any other parties as may be required by law;

(b) Placed in the home of his parents, a suitable foster home, or boarding home, upon such conditions as the Department of Juvenile Justice or the cabinet may prescribe and subject to visitation and supervision by a family service worker or juvenile probation and parole officer. At the time a committed child is placed in the home of his parents by the Department of Juvenile Justice or the cabinet, the parents shall be informed in writing of the conditions of the placement and the criteria that will be used to determine whether removal is necessary;

(c) Placed in one (1) of the facilities or programs operated by the Department of Juvenile Justice or the cabinet, except that no child committed under the provisions of KRS 610.010(1)(b), (c), or (d) or any child ten (10) years of age or under shall be placed in a facility operated by the Department of Juvenile Justice for children adjudicated as public offenders;

(d) Placed in a child-caring facility operated by a local governmental unit or by a private organization willing to receive the child, upon such conditions as the cabinet may prescribe;

(e) Treated as provided in KRS Chapter 645;

(f) Following the transfer or placement of a child pursuant to subsections (b), (c), (d), or (e) of this section, the Department of Juvenile Justice or the cabinet shall, within fourteen (14) days, excluding weekends and holidays, give written notice to the court of the transfer, the placement, and the reasons therefor.

(2) If a child committed to the cabinet as dependent, neglected, or abused is placed in the home of his parents, the child shall not be removed except in accordance with the following standards and procedures:

(a) If the family service worker believes that the committed child continues to be dependent, neglected, or abused, but immediate removal is unnecessary to protect the child from imminent death or serious physical injury, the casework situation and evidence shall be reviewed with his supervisor to determine whether to continue work with the family intact or to remove the child. There shall be documentation that the family service worker, prior to the court hearing, made an effort to contact the parents to inform them of the specific problems that could lead to removal so they have an opportunity to take corrective action. If the parents are unavailable or do not respond to attempts to communicate, the specific circumstances shall be documented;

(b) If it appears that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm and there is not reasonably available an alternative less drastic than removal of the child from the home, the cabinet shall petition the District Court to review the commitment pursuant to KRS 610.120 in relation to the cabinet's intention to remove the child from the parent's home. The petition shall set forth the facts which constitute the need for removal of the child. The court shall serve notice of the petition and the time and place of the hearing on the parents; however, the family service worker shall also contact the parents to ensure that they received the notice and are aware of the right to be represented by counsel. If the parents' whereabouts are unknown, notice may be mailed to the last known address of an adult who is a near relative. If the court fails to find that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall not be removed from the parents' home;

(c) If a family service worker finds a committed, unattended child who is too young to take care of himself, the family service worker shall make reasonable efforts to arrange for an emergency caretaker in the child's home until the parents return or fail to return within a reasonable time. If no in-home caretaker is available for the child, the family service worker shall request any appropriate law enforcement officer to take the child into protective custody. If, after a reasonable time, it appears the child has been abandoned, the cabinet shall petition the District Court to review the case; or

(d) If there exist reasonable grounds to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents are unable or unwilling to protect the child, the family service worker shall, with the assistance of a law enforcement officer, immediately remove the child prior to filing a petition for review. Within seventy-two (72) hours after the removal, the cabinet shall file a petition for review in District Court pursuant to KRS 610.120 with a request for an expeditious hearing. If the court fails to find that the child's health or welfare or physical, mental or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall be returned to the parents' home.

(3) The cabinet or the Department of Juvenile Justice, as appropriate, shall notify the juvenile court of the county of placement with the conditions of supervised placement of each child placed in that county from one (1) of the residential treatment facilities operated by the Department of Juvenile Justice or the cabinet. Notice of the conditions of such placement may be made available by the court to any law enforcement agency.

(4) The person in charge of any home to which a child is probated, and the governing authority of any private facility or agency to which a child is committed, shall make such reports to the court as the court may require, and such reports as the Department of Juvenile Justice or the cabinet may require in the performance of its functions under the law. The Department of Juvenile Justice or the cabinet shall have the power to make such visitations and inspections of the homes, facilities, and agencies in which children who have committed public offenses have been placed as it deems necessary to carry out its functions under the law.

(5) ***The Department of Juvenile Justice or the cabinet shall provide a written transfer summary to the person in charge of any foster home or any governing authority of any private facility or agency in which the Department of Juvenile Justice or the cabinet has placed a child. The written summary shall include, at a minimum, demographic information about the child, a narrative statement detailing the child's prior placements, the length of time the child has been committed, a description of the services and assistance provided to the child or the child's family since the most current case plan, a copy of all treatment records, a copy of the current case plan for the child and the child's family, and a copy of the child's medical and educational passport, if available, provided that no information shall be provided that violates any statutory confidentiality requirements. The transfer summary shall be provided by the Department of Juvenile Justice if it is responsible for the child, or the cabinet if it is responsible for the child, within seven (7) days of the placement of the child with the person, agency, or facility providing care to the child.***

(6) The Department of Juvenile Justice may assist the courts in placing children who have committed public offenses in boarding homes, and, under agreements with the individual courts, may assume responsibility for making such placements. Counties may pay or contribute towards the expenses of maintaining such children and, to the extent authorized by the fiscal court, the Department of Juvenile Justice may incur obligations chargeable to the county for such expenses.

Section 6. KRS 620.145 is amended to read as follows:

(1) Within sixty (60) days of the commitment date of a child due to abuse, neglect, or dependency, the Cabinet for Human Resources shall provide the court with jurisdiction an assessment of the child to determine:

(a) The child's current and historical educational functioning;

(b) The child's emotional and behavioral functioning; and

(c) The extent to which the child's life experiences and circumstances of commitment have created a disabling condition requiring special educational programming or other services to provide the child an appropriate public education.

(2) Upon discerning of an emotional, behavioral, or other disabling condition with negative impact upon a child's educational experience, the Cabinet for Human Resources as guardian of the child shall ensure that whatever services necessary are obtained to allow the child the benefit of a free, appropriate public education.

(3) Services required to allow the child a free, appropriate public education shall be limited to those required under Section 504 of Public Law 93-112, Public Law 94-142, or other federal statutes affecting children with emotional or behavioral disabilities.

(4) The Cabinet for Human Resources shall include activities undertaken to ensure a child committed to the Cabinet for Human Resources receives adequate public education in the six (6) month case progress report required by KRS 620.240.

(5) Any child removed from his home due to abuse, neglect, or dependency and placed in the least restrictive appropriate placement available shall, for the purposes of acquiring an appropriate public education, be considered a resident of the school district where the placement occurs.

(6) The Cabinet for Human Resources shall provide a copy of the assessment required by subsection (1) of this section to the foster parent, or other agency or entity providing residential care to a committed child, within five (5) days of filing the assessment with the court.

Section 7. KRS 610.120 is amended to read as follows:

(1) Except as otherwise provided by KRS Chapter 635, an order of commitment or an order of protective supervision or probation made by the court in the case of a child may be reviewed, continued, or terminated at any time prior to expiration on the court's own initiative or on motion by:

(a) A child who is affected by an order of juvenile session of District Court;

(b) The family, custodian, guardian, or legal representative of such a child;

(c) ***The Department of Juvenile Justice or the cabinet;***

(d) The county attorney of the county in which the committing court presides; or

(e)[~~(d)~~]Any other person having an interest in the welfare of the child.

(2) Grounds for such action may include but are not limited to allegations that there has been a substantial change of material circumstances, there exists new evidence affecting the disposition of the child, the child is no longer in need of commitment, probation, or placement, the child has not responded to or benefited from treatment or the child has not received adequate and proper treatment, the original proceedings were not conducted in the manner required by law or the public interest requires termination of the order. Upon review of the child's case, the cabinet, any agency, facility or individual responsible for the supervision, care or treatment of the child, shall divulge and communicate such information regarding the child as the court may require.

(3) Except as otherwise provided by KRS Chapter 640 relating to youthful offenders, and KRS 610.110, 620.140, 635.060, or 635.090 relating to extending commitment beyond the age of eighteen (18), an order of commitment, temporary custody, or an order of protective supervision or probation made by the court in the case of a child shall be terminated when the child attains the age of eighteen (18). At least fourteen (14) days prior to the committed child's eighteenth birthday, the Department of Juvenile Justice or the cabinet shall prepare a summary of the information concerning the child and submit it with written notification to the committing court that a child's commitment is due to expire.

Section 8. KRS 605.120 is amended to read as follows:

(1) The cabinet is authorized to expend available funds to provide for the board, lodging***,*** and care of children placed by the cabinet in a foster home or boarding home, or may arrange for payments or contributions by any local governmental unit, or public or private agency or organization, willing to make payments or contributions for such purpose. The cabinet may accept any gift, devise***,*** or bequest made to it for its purposes.

(2) The cabinet shall establish a reimbursement system for foster parents that comes as close as possible to meeting the actual cost of caring for foster children. The cabinet shall consider providing additional reimbursement for foster parents who obtain additional training, and foster parents who have served for an extended period of time. In establishing a reimbursement system, the cabinet shall also address the additional cost associated with providing care to children with exceptional needs.

(3) The cabinet shall review reimbursement rates paid to foster parents on a biennial basis and shall issue a report in October of each odd-numbered year to the Legislative Research Commission comparing the rates paid by Kentucky to the figures presented in the Expenditures on Children by Families Annual Report prepared by the United States Department of Agriculture and the rates paid to foster parents by other states. To the extent that funding is available, reimbursement rates paid to foster parents shall be increased on an annual basis to reflect cost of living increases.

(4) The cabinet is encouraged to develop pilot projects both within the state system and in collaboration with private child caring agencies to test alternative delivery systems and nontraditional funding mechanisms. Pilot projects may include but not be limited to kinship care.

Section 9. KRS 610.125 is amended to read as follows:

(1) If a child has been removed from the home and placed in the custody of the Department of Juvenile Justice or the cabinet, a judge of the District Court shall conduct a dispositional review hearing no later than ***twelve (12)***[~~eighteen (18)~~] months after custody is given to the cabinet, and ***every twelve (12) months***[~~annually~~] thereafter if custody and out-of-

home placement continues, to determine the future status of the child. The court shall address the following areas:

(a) If parental rights have not been terminated, whether the child should be returned to the parent;

(b) Whether the child should continue in out-of-home care for a specified period of time;

(c) Whether the child should be placed for adoption; and

(d) Whether special circumstances indicate that the child's needs can best be met by continuation in out-of-home care on a permanent or long-term basis.

(2) The Department of Juvenile Justice or the cabinet shall inform the court not less than sixty (60) days prior to the expiration of the time in which the hearing shall be held and within the time established in subsection (1) of this section. The court shall set a time for the hearing and notify the child's parent***, court-appointed special advocate, attorney for the child, attorney for the parent, if any,*** and the Department of Juvenile Justice or the cabinet.

(3) The Department of Juvenile Justice or the cabinet shall present evidence to the court concerning the care and progress of the child since the last dispositional hearing, including the following:

(a) The length of time the child has been committed to the Department of Juvenile Justice or the cabinet;

(b) The number, location, and date for each placement during the total period of the child's commitment;

(c) A description of the services and assistance provided to the parent or arranged by the Department of Juvenile Justice or the cabinet since the last case permanency plan or case progress report, and the results achieved;

(d) A description of the efforts and progress of the child's parent since the last case permanency plan and case progress report, including the number and dates of parental visits and the extent, quality, and frequency of the parent's communication with the child;

(e) The familial and institutional barriers to:

1. Returning the child to the home;

2. Ending the commitment of the child to the Department of Juvenile Justice or the cabinet; and

3. Delivery of appropriate services needed by the child;

(f) Recommendations of services needed to make the transition from out-of-home care to independent living for children who have reached the age of sixteen (16) years;

(g) An evaluation of the child's current placement and services provided to the child;

(h) Recommendations for necessary services required to terminate the commitment of the child to the cabinet, to return the child home, or to facilitate another permanent placement; and

(i) Recommendations as to the permanency goal for the child.

(4) The child's parent***, attorney for the parent, attorney for the child, or court-appointed special advocate, if deemed appropriate by the court,*** may present any evidence relevant to the determination of a permanency goal for the child.

(5) Upon conclusion of the hearing the court shall make a written determination regarding a plan of transitional independent living services if the child has reached the age of sixteen (16) years, and the most appropriate permanency goal if the child has not reached the age of sixteen (16) years.

Section 10. KRS 620.290 is amended to read as follows:

(1) The local foster care review board shall submit to the court within fourteen (14) days of the six (6) month review its findings and recommendations. The findings and recommendations for each child under review shall include but need not be limited to:

(a)[~~(1)~~] Whether there is a plan for permanence;

(b)[~~(2)~~] Whether the plan is progressing; and

(c)[~~(3)~~]The appropriateness of the current placement or plan for permanence. ***If the local foster care review board determines that a current placement or plan for permanence is inappropriate, a separate notification shall be provided to the court, and the cabinet which shall summarize the position of the local foster care review board, the response of the cabinet, if any, to the concerns expressed by the local foster care review board, and any action proposed by the local foster care review board.***

(2) The local foster care review board shall submit to the court, with a copy to the cabinet, within fourteen (14) days of each meeting of the board, a list of each case reviewed in which a child has been moved three (3) or more times within a six (6) month period. The list shall include the name of the case, the court number, if available, the cabinet case number, the age, sex, and race of the child, and the number of moves that have occurred.

Section 11. KRS 620.320 is amended to read as follows:

The duties of the State Foster Care Review Board shall be to:

(1) Establish, approve, and provide training programs for local foster care review board members;

(2) Review and coordinate the activities of local foster care review boards;

(3) Establish reporting procedures to be followed by the local foster care review boards and ***publish an annual written report compiling data reported by local foster care review boards which shall include statistics relating, at a minimum, to the following:***

- ***(a) How the needs of children are being met;***
- ***(b) The number of times children are moved and reasons for the moves;***
- ***(c) The average length of time in care;***
- ***(d) Sibling visitation; and***
- ***(e) The total number and frequency of reviews;***

(4) Publish an annual written report[~~ to provide information~~] on the effectiveness of such local foster care review boards; and

(5)[~~(4)~~] Evaluate and make annual recommendations to the Supreme Court, Governor, and the Legislative Research Commission regarding:

- (a) Laws of the Commonwealth;
- (b) Practices, policies, and procedures within the Commonwealth affecting permanence for children in out-of-home placement and the investigation of allegations of abuse and neglect; and
- (c) The effectiveness or lack thereof and reasons therefor of local foster care review of children in the custody of the cabinet in bringing about permanence for the Commonwealth's children.

The Committee Substitute to **HB 449** is as follows:

AN ACT relating to children in placement.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

- ***(a) "State agency child" or "state agency children" means "state agency children" defined in KRS 158.135;***
- ***(b) "School or educational facility" means any public school, private school, day treatment center, or any other public or private entity that provides educational services to state agency children; and***
- ***(c) "Educational passport" means a standard form completed by a school or educational facility which a state agency child is leaving which provides a receiving school or facility with basic demographic and academic information about the state agency child.***

(2) When the placement of a state agency child is changed and the state agency child must transfer from one school or educational facility to a different school or educational facility, the school or educational facility that the state agency child is leaving shall, within two (2) days of the state agency child leaving, prepare an educational passport for the child, which shall be delivered to the Cabinet for Human Resources or the Department of Juvenile Justice. The Cabinet for Human Resources or the Department of Juvenile Justice shall, within two (2) days of enrolling a state agency child in a new school or educational facility, present the educational passport to the receiving school or educational facility.

(3) A standard educational passport form shall be developed by the Kentucky Department of Education in consultation with the Cabinet for Human Resources and the Department of Juvenile Justice. The Kentucky Department of Education shall make the form available to all schools or educational facilities serving state agency children.

SECTION 2. A NEW SECTION OF KRS CHAPTER 600 IS CREATED TO READ AS FOLLOWS:

(1) For the purposes of this section:

- ***(a) A child is deemed to need extraordinary services if the child is mentally or emotionally ill or has symptoms of mental or emotional illness and requires medical attention, and the child's parent, guardian, or other person exercising custodial control or supervision over the child is unable to provide for the required treatment, care, or supervision of the child, and:***
  - ***1. The inability is due primarily to the lack of financial means of the child's parent, guardian, or other person exercising custodial control or supervision unless assistance has been offered and rejected;***
  - ***2. The child's parent, guardian, or other person exercising custodial control or supervision has made a reasonable effort under the circumstances to meet the needs of the child;***
  - ***3. The inability is not due to a willful act of commission or act of omission by the child's parent,***

guardian, or other person exercising custodial control or supervision ; and

4. Commitment is not opposed by the parent, guardian, or other person exercising custodial control or supervision ; and

(b) A child is deemed to need protection if the court determines the child is a dependent, abused, or neglected child and the needs of the child do not meet the definition of a child in need of extraordinary services.

(2) For children committed under KRS 620.140 after the effective date of this Act, the court shall designate in the court order of commitment and the cabinet shall document in the official case file records showing whether the commitment is due to the child needing protection or the child needing extraordinary services.

SECTION 3. A NEW SECTION OF KRS CHAPTER 605 IS CREATED TO READ AS FOLLOWS:

(1) The cabinet, the Department of Juvenile Justice, and the Kentucky Department of Education shall provide information to the individuals and entities contracting with the cabinet and the Department of Juvenile Justice to provide services and care to children committed to the cabinet or the Department of Juvenile Justice necessary to provide adequate care and services to the committed children they are serving. The cabinet, the Department of Juvenile Justice, and the Kentucky Department of Education shall develop a process that will result in the provision and transfer of information as required by Sections 1, 4, 5, 6, and 7 of this Act and this section in a timely and efficient manner, including:

(a) Medical passport or history;

(b) Educational passport;

(c) Treatment history; and

(d) Current case plan.

If action by a court is necessary to obtain or release information that the cabinet or the Department of Juvenile Justice deems necessary for the provision of care or services to a committed child, then the cabinet or Department of Juvenile Justice, as the case may be, shall promptly petition the court for permission to receive or release the necessary information.

(2) If the cabinet, the Department of Juvenile Justice, or a school or educational facility as defined in Section 1 of this Act fails to provide necessary information within the time frames established by Sections 1, 4, 5, and 6 of this Act and this section, the person, agency, or entity providing care or services to a child may petition the court having jurisdiction over the child to hold a hearing, at which time the court, if the request for hearing is granted, shall require the cabinet, the Department of Juvenile Justice, or the school or educational facility as defined in Section 1 of this Act to show cause as to why it has not provided the necessary information in a timely manner.

Section 4. KRS 605.110 is amended to read as follows:

(1) Unless provided otherwise, when any child committed to the Department of Juvenile Justice or the cabinet requires medical or surgical care or treatment, the Department of Juvenile Justice or the cabinet may provide the same or arrange for the furnishing thereof by other public or private agencies, and may give consent to the medical or surgical treatment. For this purpose, the services and facilities of local health officers and departments shall be made available to the Department of Juvenile Justice or the cabinet, and as far as practicable, any publicly-owned hospital shall provide hospitalization without charge for any such child who is a resident of the political subdivision by which the hospital is owned or operated. This section does not authorize nor shall permission be granted for abortion or sterilization.

(2) Any child placed in a foster home by an agency duly authorized in KRS Chapter 620 to place a child in a foster home shall receive a complete medical, visual, and dental examination by a professional authorized by the Kentucky Revised Statutes to conduct such examinations. Arrangements for a child placed in a foster home to receive such examinations shall be made within two (2) weeks of his placement in a foster home and not less than every twelve (12) months thereafter.

(3) Children maintained in any of the facilities and programs operated or contracted by the Department of Juvenile Justice or the cabinet shall, so far as possible, receive a common school education.

(a) The Kentucky Educational Collaborative for State Agency Children shall be established to serve children in facilities and programs operated or contracted by the Department of Juvenile Justice or the Cabinet for Human Resources Residential, Day Treatment, Clinical, and Group Home programs. All policies and procedures necessary to educate state agency children shall be approved by the Kentucky Board of Education. All duties, responsibilities, rights, and privileges specifically imposed on or granted to the local education administration units shall be imposed on or granted to the Department of Juvenile Justice or the Cabinet for Human Resources and contracted agencies with regard to educating agency children. Classrooms for the Kentucky Educational Collaborative for State Agency Children shall be within or near the facilities and programs operated or contracted by the Department of Juvenile Justice or the cabinet. The Kentucky Department of Education, the Department of Juvenile Justice, and the Cabinet for Human Resources, Department for Social Services, shall develop a biennial plan regarding the educational needs and provisions of educational programs, with emphasis on the coordination of all treatment services and funds available to provide for the education of state agency children.

(b) Teachers and other staff shall be hired on contract through a local school district or if the local school district is not willing to participate, teachers shall be hired by the Kentucky Educational Cooperative for State Agency Children. All certified educational staff of the Kentucky Educational Cooperative for State Agency Children shall be members of the Kentucky Teachers' Retirement System.

(c) Beginning July 1, 1993, the Kentucky Education Collaborative for State Agency Children shall be financed through:

1. The amount generated by state agency children under the Support Education Excellence in Kentucky program as provided in KRS 157.360 for the guaranteed base and adjustments for the number of at-risk students, exceptional students, and transportation costs;
2. A per pupil distribution of professional development funds with the collaborative serving as a consortium for state agency children pursuant to KRS 156.0951;
3. A per pupil distribution of technology funds in accordance with the state education technology plan pursuant to KRS 156.670 and the formula for the distribution of funds to local school districts;
4. A per pupil distribution of textbook funds pursuant to KRS 157.100 and 157.190;
5. The funding for school services for state agency children authorized by KRS 158.135; and
6. Other grants and entitlements, including federal funds, identified in the implementation plan developed pursuant to paragraph (e) of this subsection for the education of Kentucky's children.

(d) The commissioner of Juvenile Justice and the secretary of the Cabinet for Human Resources shall promulgate administrative regulations, pursuant to KRS Chapter 13A, with the assistance of the Kentucky Department of Education and upon recommendation of the Kentucky Board of Education regarding the governance, curriculum, and other topics necessary to educate state agency children. The regulations shall:

1. Provide for the development and implementation of interagency agreements that:
    a. Define the financial responsibility of each state and local agency for providing services to state agency children;
    b. Establish procedures for resolving interagency disputes among agencies that are parties to the agreements; and
2. Provide procedures for the implementation of the Kentucky statutes regarding school-based decision making, student outcomes, accountability, assessment, rewards and sanctions, technology, staff development, salaries, and the development of coordinated individual treatment, education, and transition plans to ensure compliance with present education and treatment laws and regulations specific to the needs of children in the programs of the Cabinet for Human Resources.

(e) ***When the placement of a state agency child is changed so that the state agency child must transfer from one school or educational facility to a different school or educational facility, the school or educational facility that the state agency child is leaving shall, within two (2) days of the state agency child leaving, prepare an educational passport for the child, which shall be delivered to the cabinet or the Department of Juvenile Justice. The cabinet or the Department of Juvenile Justice shall, within two (2) days of enrolling a state agency child in a new school or educational facility, present the educational passport to the receiving school or educational facility.***

(f) The commissioner of Juvenile Justice and the secretary of the Cabinet for Human Resources and the commissioner of the state Department of Education shall initiate development of a plan for implementation of the Kentucky Educational Collaborative for State Agency Children.

Section 5. KRS 605.090 is amended to read as follows:

(1) Unless precluded by law, any child committed to the Department of Juvenile Justice or the cabinet may by the decision of the Department of Juvenile Justice or the cabinet or its designee, at any time during the period of his commitment, be:

(a) Upon fourteen (14) days' prior written notice to the court, discharged from commitment. Written notice of discharge shall be given to the committing court and to any other parties as may be required by law;

(b) Placed in the home of his parents, a suitable foster home, or boarding home, upon such conditions as the Department of Juvenile Justice or the cabinet may prescribe and subject to visitation and supervision by a family service worker or juvenile probation and parole officer. At the time a committed child is placed in the home of his parents by the Department of Juvenile Justice or the cabinet, the parents shall be informed in writing of the conditions of the placement and the criteria that will be used to determine whether removal is necessary;

(c) Placed in one (1) of the facilities or programs operated by the Department of Juvenile Justice or the cabinet, except that no child committed under the provisions of KRS 610.010(1)(b), (c), or (d) or any child ten (10) years of age or under shall be placed in a facility operated by the Department of Juvenile Justice for children adjudicated as public offenders;

(d) Placed in a child-caring facility operated by a local governmental unit or by a private organization willing to receive the child, upon such conditions as the cabinet may prescribe;

(e) Treated as provided in KRS Chapter 645;

(f) Following the transfer or placement of a child pursuant to subsections (b), (c), (d), or (e) of this section, the Department of Juvenile Justice or the cabinet shall, within fourteen (14) days, excluding weekends and holidays, give written notice to the court of the transfer, the placement, and the reasons therefor.

(2) If a child committed to the cabinet as dependent, neglected, or abused is placed in the home of his parents, the child shall not be removed except in accordance with the following standards and procedures:

(a) If the family service worker believes that the committed child continues to be dependent, neglected, or abused, but immediate removal is unnecessary to protect the child from imminent death or serious physical injury, the casework situation and evidence shall be reviewed with his supervisor to determine whether to continue work with the family intact or to remove the child. There shall be documentation that the family service worker, prior to the court hearing, made an effort to contact the parents to inform them of the specific problems that could lead to removal so they have an opportunity to take corrective action. If the parents are unavailable or do not respond to attempts to communicate, the specific circumstances shall be documented;

(b) If it appears that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm and there is not reasonably available an alternative less drastic than removal of the child from the home, the cabinet shall petition the District Court to review the commitment pursuant to KRS 610.120 in relation to the cabinet's intention to remove the child from the parent's home. The petition shall set forth the facts which constitute the need for removal of the child. The court shall serve notice of the petition and the time and place of the hearing on the parents; however, the family service worker shall also contact the parents to ensure that they received the notice and are aware of the right to be represented by counsel. If the parents' whereabouts are unknown, notice may be mailed to the last known address of an adult who is a near relative. If the court fails to find that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall not be removed from the parents' home;

(c) If a family service worker finds a committed, unattended child who is too young to take care of himself, the family service worker shall make reasonable efforts to arrange for an emergency caretaker in the child's home until the parents return or fail to return within a reasonable time. If no in-home caretaker is available for the child, the family service worker shall request any appropriate law enforcement officer to take the child into protective custody. If, after a reasonable time, it appears the child has been abandoned, the cabinet shall petition the District Court to review the case; or

(d) If there exist reasonable grounds to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents are unable or unwilling to protect the child, the family service worker shall, with the assistance of a law enforcement officer, immediately remove the child prior to filing a petition for review. Within seventy-two (72) hours after the removal, the cabinet shall file a petition for review in District Court pursuant to KRS 610.120 with a request for an expeditious hearing. If the court fails to find that the child's health or welfare or physical, mental or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall be returned to the parents' home.

(3) The cabinet or the Department of Juvenile Justice, as appropriate, shall notify the juvenile court of the county of placement with the conditions of supervised placement of each child placed in that county from one (1) of the residential treatment facilities operated by the Department of Juvenile Justice or the cabinet. Notice of the conditions of such placement may be made available by the court to any law enforcement agency.

(4) The person in charge of any home to which a child is probated, and the governing authority of any private facility or agency to which a child is committed, shall make such reports to the court as the court may require, and such reports as the Department of Juvenile Justice or the cabinet may require in the performance of its functions under the law. The Department of Juvenile Justice or the cabinet shall have the power to make such visitations and inspections of the homes, facilities, and agencies in which children who have committed public offenses have been placed as it deems necessary to carry out its functions under the law.

(5) ***The Department of Juvenile Justice or the cabinet shall provide a written transfer summary to the person in charge of any foster home or any governing authority of any private facility or agency in which the Department of Juvenile Justice or the cabinet has placed a child. The written summary shall include, at a minimum, demographic information about the child, a narrative statement detailing the child's prior placements, the length of time the child has been committed, a description of the services and assistance provided to the child or the child's family since the***

most current case plan, a copy of the current case plan for the child and the child's family, and a copy of the child's medical and educational passport, if available, provided that no information shall be provided that violates any statutory confidentiality requirements. The transfer summary shall be provided by the Department of Juvenile Justice if it is responsible for the child, or the cabinet if it is responsible for the child, within seven (7) days of the placement of the child with the person, agency, or facility providing care to the child.

(6) The Department of Juvenile Justice may assist the courts in placing children who have committed public offenses in boarding homes, and, under agreements with the individual courts, may assume responsibility for making such placements. Counties may pay or contribute towards the expenses of maintaining such children and, to the extent authorized by the fiscal court, the Department of Juvenile Justice may incur obligations chargeable to the county for such expenses.

Section 6. KRS 620.145 is amended to read as follows:

(1) Within sixty (60) days of the commitment date of a child due to abuse, neglect, or dependency, the Cabinet for Human Resources shall provide the court with jurisdiction an assessment of the child to determine:

(a) The child's current and historical educational functioning;

(b) The child's emotional and behavioral functioning; and

(c) The extent to which the child's life experiences and circumstances of commitment have created a disabling condition requiring special educational programming or other services to provide the child an appropriate public education.

(2) Upon discerning of an emotional, behavioral, or other disabling condition with negative impact upon a child's educational experience, the Cabinet for Human Resources as guardian of the child shall ensure that whatever services necessary are obtained to allow the child the benefit of a free, appropriate public education.

(3) Services required to allow the child a free, appropriate public education shall be limited to those required under Section 504 of Public Law 93-112, Public Law 94-142, or other federal statutes affecting children with emotional or behavioral disabilities.

(4) The Cabinet for Human Resources shall include activities undertaken to ensure a child committed to the Cabinet for Human Resources receives adequate public education in the six (6) month case progress report required by KRS 620.240.

(5) Any child removed from his home due to abuse, neglect, or dependency and placed in the least restrictive appropriate placement available shall, for the purposes of acquiring an appropriate public education, be considered a resident of the school district where the placement occurs.

(6) The Cabinet for Human Resources shall provide a copy of the assessment required by subsection (1) of this section to the foster parent, or other agency or entity providing residential care to a committed child, within five (5) days of filing the assessment with the court.

Section 7. KRS 610.120 is amended to read as follows:

(1) Except as otherwise provided by KRS Chapter 635, an order of commitment or an order of protective supervision or probation made by the court in the case of a child may be reviewed, continued, or terminated at any time prior to expiration on the court's own initiative or on motion by:

(a) A child who is affected by an order of juvenile session of District Court;

(b) The family, custodian, guardian, or legal representative of such a child;

(c) ***The Department of Juvenile Justice or the cabinet;***

(d) The county attorney of the county in which the committing court presides; or

(e)[~~(d)~~]Any other person having an interest in the welfare of the child.

(2) Grounds for such action may include but are not limited to allegations that there has been a substantial change of material circumstances, there exists new evidence affecting the disposition of the child, the child is no longer in need of commitment, probation, or placement, the child has not responded to or benefited from treatment or the child has not received adequate and proper treatment, the original proceedings were not conducted in the manner required by law or the public interest requires termination of the order. Upon review of the child's case, the cabinet, any agency, facility or individual responsible for the supervision, care or treatment of the child, shall divulge and communicate such information regarding the child as the court may require.

(3) Except as otherwise provided by KRS Chapter 640 relating to youthful offenders, and KRS 610.110, 620.140, 635.060, or 635.090 relating to extending commitment beyond the age of eighteen (18), an order of commitment, temporary custody, or an order of protective supervision or probation made by the court in the case of a child shall be terminated when the child attains the age of eighteen (18). At least fourteen (14) days prior to the committed child's eighteenth birthday, the Department of Juvenile Justice or the cabinet shall prepare a summary of the

information concerning the child and submit it with written notification to the committing court that a child's commitment is due to expire.

Section 8. KRS 605.120 is amended to read as follows:

(1) The cabinet is authorized to expend available funds to provide for the board, lodging*,* and care of children placed by the cabinet in a foster home or boarding home, or may arrange for payments or contributions by any local governmental unit, or public or private agency or organization, willing to make payments or contributions for such purpose. The cabinet may accept any gift, devise*,* or bequest made to it for its purposes.

(2) The cabinet shall establish a reimbursement system for foster parents that comes as close as possible to meeting the actual cost of caring for foster children. The cabinet shall consider providing additional reimbursement for foster parents who obtain additional training, and foster parents who have served for an extended period of time. In establishing a reimbursement system, the cabinet shall also address the additional cost associated with providing care to children with exceptional needs.

(3) The cabinet shall review reimbursement rates paid to foster parents on a biennial basis and shall issue a report in October of each odd-numbered year to the Legislative Research Commission comparing the rates paid by Kentucky to the figures presented in the Expenditures on Children by Families Annual Report prepared by the United States Department of Agriculture and the rates paid to foster parents by other states. To the extent that funding is available, reimbursement rates paid to foster parents shall be increased on an annual basis to reflect cost of living increases.

(4) The cabinet is encouraged to develop pilot projects both within the state system and in collaboration with private child caring agencies to test alternative delivery systems and nontraditional funding mechanisms. Pilot projects may include but not be limited to kinship care.

Section 9. KRS 610.125 is amended to read as follows:

(1) If a child has been removed from the home and placed in the custody of the Department of Juvenile Justice or the cabinet, a judge of the District Court shall conduct a dispositional review hearing no later than *twelve (12)*[~~eighteen (18)~~] months after custody is given to the cabinet, and *every twelve (12) months*[~~annually~~] thereafter if custody and out-of-home placement continues, to determine the future status of the child. The court shall address the following areas:

- (a) If parental rights have not been terminated, whether the child should be returned to the parent;
- (b) Whether the child should continue in out-of-home care for a specified period of time;
- (c) Whether the child should be placed for adoption; and
- (d) Whether special circumstances indicate that the child's needs can best be met by continuation in out-of-home care on a permanent or long-term basis.

(2) The Department of Juvenile Justice or the cabinet shall inform the court not less than sixty (60) days prior to the expiration of the time in which the hearing shall be held and within the time established in subsection (1) of this section. The court shall set a time for the hearing and notify the child's parent*, court-appointed special advocate, attorney for the child, attorney for the parent, if any,* and the Department of Juvenile Justice or the cabinet.

(3) The Department of Juvenile Justice or the cabinet shall present evidence to the court concerning the care and progress of the child since the last dispositional hearing, including the following:

- (a) The length of time the child has been committed to the Department of Juvenile Justice or the cabinet;
- (b) The number, location, and date for each placement during the total period of the child's commitment;
- (c) A description of the services and assistance provided to the parent or arranged by the Department of Juvenile Justice or the cabinet since the last case permanency plan or case progress report, and the results achieved;
- (d) A description of the efforts and progress of the child's parent since the last case permanency plan and case progress report, including the number and dates of parental visits and the extent, quality, and frequency of the parent's communication with the child;
- (e) The familial and institutional barriers to:
    - 1. Returning the child to the home;
    - 2. Ending the commitment of the child to the Department of Juvenile Justice or the cabinet; and
    - 3. Delivery of appropriate services needed by the child;
- (f) Recommendations of services needed to make the transition from out-of-home care to independent living for children who have reached the age of sixteen (16) years;
- (g) An evaluation of the child's current placement and services provided to the child;
- (h) Recommendations for necessary services required to terminate the commitment of the child to the cabinet, to return the child home, or to facilitate another permanent placement; and
- (i) Recommendations as to the permanency goal for the child.

(4) The child's parent***, attorney for the parent, attorney for the child, or court-appointed special advocate, if deemed appropriate by the court,*** may present any evidence relevant to the determination of a permanency goal for the child.

(5) Upon conclusion of the hearing the court shall make a written determination regarding a plan of transitional independent living services if the child has reached the age of sixteen (16) years, and the most appropriate permanency goal if the child has not reached the age of sixteen (16) years.

Section 10. KRS 620.290 is amended to read as follows:

(1) The local foster care review board shall submit to the court within fourteen (14) days of the six (6) month review its findings and recommendations. The findings and recommendations for each child under review shall include but need not be limited to:

(a)[~~(1)~~] Whether there is a plan for permanence;

(b)[~~(2)~~] Whether the plan is progressing; and

(c)[~~(3)~~]The appropriateness of the current placement or plan for permanence. ***If the local foster care review board determines that a current placement or plan for permanence is inappropriate, a separate notification shall be provided to the court, and the cabinet which shall summarize the position of the local foster care review board, the response of the cabinet, if any, to the concerns expressed by the local foster care review board, and any action proposed by the local foster care review board.***

(2) The local foster care review board shall submit to the court, with a copy to the cabinet, within fourteen (14) days of each meeting of the board, a list of each case reviewed in which a child has been moved three (3) or more times within a six (6) month period. The list shall include the name of the case, the court number, if available, the cabinet case number, the age, sex, and race of the child, and the number of moves that have occurred.

Section 11. KRS 620.320 is amended to read as follows:

The duties of the State Foster Care Review Board shall be to:

(1) Establish, approve, and provide training programs for local foster care review board members;

(2) Review and coordinate the activities of local foster care review boards;

(3) Establish reporting procedures to be followed by the local foster care review boards and ***publish an annual written report compiling data reported by local foster care review boards which shall include statistics relating, at a minimum, to the following:***

(a) How the needs of children are being met;

(b) The number of times children are moved and reasons for the moves;

(c) The average length of time in care;

(d) Sibling visitation; and

(e) The total number and frequency of reviews;

(4) Publish an annual written report[~~ to provide information~~] on the effectiveness of such local foster care review boards; and

(5)[~~(4)~~] Evaluate and make annual recommendations to the Supreme Court, Governor, and the Legislative Research Commission regarding:

(a) Laws of the Commonwealth;

(b) Practices, policies, and procedures within the Commonwealth affecting permanence for children in out-of-home placement and the investigation of allegations of abuse and neglect; and

(c) The effectiveness or lack thereof and reasons therefor of local foster care review of children in the custody of the cabinet in bringing about permanence for the Commonwealth's children.

HB 468, AN ACT relating to the transportation of persons.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 96A.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires, the following words or terms shall mean as follows:

(1) "City" means any incorporated city in the Commonwealth;

(2) "County" means any county in the Commonwealth wherein there is located an incorporated city and for the purpose of this chapter shall also mean a county which has adopted an urban-county government;

(3) "State" means the Commonwealth;

(4) "Transit authority" or "authority" means a transit authority created pursuant to this chapter;

(5) "Board" means the board of a transit authority;

(6) "Public body" means any city or county of the Commonwealth;

(7) "Governing body" means, as to a county, the fiscal court thereof; and as to a city, the legislative body thereof, howsoever the same may be denominated according to law;

(8) "Proceedings" means, in the case of a county, a resolution of its fiscal court; and in the case of a city, an ordinance adopted and made effective according to law by its governing body;

(9) "Joint proceedings" relates only to the establishment of a transit authority by two (2) or more public bodies acting in concert or by agreement, and means the proceedings, taken collectively, by the governing bodies of the public bodies, participating in the creation and establishment of a transit authority;

(10) "Appointing authority" means, as to a county, the county judge/executive thereof; and as to any city, the elected chief officer thereof, whether designated as its mayor or the chairman of its board of trustees or otherwise;

(11) "Area" or "transit area" means the geographical area which may be encompassed from time to time within the lawful boundaries of such cities and counties as may be involved in the creation and establishment of an authority; and of any cities or counties within any single unified metropolitan area which may subsequently become participants as provided in this chapter***;***[~~.~~]

(12) "Mass transit," or "mass transportation," means the transportation of persons and their baggage within or without a transit area, but shall not include the for-hire operation of a taxicab, or industrial bus as defined by KRS Chapter 281***;***

(13) "Human service transportation delivery" means the provision of transportation for an eligible recipient in one of the following state programs:

(a) Nonemergency medical transportation under KRS Chapter 205;

(b) Mental health, mental retardation, or comprehensive care under KRS Chapter 202A or 645;

(c) Kentucky work programs under KRS Chapter 194 or 195;

(d) Aging services under KRS Chapter 205, 209, 216, or 273;

(e) Vocational rehabilitation under KRS 151B or 157; or

(f) Blind industries or rehabilitation under KRS Chapter 151B or 163; and

(14) "Human service transportation delivery area" means one (1) of the regions established by the Transportation Cabinet for the purpose of providing human service transportation delivery in that region.

Section 2. KRS 96A.095 is amended to read as follows:

(1) The Transportation Cabinet ***may***[~~is authorized and empowered to~~] receive and accept from the Commonwealth or any of its agencies***, including the Cabinet for Human Resources and Workforce Development Cabinet,*** and from federal agencies appropriations or grants to accomplish the promotion and development of mass transit services ***and human service transportation delivery*** in Kentucky, and to receive and accept aid or contributions from any source of either money, property, labor, or other things of value to promote mass transit services. Subject to the provisions of Section 230 of the Constitution of the Commonwealth of Kentucky, any ***of these***[~~such~~] funds, property, or things of value received by the Transportation Cabinet may be given directly to ***any of the following entities in order to accomplish the purposes of this section:***

(a) A local transit authority as created under this chapter***;***[~~ or to~~]

(b) A city***;***[~~or~~]

(c) A county***;***[~~or~~]

(d) Other public mass transit providers***;***

(e) A nonprofit or public mass transit provider operating under 49 U.S.C. sec. 5310 or 5311; or

(f) An entity providing human service transportation delivery[~~, in order to accomplish he purposes of this section~~].

(2) The Transportation Cabinet is authorized and directed to apply for any available federal funds for operating subsidies, either on a matching basis or otherwise and to make any ***of these***[~~said~~] funds received available to ***any of the following entities in order to accomplish the purposes of this section:***

(a) A local transit ***authority as***[~~authorities~~] created under this chapter***;***[~~ or to~~]

(b) A city***;***[~~or~~]

(c) A county***;***[~~or~~]

(d) Other public mass transit providers***;***

(e) A nonprofit or public mass transit provider operating under 49 U.S.C. sec. 5310 or 5311; or

(f) An entity promoting or providing transit services such as safety, planning, research, coordination, or training

activities.~~[in order to accomplish the purposes of this section; or]~~

In~~[such]~~ cases where federal laws or regulations preclude the Transportation Cabinet from direct application for ***this type of***~~[such]~~ federal funds, the cabinet is authorized and directed to provide assistance to ***any of the entities listed in this subsection***~~[local transit authorities or a city or a county or other public mass transit providers]~~ as necessary to enable it to apply for and obtain ***this type of***~~[such]~~ federal funds, in order to accomplish the purposes of this section.

(3) The Transportation Cabinet is authorized to assist cities and counties in the formation of local transit authorities in conformance with this chapter, but nothing in this chapter shall be construed as preventing the Transportation Cabinet from providing such assistance as authorized in this chapter to cities or counties where local transit authorities do not exist.

(4) The Transportation Cabinet is authorized to contract, in accordance with the provisions of KRS Chapter 45A, with a transportation provider or broker to provide human services transportation delivery within a specific human service transportation delivery area.

(5) The Transportation Cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to carry out the provisions of this section. The administrative regulations shall include, but not be limited to, the following:

- ***(a) Establishment of the human service transportation delivery areas, including the counties in each area;***
- ***(b) Safety and other physical operating requirements for all mass transit operations and human service transportation deliveries;***
- ***(c) The minimum conditions and requirements of a subcontract between the Transportation Cabinet's human service transportation provider or broker contractor and an entity providing the means of the human services transportation;***
- ***(d) Compliance with the requirements of the United States Federal Transit Administration; and***
- ***(e) A mechanism for ensuring that each human services transportation provider contractor or subcontractor:***
  - ***1. Has appropriate operating authority issued under KRS Chapter 281;***
  - ***2. Is a transit authority operating under the provisions of KRS Chapter 96A; or***
  - ***3. Has been approved by the Transportation Cabinet to operate under the provisions of 49 U.S.C. sec. 5310 or 5311.***

Section 3. KRS 96A.170 is amended to read as follows:

An authority created and established under this chapter, together with its ownership, financing, operation, rates and charges for use of its services and facilities, rules and regulations, routes, schedules, size and character of its equipment and quality of service shall be exempt from all jurisdiction of the Transportation Cabinet of the Commonwealth, provided, however, that no new service may be instituted within or outside of the authority's transit area in competition with an existing certificated bus company without an application to and a grant of authority from the Transportation Cabinet as provided by KRS Chapter 281 ***or subsection (4) of Section 2 of this Act***, provided further that nothing in this section shall deny the Transportation Cabinet the authority to render such advice and assistance, including financial aid, engineering, planning and technical assistance, as it deems advisable, to enable an authority as created under this chapter to acquire, construct, expand, maintain, and operate a mass transit system as defined in this chapter and to establish regulations to promote local transit authorities ***and to ensure compliance with the requirements of the United States Federal Transit Administration***.

Section 4. KRS 281.013 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) (a) A "city bus certificate" means a certificate granting authority only for the operation of motor vehicles transporting passengers for hire between points within the corporate limits of a city and over regular routes;

(b) A "city bus" is a motor vehicle operated under one or more city bus certificates;

(c) The term "city bus license" means a license plate issued for a bus authorizing its operation under one or more city bus certificates or a combination of city bus certificates and suburban bus certificates;

(2) (a) A "suburban bus certificate" means a certificate granting authority only for the operation of motor vehicles carrying passengers for hire within the confines of either one or more cities and their suburban area, or a suburban area, over regular routes but not granting authority to engage in intracity transportation;

(b) A "suburban bus" is a motor vehicle operated under one or more suburban bus certificates;

(c) The term "suburban bus license" means a license plate issued for a bus authorizing its operation under one or more suburban bus certificates;

(3) (a) An "industrial bus certificate" means a certificate granting authority only for the operation of motor vehicles which are not exempt under subsection ***(10)***~~[(11)]~~ of KRS 281.605 and which are used exclusively for

transporting employees of a given industry or industries for hire to and from their place of employment;

(b) An "industrial bus" is a motor vehicle operated under an industrial bus certificate;

(c) The term "industrial bus license" means a license plate issued for a bus authorizing its operation under an industrial bus certificate.

Section 5. KRS 281.605 is amended to read as follows:

The provisions of this chapter shall not apply, except as to safety regulations, to:

(1) Motor vehicles used as school buses and while engaged in the transportation of students, under the supervision and control and at the direction of school authorities;

(2) Except as provided in paragraph (e) of this subsection, motor vehicles, regardless of ownership, used exclusively:

(a) For the transportation of agricultural and dairy products, including fruit, livestock, meats, fertilizer, wood, lumber, cotton, products of grove or orchard, poultry, and eggs, while owned by the producer of the products, including landlord where the relation of landlord and tenant or landlord and cropper is involved, from the farm to a market, warehouse, dairy, or mill, or from one (1) market, warehouse, dairy, or mill to another market, warehouse, dairy, or mill;

(b) For the transportation of agricultural and dairy products, livestock, farm machinery, feed, fertilizer, and other materials and supplies essential to farm operation, from market or shipping terminal to farm;

(c) For both the purposes described in paragraphs (a) and (b) of this subsection;

(d) For the transportation of agricultural and dairy products from farm to regularly organized fairs and exhibits and return; or

(e) Motor vehicles used for the transportation of fly ash, in bags, sacks, or other containers, the aggregate weight of which does not exceed ten thousand (10,000) pounds; or bottom ash, waste ash, sludge, and pozatec which is being removed from the premises of a power generator facility for the purpose of disposal;

(3) Motor vehicles used exclusively as church buses and while operated in the transportation of persons to and from a church or place of worship or for other religious work under the supervision and control and at the direction of church authorities;

(4) [~~Motor vehicles to the extent such are used or operated in transportation programs pursuant to grants of funds in furtherance of and governed by the provisions of Title III and Title VII of the Federal Older Americans Act of 1965, Public Law 89-73, including all amendments thereto, and to the extent such are used or operated to transport persons whose fares are reimbursed or paid through programs in furtherance of and governed by the provisions of Title XIX and Title XX of the Federal Social Security Act, including all amendments thereto;~~

~~(5)~~] Motor vehicles used exclusively for the transportation of property belonging to a nonprofit cooperative association or its members where the vehicle is owned or leased exclusively by the association;

(5)[~~(6)~~] Motor vehicles owned in whole or in part by any person and used by such person to transport commodities of which such person is the bona fide owner, lessee, consignee, or bailee; provided, however, that such transportation is for the purpose of sale, lease, rent, or bailment, and is an incidental adjunct to an established private business owned and operated by such person within the scope and in furtherance of any primary commercial enterprise of such person other than the business of transportation of property for hire;

(6)[~~(7)~~] Motor vehicles used in pick-up or delivery service within a city or within a city and its commercial area for a carrier by rail;

(7)[~~(8)~~] Motor vehicles used exclusively for the transportation of coal from the point at which such coal is mined to a railhead or tipple where the railhead or tipple is located at a point not more than fifty (50) air miles from the point at which the coal is mined;

(8)[~~(9)~~] Motor vehicles used as ambulances in transporting wounded, injured, or sick animals or as ambulances as defined in KRS 211.950;

(9)[~~(10)~~] Motor vehicles used by transit authorities as created and defined in KRS Chapter 96A except as required by KRS 96A.170. Vehicles operated under the authority and direct responsibility of such transit authorities, through contractual agreement, shall be included within this exemption, without regard to the legal ownership of the vehicles, but only for such times as they are operated under the authority and responsibility of the transit authority;

(10)[~~(11)~~] Motor vehicles having a seating capacity of fifteen (15) or fewer passengers and while transporting persons between their places of residence, on the one hand, and, on the other, their places of employment, provided the driver himself is on his way to or from his place of employment, and further provided that any person who operates or controls the operation of vehicles hereunder of which said person is the owner or lessee, and any spouse of said person and any partnership or corporation with said person or his spouse having an interest therein doing such, shall be eligible to so operate an aggregate number of not more than one (1) vehicle on other than a nonprofit basis;

(11)[~~(12)~~] Motor vehicles used to transport cash letters, data processing material, instruments, or documents, regardless of the ownership of any of said cash letters, data processing material, instruments, or documents;

(12)[~~(13)~~] Motor vehicles operated by integrated intermodal small package carriers who provide intermodal-air-and-ground-transportation. For the purposes of this section, "integrated intermodal small package carrier" shall mean an air carrier holding a certificate of public convenience and necessity or qualifying as an indirect air carrier that undertakes, by itself or through a company affiliated through common ownership, to provide intermodal-air-and-ground-transportation, and "intermodal-air-and-ground-transportation" shall mean transportation involving the carriage of articles weighing not more than one hundred fifty (150) pounds by aircraft or other forms of transportation, including by motor vehicle, wholly within the Commonwealth of Kentucky. The incidental or occasional use of aircraft in transporting packages or articles shall not constitute an integrated intermodal operation within the meaning of this section; or

(13)[~~(14)~~] Motor vehicles operated pursuant to a grant of funds in furtherance of and governed by 49 U.S.C. secs. 5310 or 5311, including all amendments, and whose operators have jurisdictions and services approved annually by the Transportation Cabinet ***in accordance with 49***[~~, Department of Highways pursuant to~~] C.F.R. Title VI.

Section 6. KRS 281.635 is amended to read as follows:

Notwithstanding anything contained in this chapter:

(1) All cities of the Commonwealth are vested with the power to sell franchises or, where no franchise is sold, grant authorizations for the operation of city buses over their streets and highways; provided, however, no person shall apply for or obtain any such franchise or authorization from any city without a prior finding by the Department of Vehicle Regulation, after a hearing, conducted pursuant to KRS 281.625, that there is a demand and necessity for the service sought to be rendered, which finding shall be valid and effective for a period of one (1) year from and after the date thereof, exclusive of any delay due to the order of any court. Upon certification by the department to a city that there is a demand and necessity for the service sought to be rendered, any city may award any duly qualified person a franchise or authorization covering the proposed operation. Upon acquiring a franchise or authorization, the holder thereof shall apply to the Department of Vehicle Regulation for a city bus certificate which shall be issued to the holder of the franchise or authorization without a hearing. The governing body of any city of the first five (5) classes which does not have a city bus service may determine that there is a demand and necessity for a city bus service, and may thereafter apply to the Department of Vehicle Regulation for a city bus certificate to be operated by the city which may be issued without a hearing, if the department determines that it will be in the public interest. Unless a certificate is exercised within one (1) year from the grant thereof, exclusive of any delay due to the order of any court, the authority conferred by the issuance of the certificate of convenience and necessity shall be void.

(2) The applicant for a certificate or renewal of a certificate to operate a city bus shall at the time of application file with the department a map or maps showing the route or routes and territory proposed to be served, together with a time schedule, and shall thereafter, during the license year, file only those additional maps or time schedules that the commissioner may require.

(3) The governing body of any city of the first four (4) classes in the Commonwealth in which city buses operate shall have supervisory and regulatory power over city buses, while operating in the city, and shall have authority to enforce all ordinances or regulations pertaining to routes, services, time schedules, and operation of the city buses and the drivers thereof, but any interested party may appeal to the department from any action, finding, or order of any city within thirty (30) days after the entry of the action, finding, or order, and a hearing shall be held before the department in the same manner as other hearings are held as provided for in this chapter; however, any action, finding, or order of any city shall be sustained if there is substantial evidence or reason to support it; otherwise the department shall make the orders as it deems necessary and proper. However, where a carrier's entire operation is confined to intracity transportation within the corporate limits of a single city, there shall be no appeal to the department from the actions, findings, or orders of the city. Provided further, that where any city bus is subject to the regulatory powers of more than one (1) city and the regulations are in conflict or such as to impede the transportation facilities serving the cities, or the carrier is failing to furnish safe, adequate and convenient service to the public, the department may, upon complaint or on its own initiative, call a hearing and enter orders as are necessary and proper.

(4) The governing body of any city of the first five (5) classes in the Commonwealth in which taxicabs operate shall have supervisory and regulatory power over taxicabs certificated to operate in the city, and while operating in the city, and shall have authority to enforce all ordinances or regulations pertaining to the number and operation of taxicabs, but any interested party may appeal to the department from any action, finding, or order of any city within thirty (30) days after the entry of the action, finding, or order, and a hearing shall be held before the department in the same manner as other hearings are held as provided for in this chapter; however, any action, finding, or order of any city shall be sustained if there is substantial evidence or reason to support it; otherwise, the department shall make any orders that it deems necessary and proper. However, where a carrier's entire operation is confined to intracity transportation within the corporate limits of a single city, there shall be no appeal to the department from the actions, findings, or orders of the city.

(5) The governing body of any city of the first five (5) classes in the Commonwealth is hereby vested with the exclusive

power to prescribe the qualifications with respect to the health, vision, sobriety, intelligence, ability, moral character, and experience of the drivers of taxicabs certificated to operate in the city, and while operating in the city, and may issue permits for qualified drivers. However, any taxicab driver must also possess a Kentucky operator's license.

(6) Until any city of the Commonwealth enacts ordinances or prescribes rules and regulations as may be reasonably necessary to exercise the prior powers delegated in this section to the cities respecting the supervision and regulation of city buses, taxicabs, and taxicab drivers, the department shall possess the powers and may promulgate administrative regulations reasonably necessary to supervise and control city buses, taxicabs, and taxicab drivers, having regard for the public safety and the public need for service.

(7) If any city fails to exercise any of the authority granted it in this section, the authority shall be vested in the department.

(8) The department may, under the provisions of this chapter, originate, establish, change, promulgate, and enforce any rate that has or may be fixed by any contract, franchise, or agreement between the holder of any city bus certificate and any city, and all rights and obligations arising out of any contract regulating any rate shall be subject to the jurisdiction and supervision of the department, but no rate shall be changed nor any contract, franchise, or agreement affecting it be abrogated or changed until a hearing has been conducted.

(9) The governing body of a city shall not have authority over a motor vehicle that is being operated as a human service transportation delivery vehicle under a contract with the Transportation Cabinet in accordance with subsection (4) of Section 2 of this Act.

Section 7. KRS 281.6185 is amended to read as follows:

(1) A carrier operating pursuant to a disabled persons certificate shall not provide service to any person not requiring the use of a disabled persons vehicle. A companion may accompany the person requiring the use of the disabled persons vehicle.

(2) Irregular route common carrier certificates shall describe in general the territory where the holder shall have the right to operate or originate if less than statewide.

(3) Any person or his predecessor in interest engaged as of July 1, 1996, in the transportation of disabled persons, pursuant to a valid ***taxicab certificate or a taxicab***~~[taxi]~~ certificate limited to wheelchair equipped vans issued by the department, authorizing this activity, shall***, upon application,*** be issued a certificate as a disabled persons carrier to authorize a continuation of the same operation, except the origin of the trip may be anywhere in the authorized county rather than restricted to the city and its suburban area.

(4) The holder or owner of a taxicab certificate shall not provide transportation in a disabled persons vehicle as defined in KRS 281.014(5)(a).

HB 518, AN ACT relating to children in placement.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 194 IS CREATED TO READ AS FOLLOWS:

The Kentucky General Assembly finds that the various departments, agencies, and entities providing care and treatment to children in placement and their families often do so without appropriate collaboration of policies and services or appropriate and necessary sharing of relevant information. The General Assembly declares that the purpose of Section 2 of this Act is to establish a structure for coordinated strategic planning, policy development, and information reporting and sharing among and across departments, agencies, and entities that provide care and services to children in placement.

SECTION 2. A NEW SECTION OF KRS CHAPTER 194 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby created the "Statewide Strategic Planning Committee for Children in Placement" which is administratively attached to the Department for Social Services. The committee shall be composed of the following:

(a) Members who shall serve by virtue of their positions: the commissioner of the Department for Social Services, the commissioner of the Department for Health Services, the commissioner of the Department for Mental Health and Mental Retardation Services, the commissioner for the Department for Medicaid Services, the commissioner of the Department for Social Insurance, the commissioner of the Department of Juvenile Justice, the commissioner of the Department of Education, the executive director of the Administrative Office of the Courts, or their designees; and

(b) One (1) foster parent selected by the statewide organization for foster parents, one (1) district judge selected by the Chief Justice of the Kentucky Supreme Court, one (1) parent of a child in placement at the time of appointment to be selected by the secretary of the Cabinet for Human Resources, one (1) youth in placement at the time of the appointment to be selected by the secretary of the Cabinet for Human Resources and one (1) private child care provider selected by the statewide organization for private child care providers. These members shall serve a term of two (2) years, and may be reappointed.

(2) The Statewide Strategic Planning Committee for Children in Placement shall, by July 1, 1999, develop a statewide

strategic plan for the coordination and delivery of care and services to children in placement and their families. The plan shall be submitted to the Governor, the Chief Justice of the Supreme Court, and the Legislative Research Commission on or before July 1, 1999, and each July 1 thereafter.

(3) The strategic plan shall, at a minimum, include:

- *(a) A mission statement;*
- *(b) Measurable goals;*
- *(c) Principles:*
- *(d) Strategies and objectives; and*
- *(e) Benchmarks.*

(4) The planning horizon shall be three (3) years. The plan shall be updated on an annual basis. Strategic plan updates shall include data and statistical information comparing plan benchmarks to actual services and care provided.

(5) The Statewide Strategic Planning Committee for Children in Placement shall, in consultation with the commissioner and the statewide placement coordinator as provided for in Section 4 of this Act, establish a statewide facilities and services plan that identifies the location of existing facilities and services for children in placement, identifies unmet needs, and develops strategies to meet the needs. The planning horizon shall be five (5) years. The plan shall be updated on an annual basis. The plan shall be used to guide, direct, and, if necessary, restrict the development of new facilities and services, the expansion of existing facilities and services, and the geographic location of placement alternatives.

(6) The Statewide Strategic Planning Committee for Children in Placement may, through the promulgation of administrative regulations, establish a process that results in the review and approval or denial of the development of new facilities and services, the expansion of existing facilities and services, and the geographic location of any facilities and services for children in placement in accordance with the statewide facilities and services plan. Any process established shall include adequate due process rights for individuals and entities seeking to develop new services, construct new facilities or expand existing facilities, and shall require the involvement of local communities and other resource providers in those communities.

(7) As a part of the statewide strategic plan, and in consultation with the Kentucky Information Resources Management Commission, the Statewide Strategic Planning Committee for Children in Placement shall plan for the development or integration of information systems that will allow information to be shared across agencies and entities, so that relevant data will follow a child through the system regardless of the entity or agency that is responsible for the child. The data produced shall be used to establish and monitor the benchmarks required by subsection (3) of this section. The data system shall, at a minimum, produce the following information on a monthly basis:

- *(a) Number of placements per child;*
- *(b) Reasons for placement disruptions;*
- *(c) Length of time between removal and establishment of permanency;*
- *(d) Reabuse or reoffense rates;*
- *(e) Fatality rates;*
- *(f) Injury and hospitalization rates;*
- *(g) Health care provision rates;*
- *(h) Educational achievement rates;*
- *(i) Multiple placement rates;*
- *(j) Sibling placement rates;*
- *(k) Ethnicity matching rates;*
- *(l) Family maintenance and preservation rate; and*
- *(m) Adoption disruption rates.*

(8) The Statewide Strategic Planning Committee for Children in Placement shall publish an annual report no later than December 1 of each year that includes, but is not limited to, the information outlined in subsection (7) of this section.

SECTION 3. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO READ AS FOLLOWS:

For the purposes of Sections 3 to 6 of this Act:

(1) "Department" means the Department for Social Services;

(2) "Home county" means the county in which the child's natural parents, adoptive parents, or guardian reside. If the

parents are divorced, the home county is the county of residence of the parent with legal custody. If the child is committed, the home county is the county of original commitment or case responsibility;

(3) "Home district" means the Department for Social Services district in which the child's home county is located;

(4) "Type of placement" means the living arrangement, including family foster care, private child care, or other residential alternative that is deemed appropriate for a child as determined by the district placement coordinator and the family services worker with case responsibility; and

(5) "Unmet need" means the type of facility or placement needed to serve the child's needs which is unavailable at the time placement is being sought for the child.

SECTION 4. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO READ AS FOLLOWS:

(1) The department shall establish a procedure throughout the state that is designed to determine and expedite the placement of children who are in the custody of the department. The procedure shall utilize a statewide placement coordinator and district placement coordinators who may be state employees or employees of a contracted entity, and who shall be assigned and located in each of the department's districts.

(2) Upon determining that a child shall be removed from the current living arrangement, the family services worker with responsibility for the child shall contact the district placement coordinator to facilitate the placement. In consultation with the family services worker, the district placement coordinator shall determine the appropriate type of placement according to the child's circumstances and needs and shall attempt to locate the appropriate placement within the child's home county.

(3) The living arrangement and placement selected for the child shall be the type of facility that is determined to be the best alternative for the child that is in the closest proximity to the child's home county.

(4) If the type of placement that best suits the child's needs is not available in the child's home county, the district placement coordinator shall document the circumstance as an unmet need and may seek a placement in another county located within the home district of the child.

(5) If the type of placement that best suits the child's needs is not available in the child's home district, the district placement coordinator shall document the circumstance as an unmet need and may seek a placement in surrounding districts by contacting the statewide placement coordinator.

(6) If the type of placement that best suits the child's needs is not available in the districts surrounding the child's home district, the district placement coordinator shall document the circumstance as an unmet need and may seek a placement in any district within the state by contacting the statewide placement coordinator.

(7) If the type of placement that best suits the child's needs is not available within the state, the statewide placement coordinator shall contact the commissioner of the department or the commissioner's designee to explore placement options.

(8) The statewide placement coordinator and every district placement coordinator shall compile information that identifies the unmet needs for their jurisdiction, and shall submit the data and recommendations for meeting the unmet needs to the commissioner of the department.

(9) The commissioner shall develop a state placement resource plan that identifies areas of unmet need and strategies to meet the need. The plan shall be used to guide and, if necessary, restrict the development of new facilities, the expansion of existing facilities, and the geographic location of placement alternatives.

(10) The commissioner and the statewide planning coordinator shall assist the statewide Strategic Planning Committee for Children in Placement, created in Section 2 of this Act, in the development of a statewide facilities services plan.

SECTION 5. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO READ AS FOLLOWS:

The department shall maintain an inventory of the number and types of placements available for children by county, by district, and for the state. The inventory shall be updated every week and shall show in detail for each facility or foster home how many beds are filled, how many are empty, and the type of child that would be appropriate for referral to the facility or foster home. The inventory shall be readily accessible by the statewide placement coordinator and the district placement coordinators.

Section 6. If the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by this 1998 Regular Session of the General Assembly, the references to the Cabinet for Human Resources appearing in subsection (1)(b) of Section 1 of this Act shall be codified as the Cabinet for Families and Children.

HB 617, AN ACT relating to the regulation of entities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 199.011 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Secretary" means the secretary for human resources;

(2) "Cabinet" means the Cabinet for Human Resources;

(3) "Department" means the Department for Social Services;

(4) "Child" means any person who has not reached his eighteenth birthday;

(5) "Adult adopted person" means any adopted person who is twenty-one (21) years of age or older;

(6) "Child-caring facility" means any institution or group home***, including institutions and group homes that are publicly operated, providing residential care on a twenty-four (24) hour basis to children, not related by blood, adoption, or marriage to the person maintaining the facility,*** other than ***an institution or group home***[~~a state facility, or one (1)~~] certified by an appropriate agency as operated primarily for educational or medical purposes[~~ providing residential care on a twenty-four (24) hour basis to children, not related by blood, adoption, or marriage to the person maintaining the facility~~];

(7) "Child-placing agency" means any agency licensed by the cabinet[~~ other than a state agency~~] which supervises the placement of children in foster family homes or child-caring facilities, or which places children for adoption;

(8) "Adoption worker" means an employee of the cabinet designated as such by the secretary for human resources, a social worker employed by a county or city who has been approved by the cabinet to handle, under its supervision, adoption placement services to children, or a social worker employed by or under contract to a child-placing adoption agency;

(9) "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or of a licensed child-placing agency;

(10) "Group home" means a homelike facility for not more than eight (8) foster children, not adjacent to or part of an institutional campus, operated by a sponsoring agency for children who may participate in community activities and use community resources;

(11) "Institution" means a child-caring facility providing care or maintenance for nine (9) or more children;

(12) "Family rehabilitation home" means a child-caring facility for appropriate families and comprising not more than twelve (12) children and two (2) staff persons; and

(13) "Placement services" means those social services customarily provided by a licensed child-placing or a public agency which are necessary for the arrangement and placement of children in foster family homes, child-placing facilities, or adoptive homes. Placement services are provided through a licensed child-placing or a public agency for children who cannot be cared for by their biological parents and who need and can benefit from new and permanent family ties established through legal adoption. Licensed child-placing agencies and public agencies have a responsibility to act in the best interests of children, biological parents, and adoptive parents by providing social services to all the parties involved in an adoption.

(14) "Voluntary and informed consent" means that at the time of the execution of the consent the consenting person was fully informed of the legal effect of the consent, that the consenting person was not given or promised anything of value except those expenses allowable under KRS 199.590(6), that the consenting person was not coerced in any way to execute the consent, and that the consent was voluntarily and knowingly given. If at the time of the execution of the consent the consenting person was represented by independent legal counsel, there shall be a presumption that the consent was voluntary and informed. In the event the person was not represented by independent legal counsel, the consent shall be in writing, signed and sworn to by the consenting person and include the following:

  (a) Date, time, and place of the execution of the consent;

  (b) Name of the child, if any, to be adopted and the date and place of the child's birth;

  (c) Consenting person's relationship to the child;

  (d) Identity of the proposed adoptive parents or a statement that the consenting person does not desire to know the identification of the proposed adoptive parents;

  (e) A statement that the consenting person understands that the consent will be final and irrevocable twenty (20) days after the execution of the consent if the placement was previously approved, if approval of the placement is required;

  (f) Disposition of the child if the adoption is not adjudged;

  (g) A statement that the consenting person has received a completed and signed copy of the consent at the time of the execution of the consent;

  (h) A statement that the consenting person understands that the consent may only be withdrawn by written notification sent by certified or registered mail addressed to either the attorney for the consenting person or to the attorney for the adoptive parents, within thirty (30) days following the execution of the consent;

(i) Name and address of the person who prepared the consent, name and address of the person who reviewed and explained the consent to the consenting person, and a verified statement from the consenting person that the consent has been reviewed with and fully explained to the consenting person; and

(j) Total amount of the consenting person's legal fees, if any, for any purpose related to the execution of the consent and the source of payment of the legal fees.

Section 2. KRS 199.640 is amended to read as follows:

(1) ***Any facility or agency seeking to***[~~No person, association or organization shall~~] conduct, operate***,*** or maintain any child-caring facility***,*** or child-placing agency ***shall first obtain***[~~without having~~] a license to ***conduct, operate, or maintain the facility or agency from***[~~do so issued by~~] the cabinet.

(2) ***The cabinet shall:***

(a) Develop standards, as provided in subsection (5) of this section, which must be met by any facility or agency seeking to be licensed to conduct, operate, or maintain a child-caring facility or child-placing agency;

(b) Issue licenses to any facility or agency found to meet established standards and revoke or suspend a license after a hearing in any case that a facility or agency holding a license is determined to have substantially failed to conform to the requirements of the standards; and

(c) Establish and follow procedures designed to insure that any facility or agency licensed to conduct, operate, or maintain a child-caring facility or child-placing agency complies with the requirements of the standards on an ongoing basis.

(3) Licenses ***shall be*** issued[~~ to the agency or facility shall be valid~~] for a period of one (1) year from date of issue unless revoked by the cabinet***.***[~~ provided that~~] Each licensed facility or agency shall be visited and inspected ***at least one (1) time each year*** by a person authorized by the cabinet ***and meeting specific qualifications established by the secretary of the cabinet in an administrative regulation.***[~~at least once each year and~~] A complete report of ***the***[~~such~~] visit ***and***[~~or~~] inspection ***shall*** be filed with the cabinet.

(4) Each license issued shall specify the type of care or service the licensee is authorized to perform. Each initial application for a license shall be accompanied by a fee of one hundred dollars ($100) and shall, except for provisional licenses, be renewable annually upon expiration and reapplication when accompanied by a fee of fifty dollars ($50). The fees collected by the secretary shall be deposited in the State Treasury and credited to a revolving fund account for the purpose of carrying out the provisions of this section. The balance of said account shall lapse to the general fund at the end of each biennium.

(5) (a)[~~(3)~~] The secretary ***shall promulgate***[~~may adopt~~] administrative regulations establishing ***basic*** standards of care and service for child-caring facilities and child-placing agencies relating to the ***health and safety of all children in the care of the facility or agency, the basic components for a quality program, as referenced below***[~~sanitary and hygienic conditions, the accommodations available for each child, the diet provided, the safety of child from fire and other accidents and hazards~~], and ***any***[~~such~~] other factors as may be necessary to promote the welfare of children cared for or placed by ***the***[~~such~~] agencies and facilities***. Standards established may vary depending on the capacity of the agency or facility seeking licensure. These administrative regulations shall establish standards that insure that:***

1. The treatment program offered by the facility or agency is directed toward child safety, improved child functioning, improved family functioning, and continuity and permanence for the child;

2. The facility or agency has on staff, or has contracted with, individuals who are qualified to meet the treatment needs of the children being served, including their psychological and psychiatric needs;

3. The facility or agency has procedures in place to insure that its staff receives ongoing training and that all staff members who are required to do so meet all regional and national standards;

4. The facility or agency develops an integrated, outcomes-based treatment plan that meets the health, mental health, education, safety, and security needs of each child in its care;

5. The facility or agency has procedures in place to include parents, family, and other caregivers in a child's treatment program;

6. The facility or agency has procedures in place whereby it evaluates its programs on a quarterly basis and documents changes in the program if the results of the review indicate a change is needed;

7. The facility or agency makes available quality programs for substance abuse prevention and treatment with providers licensed under KRS Chapter 222 as part of its treatment services;

8. The facility or agency initiates discharge planning at admission and provides sufficient aftercare; and

9. The facility or agency has procedures in place that outline the structure and objectives of cooperative relationships with the community within which it is located and the local school district.

(b) The secretary shall promulgate regulations establishing recordkeeping and reporting requirements and standards for licensed agencies and facilities that recognize the electronic storage and retrieval of information for those facilities that possess the necessary technology and that include, at a minimum, the following information relating to children in the care of the agency or facility:

1. The name, age, social security number, county of origin, and all former residences of the child;

2. The names, residences, and occupations, if available, of the child's parents;

3. The date on which the child was received by the agency or facility; the date on which the child was placed in a foster home or made available for adoption; and the name, occupation, and residence of any person with whom a child is placed; and

4. A brief and continuing written narrative history of each child covering the period during which the child is in the care of the agency or facility.

(c) The secretary may promulgate administrative regulations creating separate licensure standards for different types of facilities.

(d) The secretary shall promulgate administrative regulations to establish practices and procedures for the inspection of child-caring facilities and child-placing agencies. These administrative regulations shall establish a uniform reporting mechanism that includes guidelines for enforcement.[~~; provided, however,~~]

(6) Any administrative regulations ***promulgated***[~~adopted~~] pursuant to KRS Chapter 13A to govern services provided by church-related privately operated child-caring agencies or facilities shall not prohibit the use of reasonable corporal physical discipline which complies with the provisions of KRS 503.110(1), including the use of spanking or paddling, as a means of punishment, discipline or behavior modification.

[~~(4) Each agency or facility licensed under this section shall keep a record containing:~~

~~(a) The names, ages, present and former residences of all children received;~~

~~(b) The names, residence and occupation so far as is known, of the parents;~~

~~(c) The dates of the reception, placing out for adoption or foster care, together with the names, occupation and residence of the persons with whom the child is placed;~~

~~(d) The date and cause of termination of its custody of each child; and~~

~~(e) A brief history of each child until he shall have reached the age of eighteen (18) years or shall have been adopted or discharged according to the law.~~

~~(5) Parents are received or boarded in a family rehabilitation home pursuant to a written agreement between home and parent.~~]

(7)[~~(6)~~] All records regarding children or facts learned about children and their parents and relatives by any licensed agency or facility shall be deemed confidential in the same manner and subject to the same provisions as similar records of the cabinet. The information thus obtained shall not be published or be open for public inspection except to authorized employees of the cabinet or of such licensed agency or facility in performance of their duties.

Section 3. KRS 199.670 is amended to read as follows:

(1) The cabinet may revoke ***or suspend*** a license ***issued*** under KRS 199.640 for any ***deficiency or*** condition which would have caused a denial of the license in the first instance. The cabinet may refuse to issue a license in any case where the applicant is not found to ***meet the standards established***[~~possess the qualifications prescribed~~] by the secretary ***in an administrative regulation promulgated in accordance with the provisions of Section 2 of this Act***.

(2) ***If***[~~In any case where~~] the cabinet proposes to revoke ***or suspend,*** or to refuse to issue a license, written notice shall be given to the licensee or applicant, stating the proposed action and grounds therefor, and notifying the licensee or applicant that the license will be revoked***, suspended,*** or refused unless the applicant or licensee makes ***a written request to engage in informal dispute resolution, in accordance with the provisions of subsection (4) of this section, or the applicant or licensee makes a written request***[~~application~~] for a hearing before the secretary within thirty (30) days of notice. ***Notice shall be complete and effective upon mailing. If the cabinet proposes to deny the issuance or renewal of a license, notice of the proposed action shall be provided to the licensee or applicant no later than thirty (30) days after the application for licensure or renewal is received by the cabinet.***

(3) If ***a request***[~~application~~] for a hearing is made, the hearing shall be conducted in accordance with KRS Chapter 13B. If the cabinet has probable cause to believe that an immediate threat to the public health, safety, or welfare exists, the cabinet may take emergency action pursuant to KRS 13B.125.

(4) (a)[~~(3)~~] ***Upon receipt of a statement of deficiency from the cabinet, the applicant or licensee may request one (1) informal opportunity per survey to dispute any deficiencies with which it disagrees. The applicant or licensee shall make a written request to the cabinet for informal dispute resolution, which must be received by the cabinet within ten (10) days of the receipt of the statement of deficiency by the applicant or licensee.***

The request shall:

1. Specify the deficiencies in dispute;

2. Provide a detailed explanation of the basis for the dispute;

3. Include any supporting documentation, including any information that was not available at the time of the survey; and

4. If desired, request a face-to-face meeting with the regional program manager, or the manager's designee, and a surveyor who did not participate in the original survey or the decision to issue the disputed deficiency.

(b) Upon receipt of a request for informal dispute resolution, the regional program manager, or the manager's designee, and a child-caring surveyor who did not participate in the original survey or the decision to issue the disputed deficiency shall, within thirty (30) days of receipt of the request, review the specific deficiencies in dispute, and notify the applicant or licensee in writing of the results of the review. If a face-to-face meeting was requested by the applicant or licensee, the meeting shall be held, and no decision shall be made regarding the disputed deficiencies until after the face-to-face meeting has occurred.

1. If materials submitted by the applicant or licensee by mail or at the face-to-face meeting demonstrate that specific deficiencies should not have been cited, those deficiencies will be removed from the statement of deficiencies and any enforcement actions imposed solely as a result of those cited deficiencies will be rescinded.

2. If, after review of the disputed deficiencies, the regional office staff affirms the deficiencies, the licensee or applicant may accept the findings of the regional office staff and make any corrections required by the cabinet, or may, within thirty (30) days of receipt of the notice, request in writing a meeting with the secretary or the secretary's designee. The secretary may designate an individual who holds the position of director or above to serve as the designee.

3. The secretary or the secretary's designee shall meet in person with the licensee or applicant and review the documentation available within fifteen (15) days of receipt of the request.

4. If the information provided demonstrates that specific deficiencies should not have been cited, those deficiencies will be removed from the statement of deficiencies and any enforcement actions imposed solely as a result of those cited deficiencies will be rescinded.

5. If the secretary or the secretary's designee affirms the deficiencies, the secretary or the secretary's designee shall, within fifteen (15) days issue a final written order stating the cabinet's final position regarding the deficiencies in dispute. The decision of the secretary or the secretary's designee shall be a final order for purposes of subsection (5) of this section.

(c) A request for informal dispute resolution shall not delay the required submission of a plan of correction for any deficiency not in dispute. Any corrective plan of action or similar submission required by the cabinet relating to any deficiency in dispute shall be suspended until a decision is rendered and a corrective plan of action is agreed to within the informal dispute resolution process or the secretary or the secretary's designee issues a final order.

(5) Any final order may be reviewed in the Circuit Court of the county in which the child-caring facility or child-placing agency is located in accordance with KRS Chapter 13B.

Section 4. If the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by this 1998 Regular Session of the General Assembly, the following subsection shall be added as the last numbered subsection of Section 2 of this Act:

Other than for the establishment of standards, the Cabinet for Families and Children may contract with the Cabinet for Health Services to perform any or all of its responsibilities under this section and Section 3 of this Act relating to the licensing and inspection of child-caring facilities and child-placing agencies.

The Committee on Appropriations and Revenue reported **HB 51**, with Committee Amendments attached thereto, with the expression of opinion that the same should pass. Ordered referred to the Committee on Rules.

The Committee Amendment No. 1 to **HB 51** is as follows:

On page 1, line 1, after "Section 1.", by deleting the remainder of the language entirely and inserting in lieu thereof the following:

"The General Assembly hereby approves and authorizes the construction and operation of two (2) one hundred twenty (120) bed nursing homes, one in western Kentucky and the other in eastern Kentucky.".

The Committee Amendment No. 2 Title to **HB 51** is as follows:

By amending the title to read as follows: "AN ACT relating to the approval of capital projects.".

The Committee on Appropriations and Revenue reported **HB 328**, with Committee Amendment attached thereto, and **HB 622** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 328, AN ACT relating to tax administration.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 131.155 is amended to read as follows:

(1) As used in this section the term "electronic fund transfer" means an electronic data processing medium that takes the place of a paper check for debiting or crediting an account and of which a permanent record is made.

(2) Notwithstanding any statutory provisions to the contrary, the cabinet may require all taxpayers ***and any other person who is required to collect or remit taxes and fees administered by the cabinet***[~~, whose average monthly liability for the tax imposed under KRS Chapter 139 or whose average monthly liability for the tax required to be withheld under KRS 141.310 exceeds twenty-five thousand dollars ($25,000),~~] to remit ***those taxes and fees to the cabinet***[~~that tax~~] by electronic fund transfer. The transfer shall be made on or before the date the tax is due and the cabinet may permit the filing of the tax return following the date of the tax payment. ***Taxpayers or any other person who is required to collect or remit taxes and fees administered by the cabinet whose average payment per reporting period is less than ten thousand dollars ($10,000) for each tax or fee required to be collected or remitted shall not be required to remit the payments by electronic fund transfer.***

(3) The cabinet shall promulgate administrative regulations establishing electronic fund transfer requirements for the payment of taxes and fees administered by the cabinet.

Section 2. KRS 131.990 is amended to read as follows:

(1) Any person who fails or refuses to obey a subpoena or order of the Kentucky Board of Tax Appeals made pursuant to KRS Chapter 13B shall be fined not less than twenty-five dollars ($25) nor more than five hundred dollars ($500).

(2) Any person who violates any of the provisions of KRS 131.190, except subsection (4) thereof, shall be fined not more than five hundred dollars ($500) or imprisoned for not more than six (6) months, or both, and shall be disqualified and removed from office or employment. Any person who violates the provisions of KRS 131.190(4) shall be fined not more than five thousand dollars ($5,000) or imprisoned for not more than five (5) years or both.

(3) Any person who willfully fails to comply with the rules and regulations promulgated by the Revenue Cabinet for the administration of delinquent tax collections shall be fined not less than twenty dollars ($20) nor more than one thousand dollars ($1,000).

(4) Any person who fails to do any act required or does any act forbidden by KRS 131.210 shall be fined not less than ten dollars ($10) nor more than five hundred dollars ($500).

(5) Any person who fails to comply with the provisions of Section 1 of this Act shall, unless it is shown to the satisfaction of the cabinet that the failure is due to reasonable cause, pay a penalty of one-half of one percent (0.5%) of the amount that should have been remitted under the provisions of Section 1 of this Act for each failure to comply.

Section 3. The provisions of this Act are effective for payments remitted on or after August 1, 1998.

The Committee Amendment No. 1 to **HB 328** is as follows:

On page 1, line 14, before "***ten***" by inserting "***twenty-five thousand dollars ($25,000) as of August 1, 1998, seventeen thousand five hundred dollars ($17,500) as of July 1, 1999, and***"; and

On page 1, line 15, after "***($10,000)***", by inserting "***as of July 1, 2000 and thereafter***"; and

On page 1, after line 19 but before line 20, by inserting the following:

"***(4) The cabinet may waive the requirement that a qualifying taxpayer remit the payment by electronic fund transfer if the taxpayer is unable to remit funds electronically.***

(5) Taxpayers and any other persons who are required to collect or remit taxes administered by the cabinet by electronic fund transfer shall be entitled to receive refunds for any overpayment of taxes or fees , on or after July 1, 2001, by electronic fund transfer."

HB 622, AN ACT relating to property tax administration.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 132.380 is amended to read as follows:

(1) Before any person's name shall appear before the voters on election day as a candidate for the office of property valuation administrator in any primary or general election, except as a candidate to succeed himself in office, or before he may be appointed property valuation administrator, except as an interim appointee as provided by KRS 132.375, he shall hold a certificate issued by the Revenue Cabinet, showing that he has been examined by it and that he is qualified for the office. All certificates issued shall expire one (1) year from the date of issuance. The examinations shall be written and formulated so as to test fairly the ability and fitness of the applicant to serve as property valuation administrator. The Revenue Cabinet shall hold the examinations in at least one (1) place in each Supreme Court district during the month of ***November***[~~October~~] of each year immediately preceding each year in which property valuation administrators are to be elected. The Revenue Cabinet shall advise each county attorney of the time and place of the examination, and the county attorney shall post a notice thereof in a conspicuous place in the courthouse two (2) weeks before the examination is given. Any person desiring to take an examination shall appear at the time and place designated.

(2)[~~ If, after the giving of the examination, as provided in subsection (1), there is only one (1) person qualified to be a candidate in the county, the Revenue Cabinet shall hold a second examination prior to the filing date in each Supreme Court district where necessary. Applicants from only those counties having not more than one (1) person qualified shall be eligible to take the examination. Notice of the second examination shall be posted in the manner provided in subsection (1).~~

~~(3)~~] Whenever there is a vacancy in the office of property valuation administrator to be filled by appointment or by election,[~~and there is not more than one (1) person holding a valid certificate and eligible for appointment or election,~~] the Revenue Cabinet ***shall***[~~may~~] hold a special examination for applicants seeking a certificate for the office.[~~ If, after the giving of a special examination, only one (1) person is qualified, the county judge/executive may request a second examination. Special examinations shall be held in the same manner as regular examinations.~~]

(3)[~~(4)~~] Examinations shall be given and graded in accordance with rules of the cabinet published at the time of the examination. Within ten (10) days after the examination, a certificate of fitness and qualification to fill the office of property valuation administrator shall be issued by the Revenue Cabinet to each person passing the examination.

(4)[~~(5)~~] Examination records shall be preserved by the cabinet for twelve (12) months after the examination, and the record of any person who took the examination may be seen by him at the office of the Revenue Cabinet in Frankfort, Kentucky.

Section 2. KRS 132.385 is amended to read as follows:

(1) The cabinet shall develop and administer a program for the purpose of providing education and training in the technical, legal, and administrative aspects of property tax administration for property valuation administrators, deputy property valuation administrators, and cabinet employees. Courses may be created and taught by cabinet personnel or the cabinet may adopt specific courses offered by appropriate professional organizations.

(2) The cabinet shall develop and administer, in cooperation with the property valuation administrators, a certification program for property valuation administrators, deputy property valuation administrators, and cabinet employees. A professional designation, "certified Kentucky assessor" (CKA), shall be awarded to those individuals successfully meeting the standards established by this program. Minimum requirements shall include one hundred twenty (120) hours of classroom instruction, passage of subject matter examinations, and three (3) years of experience in Kentucky property tax administration. An advanced designation, "senior Kentucky assessor" (SKA), shall be awarded to those individuals successfully completing an additional ninety (90) hours of classroom instruction, passage of subject matter examinations, and an additional two (2) years of experience in Kentucky property tax administration. Correspondence course credit administered by the cabinet may be substituted for no more than thirty (30) hours of the one hundred twenty (120) hours required for the "certified Kentucky assessor" (CKA) designation, and for no more than fifteen (15) hours of the additional ninety (90) hours required for the "senior Kentucky assessor" (SKA) designation.

(3) Any property valuation administrator awarded the certified Kentucky assessor designation shall receive a five percent (5%) salary increase effective the first day of the month following receipt of the designation. Any property valuation administrator awarded the senior Kentucky assessor designation shall receive an additional five percent (5%) salary increase effective the first day of the month following receipt of the designation.[~~ Those property valuation administrators awarded the certified Kentucky assessor designation prior to August 1, 1994, shall receive the five percent (5%) salary increase effective August 1, 1994. Those property valuation administrators awarded the senior Kentucky assessor designation prior to August 1, 1994, shall receive an additional five percent (5%) salary increase effective August 1, 1994. The salary increases provided for in this subsection shall be funded only if sufficient surplus funds are available to fund the increases.~~]

Floor Amendments (Continued)

Floor Amendment No. 1 to **HB 401**, by Representative Damron:

On page 4, line 18 by placing "[" in front of the word "or" and by placing "]" after the word "or" and by striking through the word "or", and after "organization," by adding "***or reinsurer***";

On page 5, line 1 after "section" by adding "***including reinsurance***";

On page 5, after line 16 and before line 17 by inserting the following, "***(7) "Criminal syndicate" means five (5) or more persons collaborating to promote or engage in any fraudulent insurance act, as set forth in subsection (1) of Section 7 of this Act, on a continuing basis.***";

On page 6, line 6 after "(c)" by placing a "[" before "Assists" and by striking through the language on lines 6 through 12;

On page 6, line 13 by placing "]" after "(d)" and by striking through "(d)";

On page 6, line 15 before "(e)" by inserting "***(d)***", and by placing brackets around and striking through "(e)";

On page 6, line 17 before "(f)" by inserting "***(e)***", and by placing brackets around and striking through "(f)";

On page 6, line 19 before "(g)" by inserting "***(f)***", and by placing brackets around and striking through "(g)";

On page 6, line 22 before "(h)" by inserting "***(g)***" and by placing "[" before "or" and by placing "]" after "or" and by striking through the word "or";

On page 6, line 23 before "(i)" by inserting "***(h)***", and by placing brackets around and striking through "(i)"

On page 6, line 24 after "KRS 342.0011" by inserting "***;***";

On page 6, after line 24 and before line 25 by inserting the following:

"***(i) Knowingly and with intent to defraud or deceive, presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or any agent thereof, any written or oral statement, knowing that the statement contains any false, incomplete, or misleading information concerning any material fact or thing, as part of, or in support of one (1) or more of the following:***

1. The rating of an insurance policy;

2. The financial condition of an insurer;

3. The formation, acquisition, merger, reconsolidation, dissolution, or withdrawal from one (1) or more lines of insurance in all or part of this Commonwealth by an insurer; or

4. A document filed with the commissioner;

(j) Knowingly and with intent to defraud or deceive engages in any of the following:

1. Solicitation or acceptance of new or renewal insurance risks on behalf of an insolvent insurer; or

2. Removal, concealment, alteration, tampering, or destruction of the assets or records of an insurer; or

(k) Assists, abets, solicits, or conspires with another to commit a fraudulent insurance act in violation of this subtitle";

On page 6, line 25 after "in" by adding "***paragraphs***" and by placing "[" in front of the word "paragraph" and by placing "]" after the word "paragraph" and by striking through the word "paragraph", and after "(b)" by adding "***and (c)***";

On page 7, line 10 after "(b)" by inserting "***Except as provided in paragraph (c) of this subsection, where***", and by placing "[" in front of "Where" and by placing "]" after "Where" and by striking through "Where";

On page 7, line 21 after "(c)" by inserting the following:

"***Any person, with the purpose to establish or maintain a criminal syndicate, or to facilitate any of its activities, as set forth in KRS 506.120(1), shall be guilty of engaging in organized crime, a Class B felony, and shall be punished by:***

1. Imprisonment for not less than ten (10) years nor more than twenty (20) years;

2. A fine, per occurrence, of not more than ten thousand dollars ($10,000) per individual nor one hundred thousand dollars ($100,000) per corporation, or twice the amount of gain received as a result of the violation; whichever is greater; or

3. Both imprisonment and a fine, as set forth in subparagraphs 1. and 2. of this paragraph.";

On page 7, Line 21 before "In" by inserting "***(d)***"; and

On page 7, Line 22 after "(a)" by adding "***,***", and by placing "[" before "or" and by placing "]" after "or" and by striking through "or", and after "(b)" by adding "***, or (c)***".

Calendar

HCR 8, HCR 12, HCR 21, HCR 22, HCR 23, HCR 24, HCR 25, HCR 26, HCR 27, HCR 28, HCR 29, HCR 30, and **HCR 41** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Recess

Representative Stumbo moved to suspend the rules to allow the House to recess for a Committee on Rules meeting in the Speaker's Office. Agreed. At the appointed hour, the Speaker resumed the Chair and called the House to order.

Floor Amendments (Continued)

Floor Amendment No. 4 to the Committee Substitute to **HB 327**, by Representative Riner:

On page 4, line 1, to place brackets around and strike through "conditional discharge or"; and

On page 4, line 6, following "consecutively." to insert "***When sentencing a defendant as a second or third offender, the defendant shall be sentenced to jail with work release for verified employment, education, drug and alcohol treatment education programs, and religious services, unless the court is of the opinion that the sentence would unduly depreciate the seriousness of the offense, in which case the court may order a portion of the sentence served as jail time without work release. If a defendant granted work release pursuant to this section violates the provisions of work release the court may order the defendant incarcerated for the remainder of his or her sentence. When a defendant is granted work release pursuant to this section, any portion of a day spent in jail shall count as a twenty-four (24) hour day for purposes of service of sentence and for accounting purposes of the jail.***"

Report On Enrolled Bills

HB 109, HB 110, and **HB 135** delivered to the Senate and signed by the President. Delivered to the Governor on February 24 at 2:22 p.m.

Representative Stumbo moved that the rules be suspended for a Committee on Rules Report. Agreed.

Report of Committees (Continued)

The Committee on Rules reported that **HB 401, HB 414, HB 457, SB 101, SB 141, HCR 8, HCR 12, HCR 21, HCR 22, HCR 23, HCR 24, HCR 25, HCR 26, HCR 27, HCR 28, HCR 29, HCR 30,** and **HCR 41** have been posted for passage in the Orders of the Day for February 25, 1998.

The Committee on Rules reported that the following Bill has been recommitted:

Appropriations and Revenue: **HB 85**

Floor Amendments (Continued)

Floor Amendment No. 1 to the Committee Substitute to **HB 493**, by Representative Barrows:

On page 1, line 23, following the word "benefits" to delete "***shall not***" and remove the brackets and strikethroughs around "may"; and

On page 1, line 25, following the word "claimant", to insert the words "***, if the claimant so designates***".

Orders of the Day

HB 391, with Committee Substitute and Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved the adoption of the Committee Substitute to **HB 391**. Agreed.

Representative Long moved that **HB 391**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 91, Nays 2 (See February 24, 1998 roll call on **HB 391** - Appendix.) **HB 391**, by way of Committee Substitute, was passed. Representative Long moved the adoption of Committee Amendment No. 1 Title. Agreed; and the title was agreed to.

Representative Long moved that the vote by which **HB 391**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 445 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Damron moved that **HB 445** be passed.

On the roll call the vote was: Yeas 91, Nays 1 (See February 24, 1998 roll call on **HB 445** - Appendix.) **HB 445** was passed and the title agreed to. Representative Damron moved that the vote by which **HB 445** was passed be reconsidered and said motion be placed on the table. Agreed.

SB 172 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **SB 172** be passed.

On the roll call the vote was: Yeas 93, Nays 3 (See February 24, 1998 roll call on **SB 172** - Appendix.) **SB 172** was passed and the title agreed to. Representative Stumbo moved that the vote by which **SB 172** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 418 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Moberly moved that **HB 418** be passed.

On the roll call the vote was: Yeas 95, Nays 1 (See February 24, 1998 roll call on **HB 418** - Appendix.) **HB 418** was passed and the title agreed to. Representative Moberly moved that the vote by which **HB 418** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 564, with Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Miller moved the adoption of Floor Amendment No. 2 to **HB 564**. Agreed.

Representative Miller moved the adoption of Floor Amendment No. 4 to **HB 564**. Agreed.

Representative Miller moved that **HB 564**, as amended, be passed.

On the roll call the vote was: Yeas 90, Nays 7 (See February 24, 1998 roll call on **HB 564** - Appendix.) **HB 564**, as amended, was passed and the title agreed to. Representative Miller moved that the vote by which **HB 564**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 32, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Murgatroyd moved the adoption of the Committee Substitute to **HB 32**. Agreed.

Representative Murgatroyd moved that **HB 32**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 92, Nays 1 (See February 24, 1998 roll call on **HB 32** - Appendix.) **HB 32**, by way of Committee Substitute, was passed and the title agreed to. Representative Murgatroyd moved that the vote by which **HB 32**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 14, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Nesler moved the adoption of Committee Amendment No. 1 to **HB 14**. Agreed.

Representative Nesler moved that **HB 14**, as amended, be passed.

On the roll call the vote was: Yeas 89, Nays 7 (See February 24, 1998 roll call on **HB 14** - Appendix.) **HB 14**, as amended, was passed and the title agreed to. Representative Nesler moved that the vote by which **HB 14**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 333 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Jenkins moved that **HB 333** be passed.

On the roll call the vote was: Yeas 92, Nays 3 (See February 24, 1998 roll call on **HB 333** - Appendix.) **HB 333** was passed and the title agreed to. Representative Jenkins moved that the vote by which **HB 333** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 342 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 342** be passed.

On the roll call the vote was: Yeas 92, Nays 4 (See February 24, 1998 roll call on **HB 342** - Appendix.) **HB 342** was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 342** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 344 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 344** be passed.

On the roll call the vote was: Yeas 95, Nays 2 (See February 24, 1998 roll call on **HB 344** - Appendix.) **HB 344** was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 344** was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 5 to the Committee Substitute to **HB 327**, by Representative Coleman:

On page 12, following line 26 to insert the following language:

"Section 8. KRS 189A.200 is amended to read as follows:

(1) ~~[In addition to the pretrial suspension of a motor vehicle operator's license authorized by KRS 189A.060,]~~ the court shall at the arraignment or as soon as such relevant information becomes available suspend the motor vehicle operator's license and motorcycle operator's license and driving privileges of any person charged with a violation of KRS 189A.010(1)(a), (b), (c), or (d) who:

(a) Has refused to take an alcohol concentration or substance test as reflected on the uniform citation form; or

(b) Has been convicted of one (1) or more prior offenses as described in KRS 189A.010(4)(e) or has had his operator's license revoked or suspended on one (1) or more occasions for refusing to take an alcohol concentration or substance test, in the five (5) year period immediately preceding his arrest***; or***

(c) Has been charged with a violation of Section 1 of this Act and has an alcohol concentration in blood or breath of 0.08 or greater;

(d) Has a prior driving history that indicates prior traffic violations, including but not limited to, driving under the influence of intoxicating beverages or impairing chemicals or other traffic offenses demonstrating a lack of regard for the safety of others; or

(e) The violation of Section 1 of this Act resulted in an accident involving physical injury to a person other than the defendant.

(2) Persons whose licenses have been suspended pursuant to this section may file a motion for judicial review of the suspension, and the court shall conduct the review in accordance with this chapter within thirty (30) days after the filing of the motion. The court shall, at the time of the suspension, advise the defendant of his rights to the review.

(3) When the court orders the suspension of a license pursuant to this section, the defendant shall immediately surrender the license to the Circuit Court clerk, and the court shall retain the defendant in court or remand him into the custody of the sheriff until the license is produced and surrendered. If the defendant has lost his operator's license, other than due to a previous suspension or revocation, which is still in effect, the sheriff shall take him to the office of the circuit clerk so that a new license can be issued. If the license is currently under suspension or revocation, the provisions of this subsection shall not apply.

(4) The Circuit Court clerk shall retain any license surrendered to him pursuant to this section until:

(a) The court enters an order directing the return of the license to the defendant;

(b) In the event of a first offense charge not involving a refusal by the defendant to take an alcohol concentration or substance test, for a violation of KRS 189A.010(1)(a), (b), (c), or (d), ninety (90) days have elapsed since the surrender of the license and the case has not been concluded;

(c) In the event of a second offense charge not involving a refusal by the defendant to take an alcohol concentration or substance test, for a violation of KRS 189A.010(1)(a), (b), (c), or (d), twelve (12) months have elapsed since the surrender of the license and the case has not been concluded;

(d) In the event of a third offense charge not involving a refusal by the defendant to take an alcohol concentration or substance test, for a violation of KRS 189A.010(1)(a), (b), (c), or (d), twenty-four (24) months have elapsed since the surrender of the license and the case has not been concluded;

(e) In the event of a fourth or subsequent offense charge not involving a refusal by the defendant to take an alcohol concentration or substance test, for a violation of KRS 189A.010(1)(a), (b), (c), or (d), sixty (60) months have elapsed since the surrender of the license and the case has not been concluded;

(f) In the event of a charge involving a refusal by the defendant to take an alcohol concentration or substance test, for a violation of KRS 189A.010(1)(a), (b), (c), or (d), the period specified by KRS 189A.107 has elapsed since the surrender of the license and the case has not been concluded;

(g) A judgment of acquittal is entered in the case unless the applicable suspension period required by KRS 189A.107 has not expired; or

(h) A judgment of conviction for a violation of KRS 189A.010(1)(a), (b), (c), or (d) is entered in the case, whereupon the clerk shall transmit the license forthwith to the Department of Transportation.

(5) The clerk shall promptly notify the Department of Transportation of all licenses surrendered pursuant to this section.

(6) Any person whose operator's license has been suspended pursuant to this section shall be given credit for all pretrial suspension time against the period of revocation imposed upon conviction.

Section 9. KRS 186.560 is amended to read as follows:

(1) The cabinet shall forthwith revoke the license of any operator of a motor vehicle upon receiving record of his conviction of any of the following offenses:

(a) Murder or manslaughter resulting from the operation of a motor vehicle;

(b) Driving a vehicle which is not a motor vehicle while under the influence of alcohol or any other substance which may impair one's driving ability;

(c) Perjury or the making of a false affidavit under KRS 186.400 to 186.640 or any law requiring the registration of motor vehicles or regulating their operation on highways;

(d) Any felony in the commission of which a motor vehicle is used;

(e) Conviction or forfeiture of bail upon three (3) charges of reckless driving within the preceding twelve (12) months;

(f) Conviction of driving a motor vehicle involved in an accident and failing to stop and disclose his identity at the scene of the accident;

(g) Conviction of theft of a motor vehicle or any of its parts, including the conviction of any person under the age of eighteen (18) years;

(h) Failure to have in full force and effect the security required by Subtitle 39 of KRS Chapter 304 upon conviction of a second and each subsequent offense within any five (5) year period;

(i) Conviction for fraudulent use of a driver's license or use of a fraudulent driver's license to purchase or attempt to purchase alcoholic beverages, as defined in KRS 241.010, in violation of KRS 244.085; and

(j) Conviction of operating a motor vehicle, motorcycle, or moped without an operator's license as required by KRS 186.410.

(2) If the person convicted of any offense named in subsection (1) of this section is not the holder of a license, the cabinet shall deny the person so convicted a license for the same period of time as though he had possessed a license which had been revoked. If through an inadvertence the defendant should be issued a license, the cabinet shall forthwith cancel it.

(3) The cabinet upon receiving a record of the conviction of any person upon a charge of operating a motor vehicle while the license of that person is denied or suspended, or revoked, or while his privilege to operate a motor vehicle is withdrawn, shall immediately extend the period of the first denial, suspension, revocation, or withdrawal for an additional like period.

(4) The revocation or denial of a license or the withdrawal of the privilege of operating a motor vehicle for a violation of subsection (1)(a) of this section shall be for a period of not less than five (5) years. Revocations or denials under this section shall not be subject to any lessening of penalties authorized under any other provision of this section or any other statute.

(5) Except as provided in subsections (3), (4), and (8) of this section, in all other cases, the revocation or denial of a license

or the withdrawal of the privilege of operating a motor vehicle under this section shall be for a period of six (6) months, except that, if the same person has had one (1) previous conviction of any offense enumerated in subsection (1) of this section, regardless of whether the person's license was revoked because of the previous conviction, the period of the revocation, denial, or withdrawal shall be one (1) year; if the person has had more than one (1) previous conviction of the offenses considered collectively as enumerated in subsection (1) of this section, regardless of whether the person's license was revoked for any previous conviction, the period of revocation, denial, or withdrawal shall be for not less than two (2) years. If the cabinet, upon receipt of the written recommendation of the court in which any person has been convicted of violating KRS 189.520(1) or KRS 244.085(5) as relates to instances in which a driver's license or fraudulent driver's license was the identification used or attempted to be used in the commission of the offense, who has had no previous conviction of said offense, the person's operator's license shall not be revoked, but the person's operator's license shall be restricted to any terms and conditions the secretary in his discretion may require, provided the person has enrolled in an alcohol or substance abuse education or treatment program as the cabinet shall require. If the person fails to satisfactorily complete the education or treatment program or violates the restrictions on his operator's license, the cabinet shall immediately revoke his operator's license for a period of six (6) months.

(6) In order to secure the reinstatement of a license to operate a motor vehicle or motorcycle restored following a period of suspension or revocation pursuant to KRS ~~[189A.060,]~~189A.070, and 189A.080, the person whose license is suspended or revoked shall comply with the fees and other procedures of the Transportation Cabinet with regard to the reinstatement of suspended or revoked licenses.

(7) The cabinet shall revoke the license of any operator of a motor vehicle upon receiving notification that the person is under age eighteen (18) and has dropped out of school or is academically deficient, as defined in KRS 159.051(1).

(8) A person under the age of eighteen (18) who is convicted of the offenses of subsections (1) or (3) of this section, except for subsection (1)(h) of this section, shall have his license revoked until he reaches the age of eighteen (18) or shall have his license revoked as provided in this section, whichever penalty will result in the longer period of revocation.

Section 10. KRS 189A.080 is amended to read as follows:

(1) All licenses suspended or revoked pursuant to KRS ~~[189A.060 or]~~189A.070(1) shall be surrendered to the court. Other revocations pursuant to this chapter shall be administered by the Transportation Cabinet.

(2) The court shall retain control of the license until such time as the suspension or revocation imposed pursuant to KRS ~~[189A.060 or]~~189A.070(1) is lifted and the court shall provide notification of the suspension and actions taken within five (5) days to the Transportation Cabinet.

(3) At the end of the period of license suspension or revocation, imposed pursuant to KRS ~~[189A.060 or]~~189A.070(1), the person whose license was suspended or revoked may apply to the circuit clerk for reinstatement of the license. If all requirements of KRS Chapter 186 have been met and the license has not been suspended or revoked by the Transportation Cabinet for other reasons, the license shall be returned.

Section 11. The following KRS section is repealed:

189A.060 Pretrial suspension of operator's license.

Orders of the Day (Continued)

HB 130, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Burch moved the adoption of the Committee Substitute to **HB 130**. Agreed.

Representative Burch moved that **HB 130**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 74, Nays 16 (See February 24, 1998 roll call on **HB 130** - Appendix.) **HB 130**, by way of Committee Substitute, was passed and the title agreed to. Representative Burch moved that the vote by which **HB 130**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Stumbo moved that the three day posting requirement on **HB 632** be waived. Agreed.

Representative Stumbo moved that **HB 605** be reassigned to Counties and Special Districts. Agreed.

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions, Report of Committees and Posting of Bills and Resolutions for Consideration. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 706, by Representative Jordan: AN ACT relating to distinguished educators.

HB 707, by Representative Jordan: AN ACT relating to civil rights.

HB 708, by Representative Geveden: AN ACT relating to the use of information technology.

HB 709, by Representatives J. Arnold, Thomas, Gooch, Sims, Stewart, Allen, Yonts, Lee, J. Adams, Scott, L. Clark, Callahan, Nesler, McKee, A. Arnold, Damron, Weaver, Newsome, Haydon, Treesh, Turner, and Maricle: AN ACT relating to swine.

HB 710, by Representatives Hoffman and Stein: AN ACT relating to instructional time for students.

HB 711, by Representative Nunn: AN ACT relating to medical review organizations.

HB 712, by Representative Coleman: AN ACT relating to repayment of educational loans for primary health care professionals.

HB 713, by Representative J. Adams: AN ACT relating to electrical services.

HB 714, by Representative Colter: AN ACT relating to the Education Professional Standards Board.

HB 715, by Representatives Newsome, J. Arnold, Maricle, Stumbo, Barrows, Mason, Collins, Ballard, Bratcher, Adkins, Vincent, Colter, Rader, Crenshaw, Stewart, Bruce, Palumbo, Anderson, Napier, Alexander, Riner, Gray, Allen, Nesler, Stein, P. Clark, Worthington, and Moberly: AN ACT relating to the Teachers' Retirement System.

HB 716, by Representative Damron: AN ACT relating to the building construction industry.

HB 717, by Representative Brown: AN ACT relating to the Department of Fish and Wildlife Resources.

HB 718, by Representatives Stein, Marzian, and Crenshaw: AN ACT relating to reconstruction of the female breast after cancer.

HB 719, by Representatives Stein and Crenshaw: AN ACT relating to health insurance coverage for retired policemen and firefighters.

HB 720, by Representatives Kerr and Murgatroyd: AN ACT relating to charter buses.

HR 91, by Representative D. Butler: A RESOLUTION adjourning the House of Representatives in honor of the occasion of the birth of little Miss Emily Butler.

HJR 92, by Representative Worthington: A JOINT RESOLUTION establishing the additional four (4) year highway construction plan outlined in the Recommended FY 1999 - FY 2004 Six Year Road Plan presented to the 1998 General Assembly.

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Health and Welfare: **HB 621, HB 652, HB 657**

Judiciary: **HB 490, HB 659, HB 689, HB 690**

Transportation: **HB 155, HB 450, HB 497, HB 629, HB 645, HB 655, HB 656, SB 85, SB 167, SB 259**

Banking and Insurance: **HB 650**

Counties and Special Districts: **HB 501, HB 559, SB 103, SB 114**

Natural Resources and Environment: **HB 488**

Agriculture and Small Business: **HB 626, HB 658**

Cities: **HB 671**

Report of Committees (Continued)

The Committee on State Government reported **HB 246**, with Committee Substitutes and Committee Amendment attached thereto, with the expression of opinion that the same should pass. Ordered referred to the Committee on Rules.

The Committee Substitute No. 2 to **HB 246** is as follows:

HB 246, AN ACT proposing an amendment to Section 36 of the Constitution of Kentucky relating to legislative sessions.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. It is proposed that Section 36 of the Constitution of Kentucky be amended to read as follows:

The General Assembly shall meet ***each year*** on the first Tuesday after the first Monday in January. In odd-numbered years***, the General Assembly shall convene in organizational session*** for a period not to exceed ***five***[~~ten~~] legislative days for the purposes of electing legislative leaders, adopting rules of procedure, and the organizing of committees. ***The General Assembly shall then adjourn until the first Tuesday in February in odd-numbered years, at which time it shall convene in interim session for a period not to exceed twenty-five legislative days***. The General Assembly shall then adjourn until the first Tuesday after the first Monday in January of the following even-numbered years, at which time the General Assembly shall convene in regular session. ***All***[~~, and its~~] sessions shall be held at the seat of government, except in case of war, insurrection or pestilence, when it may, by proclamation of the Governor, assemble, for the time being, elsewhere.

Section 2. It is proposed that Section 42 of the Constitution of Kentucky be amended to read as follows:

The members of the General Assembly shall severally receive from the State Treasury compensation for their services: Provided, No change shall take effect during the session at which it is made; nor shall a session of the General Assembly continue beyond sixty legislative days, exclusive of Sundays, legal holidays or any day on which neither House meets, except that no regular session shall extend beyond April 15 of even-numbered years ***and no interim session shall extend beyond March 30 of odd-numbered years***; but this limitation as to length of session shall not apply to the Senate when sitting as a court of impeachment. A legislative day shall be construed to mean a calendar day.

Section 3. This amendment shall be submitted to the voters of the Commonwealth for their ratification or rejection at the time and in the manner provided for under Sections 256 and 257 of the Constitution and under KRS 118.415. The question to be submitted to the voters regarding this proposed amendment shall read: "Are you in favor of amending the Kentucky Constitution to reduce the General Assembly's organizational session by five days and to allow the General Assembly to meet in interim session in odd-numbered years for twenty-five days?"

The Committee Amendment No. 1 Title to **HB 246** is as follows:

By amending the title to read "AN ACT proposing an amendment to Sections 36 and 42 of the Constitution of Kentucky relating to legislative sessions.".

The Committee on State Government reported **HB 205, HB 207, HB 332,** with Committee Substitute attached thereto, **HB 337, HB 350, HB 423,** with Committee Substitute attached thereto, **HB 427,** with Committee Substitute attached thereto, **HB 439, HB 440, HB 451, HB 453,** with Committee Substitute attached thereto, **HB 470,** with Committee Substitute attached thereto, **HB 528, HB 549, HB 592, SB 155,** and **SCR 2** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 205, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 164A.050 is amended to read as follows:

(1) There is hereby created and established an independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky which shall be a body corporate and politic to be known and identified as the Kentucky Higher Education Student Loan Corporation.

(2) The Kentucky Higher Education Student Loan Corporation is created and established as an independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky to perform essential governmental and public functions and purposes in improving and otherwise promoting the educational opportunities of the citizens and inhabitants of the Commonwealth of Kentucky and other qualified students by a program of financing, making, and purchasing of insured student loans.

(3) The corporation shall be governed by a board of directors consisting of ***eleven (11)***[~~seven (7)~~] members, ***eight (8)***[~~four (4)~~] of whom shall be chosen from the general public residing in the Commonwealth of Kentucky and three (3) of whom shall be the chairman of the Council on Postsecondary Education, the secretary of the Finance and Administration Cabinet, and the chairman of the Kentucky Higher Education Assistance Authority.

(4) The Governor shall appoint the ***eight (8)***[~~four (4)~~] directors from ***nominees submitted by the Governor's Higher Education Nominating Committee under KRS 164.005***[~~the general public~~] to take office and to exercise all powers thereof immediately. ***The***[~~Of the new members of the corporation so appointed, two (2) shall continue in office for a term of four (4) years, and two (2) shall continue in office for a term of three (3) years. All succeeding~~] terms ***shall be staggered and*** shall be for a period of four (4) years each. Each director shall serve for the appointed term and until a

successor has been appointed and has duly qualified.

(5) In the event of a vacancy, the Governor may appoint a replacement director ***from nominees submitted by the Governor's Higher Education Nominating Committee under KRS 164.005*** who shall hold office during the remainder of the term so vacated.

(6) The Governor may remove any director from the general public in case of incompetency, neglect of duties, gross immorality, or malfeasance in office; and may thereupon declare such office vacant and may appoint a person to fill such vacancy as provided in other cases of vacancy.

(7) The board shall elect from its voting membership a chairman, secretary, and treasurer. The executive director of the Kentucky Higher Education Assistance Authority shall serve as executive director of the corporation.

(8) The executive director shall administer, manage, and direct the affairs and business of the corporation, subject to the policies, control, and direction of the board of directors of the corporation. The secretary of the corporation shall keep a record of the proceedings of the corporation and shall be custodian of all books, documents, and papers filed with the corporation, the minute book or journal of the corporation, and its official seal. The secretary may copy all minutes and other records and documents of the corporation and give certificates under the official seal of the corporation to the effect that such copies are true copies and all persons dealing with the corporation may rely upon such certificates.

(9) A majority of the board of directors of the corporation shall constitute a quorum for the purpose of conducting its business and exercising its powers and for all other purposes notwithstanding the existence of any vacancies in respect of the board of directors.

(10) Official actions may be taken by the corporation at meetings duly called by the chairman upon three (3) days' written notice to each director or upon the concurrence of at least a majority of the directors.

(11) Directors shall receive no compensation for their services but shall be entitled to payment of any reasonable and necessary expense actually incurred in discharging their duties under this chapter.

(12) The Kentucky Higher Education Assistance Authority, the "guarantee agency", shall provide technical, clerical, and administrative assistance to the corporation, together with necessary office space and personnel, and shall assist the corporation in all ways by the performance of any and all actions which may be useful or beneficial to the corporation in the performance of its public functions as an independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky charged with the responsibility of financing, making, and purchasing of insured student loans. The corporation shall enter into such contracts with the guarantee agency as shall be proper and appropriate in respect of such services which may include, but not by way of limitation, servicing and collection of insured student loans.

Section 2. The General Assembly confirms Executive Orders 96-917 and 96-1138, relating to the increase in membership of the Kentucky Higher Education Student Loan Corporation, to the extent they are not otherwise confirmed by this Act.

HB 207, AN ACT relating to the pledge of allegiance to the state flag of the Commonwealth of Kentucky.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 2 IS CREATED TO READ AS FOLLOWS:

The following shall be the official pledge of allegiance to the state flag of the Commonwealth of Kentucky: "I pledge allegiance to the flag of the Commonwealth of Kentucky, and to the Sovereign State for which it stands, one State within the Union, blessed with diversity, natural wealth and beauty, and grace from on High."

HB 332, AN ACT relating to the contracting out of government services.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 4 and Section 5 of this Act, unless the context requires otherwise:

(1) "Privatize" means to contract out in order to procure the services of a private vendor to provide a service that is similar to, and in lieu of, a service provided, in whole or in part, by regular state employees; and

(2) "Privatization contract" means an agreement or combination of a series of agreements by which a private vendor agrees to provide services that are substantially similar to, and in lieu of, services previously provided, in whole or in part, by regular employees of the state. This term includes but is not limited to concessionary contracts. This term does not include personal service contracts as defined in KRS 45A.690.

SECTION 2. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) A state agency may enter into a privatization contract.

(2) Before entering into a privatization contract, the state agency shall determine and set forth in writing:

- *(a) The necessity for the service and the intended goals of the service;*
- *(b) Problems and inefficiencies existing with the current governmental operation of the service;*
- *(c) Certification that no other state agency is capable of providing the service; and*
- *(d) Methods by which the current operation could be reengineered and streamlined and kept in state government.*

(3) If, after complying with the provisions of subsection (2) of this section, the state agency determines to proceed with privatization, it shall determine and set forth in writing:

- *(a) The tangible benefits of privatizing the service;*
- *(b) Any state or federal legal restraints that may limit or prevent privatization of the government service;*
- *(c) The risks to which the Commonwealth is exposed when a service is privatized, including but not limited to the consequences if the service is interrupted or stopped, financial risks from increase in lawsuits, and potential for corruption or abuse;*
- *(d) The availability of multiple qualified and competitive private vendors and the state's ability to switch from one private vendor to another;*
- *(e) 1. A cost-benefit analysis comparison that shall include, but not be limited to, collection and analysis of the total fixed and variable, direct and indirect, costs of:*
    - *a. The current governmental operation;*
    - *b. The private vendor operation; and*
    - *c. A reengineering of the current governmental operation, including the transfer, if possible, of the responsibility for the service to another state agency.*
  - *2. The costs shall include, but not be limited to:*
    - *a. Facility and equipment maintenance;*
    - *b. Depreciation and replacement costs;*
    - *c. Inflation-adjusted costs, where comparison to past years is being conducted;*
    - *d. Transition costs associated with shifting the service delivery from the government agency to a private vendor;*
    - *e. Costs of monitoring, evaluating, and enforcing the contract;*
    - *f. Cost of resuming government operation of the service if the privatization effort fails; and*
    - *g. Personnel costs such as those providing for benefits, early retirements, retraining, and relocation in another position;*
- *(f) 1. The effect that privatization of the service would have on state employees; and*
  - *2. A plan of assistance for all state employees who will be adversely affected by privatizing the service. The plan shall include at least:*
    - *a. Efforts to place affected employees in vacant positions in another state agency and, if needed, to retrain employees for another position in state government;*
    - *b. Provisions in the contract, if feasible, for the hiring by the contractor of displaced employees at wages and benefits comparable to the wages and benefits paid to the state employees, subject to the provisions of Section 5 of this Act; and*
    - *c. Prior notification to affected state employees the day the contract is signed, or three (3) months before the day the adverse effect will occur, whichever is earlier;*
- *(g) Review and evaluation of the staff capacity, resources, and expertise in the agency to monitor the contract; and*
- *(h) A process for monitoring, evaluating, and enforcing a contract with a private vendor which shall include, but not be limited to:*
  - *1. Development of a method for ongoing, comprehensive performance evaluation of the private vendor;*
  - *2. Establishment of performance criteria and standards to evaluate the private vendor; and*
  - *3. Development and implementation of a detailed cost-benefit analysis comparison format that would ensure a three (3) way comparison of the current government operation, the private vendor operation, and a reengineering of the current operation to provide the service with state employees.*

(4) All information required by subsections (2) and (3) of this section shall be submitted to the Finance and

Administration Cabinet for its review and approval prior to proceeding with the contracting provisions of KRS Chapter 45A.

(5) The Commonwealth shall retain responsibility for ensuring the quality and reliability of the services.

(6) A private vendor who enters into a privatization contract with a state agency shall be deemed a public agency for purposes of KRS 61.870 to 61.884, and any records prepared, owned, used, in the possession of, or retained by the vendor relating to services provided pursuant to the privatization contract shall be public records, access to which shall be governed by KRS 61.870 to 61.884. A private vendor's records that are not related to services provided under the privatization contract shall not be public records.

(7) Any other statute to the contrary notwithstanding, all records prepared, owned, used, in the possession of, or retained by a state agency in conjunction with the approval, evaluation, or enforcement of a privatization contract shall be public records, access to which shall be governed by KRS 61.870 to 61.884.

SECTION 3. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) The Finance and Administration Cabinet shall develop an objective, systematic, and well-documented process for evaluating the information in subsections (2) and (3) of Section 2 of this Act for use in determining whether to approve privatization of a government service.

(2) The process shall be adopted by administrative regulation promulgated in accordance with KRS Chapter 13A.

SECTION 4. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) After approval of a privatization contract by the Finance and Administration Cabinet and issuance and execution of the privatization contract, the contracting agency shall annually evaluate the performance of the contract and report its findings to the Governor, the Auditor of Public Accounts, and the Legislative Research Commission.

(2) The Auditor of Public Accounts shall review the evaluation of the performance of any privatization contract awarded in the amount of two hundred fifty thousand dollars ($250,000) or more annually. The review shall include but not be limited to determining whether the contractor is complying with all applicable statutory requirements and the provisions of the contract.

(3) The cost of the Auditor's review under subsections (2), (3), and (4) of this section shall be charged to the contractor. If the contractor is delinquent in its payments to the Auditor, the Finance and Administration Cabinet shall withhold any money due the contractor until the Auditor of Public Accounts has been paid in full.

(4) The Auditor of Public Accounts shall report the findings of his review to the Governor, the Finance and Administration Cabinet, the contracting agency, the contractor, and the Legislative Research Commission. If the Auditor finds that the contractor has not complied with the applicable statutory requirements or the provisions of the contract, or both, the contractor shall have ninety (90) days after receipt of the auditor's report to correct the noncompliance. The Finance and Administration Cabinet shall terminate the contract ninety (90) days after the contractor's receipt of the report unless the noncompliance is corrected.

Section 5. KRS 11A.130 is amended to read as follows:

Nothing in this chapter shall be construed to prohibit an officer or public servant employed by an agency that is privatized from accepting employment from the person or business which is operating that agency *if the officer or public servant was not involved in making the decision to privatize or in developing the provisions of the privatization contract*.

The Committee Substitute to **HB 332** is as follows:

AN ACT relating to the contracting out of government services.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 5 and Section 6 of this Act, unless the context requires otherwise:

(1) "Privatize" means to contract out in order to procure the services of a private vendor to provide a service that is similar to, and in lieu of, a service provided by state employees of the privatizing agency;

(2) "Privatization contract" means an agreement or combination of a series of agreements by which a private vendor agrees to provide services that are substantially similar to, and in lieu of, services previously provided, in whole or in part, by at least ten (10) permanent, full-time, budgeted employees of the state agency. This term includes but is not limited to concession contracts. This term does not include personal service contracts as defined in KRS 45A.690, contracts entered into pursuant to KRS Chapter 176, 177, 178, 179, 180, or 181, Medicaid provider contracts, architect and engineering contracts entered into pursuant to KRS 45A.800 to 45A.835, price contracts, construction contracts, or memoranda of understanding or memoranda of agreements; and

(3) "Services" shall not include administration and support functions of government. "Administration and support

functions" shall include, but not be limited to, construction contracts, bond counsel and bond underwriting services, architect and engineering services, price contracts, personal service contracts, and memoranda of understanding and memoranda of agreement.

SECTION 2. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) Upon approval of the Finance and Administration Cabinet, a state agency may enter into a privatization contract.

(2) Before a state agency recommends to the Finance and Administration Cabinet that it enter into a privatization contract, the state agency shall determine and set forth in writing:

(a) The necessity for the service and the intended goals of the service;

(b) Problems and inefficiencies existing with the current governmental operation of the service; and

(c) Whether the service can efficiently be provided by the agency.

(3) If the state agency determines that the service cannot efficiently be provided by the agency, the state agency shall be permitted to continue the normal contracting process for the service. However, if the state agency determines that the service can efficiently be provided by the agency and the state agency chooses to proceed with privatization, it shall set forth in writing to the Finance and Administration Cabinet:

(a) The tangible benefits of privatizing the service;

(b) Any state or federal legal restraints that may limit or prevent privatization of the government service;

(c) The availability of multiple qualified and competitive private vendors;

(d) 1. A cost-benefit analysis comparison that shall include, but not be limited to, collection and analysis of the total assessible fixed and variable, direct and indirect, costs of:

a. The current governmental operation; and

b. The private vendor contract.

2. The costs shall include, but not be limited to:

a. Facility and equipment maintenance;

b. Inflation-adjusted costs, where comparison to past years is being conducted;

c. Transition costs associated with shifting the service delivery from the government agency to a private vendor;

d. Costs of monitoring, evaluating, and enforcing the contract;

e. Personnel costs such as those providing for benefits, early retirements, retraining, and relocation in another position; and

f. A plan for resuming government operation of the service if the privatization effort fails.

(e) A plan of assistance for all state employees who will be adversely affected by privatizing the service. The plan shall include at least:

1. Efforts to place affected employees in vacant positions in another state agency and to retrain employees for another position in state government;

2. Provisions in the contract, if feasible, for the hiring by the contractor of displaced employees at wages and benefits comparable to the wages and benefits paid to the state employees, subject to the provisions of Section 6 of this Act; and

3. Prior notification to affected state employees the day the contract is signed, or three (3) months before the day the adverse effect will occur, whichever is earlier; and

(f) A process for monitoring, evaluating, and enforcing a contract with a private vendor which shall include, but not be limited to:

1. Development of a method for ongoing, comprehensive performance evaluation of the private vendor; and

2. Establishment of performance criteria and standards to evaluate the private vendor.

(4) All information required by subsections (2) and (3) of this section shall be submitted to the Finance and Administration Cabinet for its review and approval prior to proceeding with the contracting provisions of KRS Chapter 45A.

(5) The state agency shall retain responsibility for ensuring the quality and reliability of the services.

(6) A private vendor's records related to services provided under the privatization contract shall be public records under KRS 61.870 to 61.884.

(7) Any other statute to the contrary notwithstanding, all records prepared, owned, used, in the possession of, or retained

by a state agency in conjunction with the approval, evaluation, or enforcement of a privatization contract shall be public records, access to which shall be governed by KRS 61.870 to 61.884.

SECTION 3. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) The Finance and Administration Cabinet shall develop an objective and systematic process for evaluating the information in subsections (2) and (3) of Section 2 of this Act for use in determining whether to approve privatization of a government service.

(2) The process shall be adopted by administrative regulation promulgated by the Finance and Administration Cabinet in accordance with KRS Chapter 13A.

SECTION 4. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) After approval of a privatization contract by the Finance and Administration Cabinet and issuance and execution of the privatization contract, the contracting agency shall annually evaluate the performance of the contract and report its findings to the Governor, the Auditor of Public Accounts, and the Legislative Research Commission.

(2) The state agency entering into the contract shall provide for an evaluation of the performance of any privatization contract awarded in excess of five hundred thousand dollars ($500,000) annually. The review shall include but not be limited to determining whether the contractor is complying with all applicable statutory requirements and the provisions of the contract. The performance evaluation shall be forwarded to the Auditor of Public Accounts and the Legislative Research Commission. The evaluation shall be subject to review by the Auditor of Public Accounts, who shall report any findings to the Legislative Research Commission.

SECTION 5. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

The provision of Sections 1 to 5 and 6 of this Act shall not apply to privatization contracts awarded prior to the effective date of this Act, or any renewals thereof.

Section 6. KRS 11A.130 is amended to read as follows:

Nothing in this chapter shall be construed to prohibit an officer or public servant employed by an agency that is privatized from accepting employment from the person or business which is operating that agency ***if the officer or public servant was not involved in making the decision to privatize or in developing the provisions of the privatization contract***.

HB 337, AN ACT relating to the statewide public advocacy system.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 31.051 is amended to read as follows:

(1) With the exception of the administrative fee contained in subsection (2) of this section, all moneys received by the public advocate from indigent defendants pursuant to KRS Chapter 31 or which are collected by the public advocate pursuant to KRS Chapter 431 shall be credited to the public advocate fund of the county in which the trial is held and shall not be credited to any general account maintained by or for the public advocate. Moneys credited to a county public advocate fund may be used only to support the public advocate program of that county.

(2) Any person provided counsel under the provisions of this chapter shall be assessed at the time of appointment, a nonrefundable ***fifty***[~~forty~~] dollar ***($50)***[~~($40)~~] administrative fee, payable, at the court's discretion, in a lump sum or in installments. The court ***shall***[~~may~~] reduce or waive the fee if the person[~~ remains in custody or~~] does not have the financial resources to pay the fee. In any case or legal action a needy person shall be assessed a total administrative fee of no more than ***fifty***[~~forty~~] dollars ***($50)***[~~($40)~~], regardless of the stages of the matter at which the needy person is provided appointed counsel. In the event the defendant fails to pay the fee, the fee shall be deducted from any posted cash bond or shall constitute a lien upon any property which secures the person's bail, regardless of whether the bond is posted by the needy person or another. The failure to pay the fee shall not reduce or in any way affect the rendering of public defender services to the person.

(3) The administrative fee shall be in addition to any other contribution or recoupment assessed by the court pursuant to KRS 31.120 and shall be collected in accordance with that section.

(4) The administrative fees collected pursuant to this subsection (2) shall be placed in a special trust and agency account for the Department of Public Advocacy, and the funds shall not lapse.

(5) If the administrative fee, or any portion thereof, is not paid by the due date, the court's order is a civil judgment subject to collection under Civil Rule 69.03 and KRS Chapter 426.

Section 2. KRS 31.070 is amended to read as follows:

If a ***court, after finding that the Department of Public Advocacy fails to provide an attorney to a person eligible for representation under KRS Chapter 31, appoints, under the court's inherent authority, an attorney to provide representation to the needy person,***[~~judicial circuit, through the county or counties therein, adopts a plan involving appointed counsel~~] the public advocate is hereby authorized to pay reasonable and necessary fees and expenses subject to the following limitations:

(1) No fee shall be paid in excess of ***the prevailing maximum fee per attorney paid by the Department of Public Advocacy for the type of representation provided, and no hourly rate shall be paid in excess of the prevailing hourly rate paid by the Department of Public Advocacy for the type of representation provided***[~~$1,000 for any defense of a single person in any case~~]; ***and***

(2)[~~In the case of multiple defendants no fee shall be paid in excess of $1,000 for each defendant in the case; and~~

~~(3)~~] Each fee plus expenses incurred in the defense shall be presented by the defense attorney to the Circuit Court Judge who shall review the fee and expenses request and shall approve, deny, or modify the amount of compensation and fee listed therein. After final approval of the fee and expenses the Circuit Judge shall, if state compensation is desired, certify the amount and transmit the document to the public advocate who shall review the fee and expense request and shall approve, deny, or modify the request. The request as approved or modified shall then be paid. Requests for payment of assigned counsel by the state shall be denied if the district has exceeded the amount of funds which may be allotted to it, if the district plan has not been approved, or if the public advocate finds that compensation is otherwise not warranted. The decision of the public advocate in all matters of fee and expense compensation shall be final.

Section 3. KRS 31.120 is amended to read as follows:

(1) The determination of whether a person covered by KRS 31.110 is a needy person shall be deferred no later than his first appearance in court or in a suit for payment or reimbursement under KRS 31.150, whichever occurs earlier. Thereafter, the court concerned shall determine, with respect to each step in the proceedings, whether he is a needy person. However, nothing herein shall prevent appointment of counsel at the earliest necessary proceeding at which the person is entitled to counsel, upon declaration by the person that he is needy under the terms of this chapter. In that event, the person involved shall be required to make reimbursement for the representation involved if he later is determined not a needy person under the terms of this chapter. At arraignment, the court shall conduct a nonadversarial hearing to determine whether a person who has requested a public defender is able to pay a partial fee.

(2) In determining whether a person is a needy person and in determining the extent of his, and, in the case of an unemancipated minor under KRS 31.100(3)(c), his custodial parent's or guardian's inability to pay, the court concerned shall consider such factors as income, property owned, outstanding obligations, and the number and ages of his dependents. Release on bail, or any other method of release provided in KRS Chapter 431, shall not necessarily prevent him from being a needy person. In each case, the person, and, if an unemancipated minor under KRS 31.100(3)(c) and (d), his custodial parent or guardian, subject to the penalties for perjury, shall certify by affidavit of indigency which shall be compiled by the pretrial release officer, as provided under KRS Chapter 431 and Supreme Court Rules or orders promulgated pursuant thereto, the material factors relating to his ability to pay in the form the Supreme Court prescribes.

(3) It shall be prima facie evidence that a person is not indigent or needy within the meaning of this chapter if he and, in the case of an unemancipated minor under KRS 31.100(3)(c) and (d), if his custodial parent or guardian:

  (a) Owns real property in the Commonwealth or without the Commonwealth;

  (b) Is not receiving, or if not receiving is not eligible to receive, public assistance payments at the time the affidavit of indigency is executed;

  (c) Has paid money bail (other than a property bond of another), whether deposited by himself or another, to secure his release from confinement on the present charge of which he stands accused or convicted; or

  (d) Owns more than one (1) motor vehicle.

(4) To the extent that a person covered by KRS 31.110, and, in the case of an unemancipated minor under KRS 31.100(3)(c) and (d), his custodial parent or guardian, is able to provide for an attorney, the other necessary services and facilities of representation, and court costs, the court shall order payment in an amount determined by the court and may order that the payment be made in a lump sum or by installment payments. The determination shall be made at each stage of the proceedings.

(5) The court shall order all moneys collected pursuant to subsection (4) of this section be paid to the clerk of that court pursuant to the schedule of payment. The clerk shall forward to the Department of Public Advocacy on a monthly basis a copy of all the orders ***or an electronic report compiled by the Administrative Office of the Courts listing those orders. Additionally, the clerk shall forward to the Department of Public Advocacy on a monthly basis an accounting of and the moneys collected in***[~~and the moneys collected pursuant thereto with an accounting as to~~] each case.

(6) The affidavit of indigency, to be subscribed and sworn to by the person, and, in the case of an unemancipated minor under KRS 31.100(3)(c), by his custodial parent or guardian, shall be as set out herein:

Commonwealth of Kentucky

County of...............

Affiant........................, being first duly sworn says that he is not now represented by private counsel and that he does not have the money or assets out of which to employ one; that he is indigent and requests the court to appoint counsel.

Affiant states that his income is ....; that he owns the following property:

Description	Value
....	....
....	....
....	..........................;

that he has the following dependents:

Name	Age	Relationship
....	....	....
....	....	....
....	....	..........................;

and that he has the following obligations:

To whom owed	Amount owing
....	....
....	....
....	....

....
Signature of affiant

Subscribed and sworn to before me this .... , day of ...., 19 .....

....
Signature and title of officer
administering the oath

Any persons making false statements in the above affidavit shall be subject to the penalties for perjury under KRS Chapter 523, the maximum penalty for which is five (5) years imprisonment.

Section 4. KRS 31.170 is amended to read as follows:

(1) If the fiscal court of a county elects to establish and maintain an office for public advocacy, it shall:

(a) Appoint the district public advocate and any number of assistant district public advocates necessary to adequately perform the functions of said office.

(b) Prescribe the qualifications of the district public advocate, his term of office which may not be more than four (4) years and fix the rate of annual compensation for him and his assistants. In order to be qualified for appointment as district public advocate a person must have been admitted to the practice of law and licensed to practice in the Commonwealth of Kentucky and be competent to counsel and defend a person charged with a crime.

(c) Provide for the establishment, maintenance and support of his office.

(2) If the fiscal court of a county elects to arrange with a nonprofit organization to provide attorneys, the county and any cities involved may reimburse the organization for such expenses as the fiscal courts respectively concerned have determined to be necessary in the representation of needy persons under this chapter, or may provide facilities described in KRS 31.180(2)(a) in addition to or in lieu of said reimbursement.

(3) If***, in a county where the fiscal court has elected to provide representation under subsection (1) or (2) of this section, after finding that the fiscal court fails to provide an attorney to a person eligible for representation under KRS Chapter 31,*** a court assigns***, under the court's inherent authority,*** an attorney to represent a needy person it shall prescribe a reasonable rate of compensation for his services and shall determine the direct expenses necessary to representation for which he would be reimbursed. The county shall pay the attorney the amounts so prescribed from the funds made available by the Department of Public Advocacy.

(4) An attorney under subsection (3) shall be compensated for his services with regard to the complexity of the issues, the time involved, and other relevant considerations. However, ***no fee shall be paid in excess of the prevailing maximum fee per attorney paid by the Department of Public Advocacy for the type of representation provided, and no hourly rate shall be paid in excess of the prevailing hourly rate paid by the Department of Public Advocacy for the type of representation provided***[~~he may be compensated at a rate no higher than thirty-five dollars ($35) an hour for time spent in court and no higher than twenty-five dollars ($25) an hour for time spent out of court subject in each case to a maximum total fee of one thousand two hundred fifty dollars ($1,250) in case of a felony and five hundred dollars ($500) in any other case, unless the court concerned finds that special circumstances warrant a higher total fee~~].

Section 5. KRS 31.185 is amended to read as follows:

(1) Any defending attorney operating under the provisions of this chapter is entitled to use the same state facilities for the evaluation of evidence as are available to the attorney representing the Commonwealth. If he considers their use impractical, the court concerned may authorize the use of private facilities to be paid for on court order by the county.

(2) The fiscal court of each county or legislative body of an urban-county government [~~containing less than ten (10) Circuit Judges~~]shall annually appropriate twelve and a half ($0.125) cents per capita of the population of the county, as determined by the Council of Local Governments' most recent population statistics, to a special account to be administered by the Finance and Administration Cabinet to pay court orders entered against counties pursuant to subsection (1) of this section. The funds in this account shall not lapse and shall remain in the special account.

(3) The Finance and Administration Cabinet shall pay all court orders entered pursuant to subsection (1) of this section from the special account until the funds in the account are depleted. If in any given year the special account including any funds from prior years is depleted and court orders entered against counties pursuant to subsection (1) of this section for that year or any prior year remain unpaid, the Finance and Administration Cabinet shall pay those orders from the Treasury in the same manner in which judgments against the Commonwealth and its agencies are paid.

(4) Only court orders entered after July 15, 1994, shall be payable from the special account administered by the Finance and Administration Cabinet or from the Treasury as provided in subsections (2) and (3) of this section.

[~~(5) Each county with a judicial district containing ten (10) or more Circuit Judges shall be solely liable for any court order entered against it pursuant to subsection (1) of this section.~~]

Section 6. KRS 31.200 is amended to read as follows:

(1) Subject to KRS 31.190, any direct expense, including the cost of a transcript or bystander's bill of exceptions or other substitute for a transcript that is necessarily incurred in representing a needy person under this chapter, is a charge against the county on behalf of which the service is performed; provided, however, that such a charge shall not exceed the established rate charged by the Commonwealth and its agencies.

(2) Any direct expense including the cost of a transcript or bystander's bill of exceptions or other substitute for a transcript shall be paid from the special account established in KRS 31.185(2) and in accordance with the procedures provided in KRS 31.185(3).

(3) If two (2) or more counties jointly establish an office for public advocacy, the expenses not otherwise allocable among the participating counties under subsection (1) shall be allocated, unless the counties otherwise agree, on the basis of population according to the most recent decennial census.

(4) Expenses incurred in the representation of needy persons confined in a state correctional institution shall be ***paid from the special account established in subsection (2) of Section 5 of this Act and in accordance with the procedures provided in subsection (3) of Section 5 of this Act***[~~borne by the state Department of Public Advocacy~~].

Section 7. KRS 31.240 is amended to read as follows:

In the area of relation of local programs to the state program the following are permitted:

(1) Each county or counties in a district may compensate district advocates appointed pursuant to KRS 31.170, under their own employ at rates greater than the state district advocate but must pay from their own funds all amounts in excess of the state contribution.

(2) Each county or counties in a district may adopt their own plan of aid to the indigent provided all plans in a district, viewed as a whole, are approved by the Department for Public Advocacy.

(3) [~~Each county or counties providing for assigned counsel may compensate them at rates provided for in KRS 31.170; however, the state contribution to such compensation shall not be greater than is provided for by KRS 31.070.~~]The county or counties shall be obligated to pay and shall pay all amounts in excess of the state contribution. No county shall be required to pay the maximum amounts provided for in KRS 31.170 unless the amounts be approved by the circuit judge.

HB 350, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. The General Assembly hereby confirms Executive Order 96-1576, dated November 27, 1996, which transfers certain programs, personnel, and funding pertaining to public offenders, youthful offenders, and mentally ill youth from the Cabinet for Families and Children to the Department of Juvenile Justice, Justice Cabinet, and which abolishes the Division of Children's Residential Services within the Department for Social Services, Cabinet for Families and Children.

HB 423, AN ACT relating to disaster and emergency response activity.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 39.433 is amended to read as follows:

(1) [~~Neither~~]The state ***and its***[~~nor any~~] political ***subdivisions***[~~subdivision of the state, nor the agents or representatives of the state or any political subdivision thereof,~~] shall ***not*** be liable for personal injury or property damage sustained by any person appointed or acting as a volunteer[~~ disaster and emergency services or~~] disaster and emergency response worker, or member of any agency engaged in[~~ disaster and emergency services or~~] disaster and emergency response activity ***under the provisions of KRS 39.400 to 39.460***. The foregoing shall not affect the right of any ***volunteer***[~~person~~] to ***qualify for***[~~receive~~] benefits[~~ or compensation to which he might otherwise be entitled~~] under the Workers' Compensation Law or KRS 39.417 and 39.418 hereof or any pension law or any act of Congress.

(2) [~~Neither~~]The state ***and its***[~~nor any~~] political ***subdivisions***[~~subdivision of the state nor, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or any political subdivision thereof, nor any volunteer or auxiliary disaster and emergency services or disaster and emergency response worker or member of any agency engaged in any disaster and emergency services or disaster and emergency response activity, complying with or reasonably attempting to comply with KRS 39.400 to 39.460 and 39.990, or any order, rule, or regulation promulgated pursuant to the provisions of KRS 39.400 to 39.460 and 39.990, or other precautionary measures enacted by any city of the state,~~] shall ***not*** be liable for the death of or injury to persons, or for damage to property, as a result of any ***disaster and emergency response***[~~such~~] activity ***under the provisions of KRS 39.400 to 39.460***.

(3) Except in cases of willful misconduct, negligence, or bad faith, the following persons shall not be liable for the death or injury to persons, or for damage to property, as a result of disaster and emergency response activity when complying with or reasonably attempting to comply with the provisions of KRS 39.400 to 39.460:

(a) Employees, agents, or representatives of the state and its political subdivisions;

(b) Any volunteer or auxiliary disaster and emergency response worker enrolled or registered with the division in accordance with the division's administrative regulations; or

(c) Any member of any agency engaged in any disaster and emergency response activity.

(4) While engaged in disaster and emergency response activity, volunteers enrolled or registered with the division shall have the same degree of responsibility for their actions and enjoy the same immunities as officers and employees of the state and its political subdivisions performing similar work, including the provisions of KRS 12.211 and 12.212, allowing the Attorney General to provide defense of any civil action brought against a volunteer enrolled or registered with the division due to an act or omission made in the scope and course of a disaster and emergency response activity.

The Committee Substitute to **HB 423** is as follows:

AN ACT relating to disaster and emergency response activity.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 39.433 is amended to read as follows:

(1) [~~Neither~~]The state ***and its***[~~nor any~~] political ***subdivisions***[~~subdivision of the state, nor the agents or representatives of the state or any political subdivision thereof,~~] shall ***not*** be liable for personal injury or property damage sustained by any person appointed or acting as a volunteer[~~ disaster and emergency services or~~] disaster and emergency response worker, or ***volunteer*** member of any agency engaged in[~~ disaster and emergency services or~~] disaster and emergency response activity ***under the provisions of KRS 39.400 to 39.460***. The foregoing shall not affect the right of any ***volunteer***[~~person~~] to ***qualify for***[~~receive~~] benefits[~~ or compensation to which he might otherwise be entitled~~] under the Workers' Compensation Law or KRS 39.417 and 39.418 hereof or any pension law or any act of Congress.

(2) [~~Neither~~]The state ***and its***[~~nor any~~] political ***subdivisions***[~~subdivision of the state nor, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or any political subdivision thereof, nor any volunteer or auxiliary disaster and emergency services or disaster and emergency response worker or member of any agency engaged in any disaster and emergency services or disaster and emergency response activity, complying with or reasonably attempting to comply with KRS 39.400 to 39.460 and 39.990, or any order, rule, or regulation promulgated pursuant to the provisions of KRS 39.400 to 39.460 and 39.990, or other precautionary measures enacted by any city of the state,~~] shall ***not*** be liable for the death of or injury to persons, or for damage to property, as a result of any ***disaster and emergency response***[~~such~~] activity ***under the provisions of KRS 39.400 to 39.460***.

(3) Except in cases of willful misconduct, gross negligence, or bad faith, the following persons shall not be liable for the death or injury to persons, or for damage to property, as a result of disaster and emergency response activity when complying with or reasonably attempting to comply with the provisions of KRS 39.400 to 39.460:

(a) Employees, agents, or representatives of the state and its political subdivisions;

(b) Any volunteer or auxiliary disaster and emergency response worker enrolled or registered with a local disaster and emergency services organization or with the division in accordance with the division's administrative regulations; or

(c) Any member of any agency engaged in any disaster and emergency response activity.

(4) While engaged in disaster and emergency response activity, volunteers enrolled or registered with a local disaster and emergency services organization or with the division shall have the same degree of responsibility for their actions and enjoy the same immunities as officers and employees of the state and its political subdivisions performing similar work, including the provisions of KRS 12.211, 12.212, and 12.215, allowing the Attorney General to provide defense of any civil action brought against a volunteer enrolled or registered with a local disaster and emergency services organization or with the division due to an act or omission made in the scope and course of a disaster and emergency response activity.

HB 427, AN ACT relating to financial administration.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 41.010 is amended to read as follows:

(1) As used in KRS 41.070, 41.110, 41.120, 41.130, 41.150, 41.160, 41.290, 41.300 or 41.990, unless the context requires otherwise, the terms "appropriation," "budget unit," "disbursements," "employee," "expenditures," "expenses," and "receipts" have the meaning given them by KRS 43.010 and 48.010.

(2) As used in this chapter***:***

(a) [~~, the words~~]"Bank" and "depository" include any qualified financial intermediary and savings and loan associations chartered by the State of Kentucky or the United States government ***designated to take custody of state funds on deposit, for periods greater than overnight, with the intent to honor presentments against those deposits;***

(b) "Warrant" means a printed or electronic authorization from the Finance and Administration Cabinet for the Treasurer to issue a check;

(c) "Form" or "report" means any written method of transporting data;

(d) "Writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

Section 2. KRS 41.070 is amended to read as follows:

(1) Unless otherwise expressly provided by law, no receipts from any source of state money or money for which the state is responsible shall be held, used, or deposited in any personal or special bank account, temporarily or otherwise, by any agent or employee of any budget unit, to meet expenditures or for any other purpose. All receipts of any character of any budget unit, all revenue collected for the state, and all public money and dues to the state shall be deposited in state depositories in the most prompt and cost-efficient manner available. However in the case of state departments or agencies located outside Frankfort, and all state institutions, the Finance and Administration Cabinet may permit temporary deposits to be made to the accounts maintained by the agency, department, or institution in a bank which has been designated as a depository for state funds for a period not to exceed thirty (30) days, and may require that the money be forwarded to the State Treasury at the time and in the manner and form prescribed by the cabinet. Nothing in this section shall be construed as authorizing any representative of any agency, department, or institution to enforce or cash, even for the purpose of a deposit, any check or other instrument of value payable to the Commonwealth or any agency thereof.

(2) Each agency depositing its receipts directly with the State Treasurer shall do so ***in the manner***[~~on a pay-in voucher form~~] approved by the State Treasurer as agent in charge of public fund deposits.

(3) The Revenue Cabinet may deposit[~~ tax~~] receipts to the credit of the State Treasury directly with a depository designated by the Treasurer and utilized by the Commonwealth for its primary banking services. The State Treasurer, with the approval of the Finance and Administration Cabinet, may authorize other agencies to deposit receipts directly with a depository designated by the Treasury to the credit of the State Treasury if the Treasurer prescribes the manner in which the deposit is to be made, and the forms and reports to be filed with the Treasury Department. The Finance and Administration Cabinet shall prescribe the forms and reports to be filed with it when this type of deposit is made.

(4) Each department, agency, or other budget unit which receives funds to be deposited into the State Treasury shall maintain records to report adequately each amount received, from whom received, and date received. Agency records shall be easily reconcilable with the ***information***[~~pay-in vouchers~~] forwarded to the State Treasurer.

Section 3. KRS 41.100 is amended to read as follows:

The Treasurer shall receive ***notification from state agencies of all deposits, and*** all money due or payable to the state[~~, when tendered by a state agency~~]. ***The Treasurer***[~~He~~] shall ***provide acknowledgment of the notification***[~~receipt one (1) copy of the pay-in-voucher and forward it~~] to the Finance and Administration Cabinet.

Section 4. KRS 41.120 is amended to read as follows:

All claims against the state shall be paid by the Treasurer on the warrants of the Finance and Administration Cabinet. All warrants issued in accordance with the provisions of this chapter shall, when signed by the secretary of the Finance and Administration Cabinet or an assistant designated by him, constitute full and sufficient authority to the Treasurer for the disbursement of public money in the amount set forth.[~~ Said~~] Signatures may be placed on the warrants by means of an approved mechanical device. A signed transmittal which lists warrants may be accepted in lieu of each warrant being signed. ***Electronic authorization, approved by the secretary of the Finance and Administration Cabinet, may be accepted in lieu of any signatures.***

Section 5. KRS 41.130 is amended to read as follows:

(1) Each warrant of the Finance and Administration Cabinet upon the Treasury shall specify the date,[~~ number,~~] amount, ***and*** person to whom payable[~~, on what account issued, and the particular appropriation against which it is drawn,~~] and no money shall be disbursed by the Treasurer unless the warrant contains these specifications.[~~ The Finance and Administration Cabinet shall date and number each warrant.~~]

(2) No warrant shall be issued unless the money to pay it has been appropriated by law. The Finance and Administration Cabinet may require any claimant to state on the face of his claim the law under which it is payable.

Section 6. KRS 41.140 is amended to read as follows:

All warrants issued by the Finance and Administration Cabinet shall be submitted to the Treasurer[~~, accompanied by a list of all the warrants submitted at any one (1) time~~], showing for each warrant the name of the payee ***and***[~~,~~] the amount[~~, and the fund against which drawn, and each list shall show the total of the amounts of all the warrants listed~~].

Section 7. KRS 41.160 is amended to read as follows:

No money shall be paid out of the Treasury except by the check of the Treasurer upon a state depository***, or through the provisions of Section 19 of this Act***. The Treasurer shall date and number ***the***[~~his~~] checks on each of the state depositories in the order in which they are issued. Payments may be made direct by the Treasurer to the persons entitled to receive them, by mail or otherwise, or through the heads of the budget units which incurred the expenditures.

Section 8. KRS 41.165 is amended to read as follows:

(1) Notwithstanding the provisions of KRS 337.010 through 337.070 and 41.160, the Treasurer shall pay, by electronic fund transfer, the wages of any state employee who makes a prior written request to the ***employing state agency***[~~Department of the Treasury~~] to be paid by electronic fund transfer. The Treasurer may refuse to comply with the request of an employee if the financial institution designated by the employee does not have the capability of receiving electronic transfers of funds.

(2) The Department of Personnel shall provide forms on which to request wage payments by electronic transfer of funds. The Department of Personnel may, by regulations promulgated pursuant to KRS Chapter 13A, require information on the request forms for wage payment by electronic transfer of funds that sufficiently identifies the employee and the designated financial institution of the employee.

(3) Any state agencies which employ persons who have exercised the option authorized by subsection (1) of this section shall retain the forms described in subsection (2) of this section.

Section 9. KRS 41.167 is amended to read as follows:

(1) The State Treasurer may withdraw funds from or deposit funds in the State Treasury by means of electronic funds transfers. The ***employing state agency***[~~Treasurer~~] shall obtain a payee's prior, written consent for the payment of funds due him from the State Treasury by means of direct deposit rather than by means of a paper check issued to him. A single authorization may be granted for multiple payments to a payee by means of direct deposit.

(2) For the purpose of implementing this section and unless the context requires a different meaning, the term "check" as used in this chapter shall mean either a paper check or a paperless entry on an electronic data processing medium that substitutes for a paper check for the purposes of debiting or crediting an account and of which a permanent record is made.

Section 10. KRS 41.170 is amended to read as follows:

The Finance and Administration Cabinet shall ***record***[~~enter~~] all warrants ***in the unified and integrated system of accounts***[~~into a general ledger account for warrants payable~~]. After the Treasurer has issued a check to pay the warrant, ***the Treasurer***[~~he~~] shall notify the Finance and Administration Cabinet[~~ in writing~~]; a single notification may reflect all warrants paid each day.

Section 11. KRS 41.260 is amended to read as follows:

Whenever the Treasurer decides to transfer any deposit of public money from one (1) state depository bank to another, ***the***

Treasurer[~~he~~] shall ***notify***[~~cause to be prepared and transmitted to~~] the Finance and Administration Cabinet***,***[~~ a voucher~~] describing the proposed transfer and the[~~ pay in vouchers for the~~] deposit of[~~ the~~] money to be[~~ so~~] transferred. On receipt of ***the notification***[~~these documents~~] the Finance and Administration Cabinet shall register the proposed transfer[~~ in a book to be maintained for this purpose~~] and issue its warrant for the amounts specified by the Treasurer.[~~ The Finance and Administration Cabinet shall fill in on the warrant the bank at which it is payable as specified by the Treasurer and shall transmit the warrant accompanied by all copies of the pay in vouchers to the Treasurer.~~] When the transfers have been completed the Treasurer shall immediately ***notify***[~~transmit receipted copies of the pay in vouchers to~~] the Finance and Administration Cabinet.

Section 12. KRS 41.310 is amended to read as follows:

The Finance and Administration Cabinet shall furnish the Treasurer ***with information regarding***[~~reports which exhibit~~] the status of each receipt and expenditure account. At the end of each month, the Treasurer shall furnish the Finance and Administration Cabinet ***with information regarding***[~~a report showing~~] the accumulated receipts and a listing of all warrants unpaid as of the end of the last day of each month.

Section 13. KRS 41.350 is amended to read as follows:

(1) Canceled checks of the State Treasurer upon state depository banks shall be microfilmed and the original check preserved by the State Treasurer for a period of one (1) year. At the expiration of this period, unless required for the purpose of an action then pending, the checks shall be sold as waste paper or destroyed. Microfilm reproductions of Treasury Department checks shall be preserved for a period of five (5) years. Microfilm reproductions of ***printed*** warrants shall be preserved for a period of five (5) years.

(2) Microfilm reproductions of electronic fund transfer entries debiting state accounts transmitted to the State Treasurer by state depositories shall be preserved by the State Treasurer for a period of five (5) years. At the expiration of this period, unless required for the purpose of an action then pending, they may be destroyed.

Section 14. KRS 41.370 is amended to read as follows:

(1) Any check issued by the State Treasurer shall not be valid as an order for payment after one (1) year from its date of issue and this limitation shall appear on all checks issued. The State Treasurer is authorized to clear ***the***[~~his~~] records of all such unpaid checks and credit the amounts to the fund against which it was originally drawn.

(2) When any properly endorsed check issued by the State Treasurer is presented for payment more than one (1) year after its date of issue and within the period prescribed by KRS 413.120, the State Treasurer shall, upon satisfactory proof of ownership, cancel ***the***[~~such~~] check and forward it to the secretary of the Finance and Administration Cabinet with the date and ***identifying information***[~~number of the pay in voucher~~] which credited the amount of ***the***[~~such~~] check to a particular fund. The secretary of the Finance and Administration Cabinet shall draw a warrant against the check. All endorsements on the surrendered check shall have the same effect as if the check were paid by the drawee. All checks paid in the manner herein set forth shall be charged against the fund against which they were originally drawn.

(3) There shall be a fee charged for each check presented for reissue. The fee shall be twenty-five dollars ($25). If the check to be reissued is less than twenty-five dollars ($25) and replacement is required, a check payable to the Kentucky State Treasurer shall accompany the request for reissue. Reissued checks greater than twenty-five dollars ($25) shall have the fee deducted from the face value of the original check.

(4) Fees collected by the Treasurer shall be deposited in the surplus account of the general fund.

SECTION 15. A NEW SECTION OF KRS CHAPTER 45 IS CREATED TO READ AS FOLLOWS:

As used in this chapter, "warrant" means a printed or electronic authorization from the Finance and Administration Cabinet for the Treasurer to issue a check.

Section 16. KRS 45.305 is amended to read as follows:

(1) The Finance and Administration Cabinet shall install a unified and integrated system of accounts for the state which shall comply with generally accepted accounting principles, and which shall be in addition to other accounts required by this chapter, and which shall include:

   (a) A set of budgetary control accounts for each fund, comprising an account with the available cash of the fund, an account with the budget estimate of the amount of money to be derived from each source of revenue and nonrevenue receipts, an account with the total of the unallotted balances of appropriations, an account with the total of the free balances of allotments, an account with the total commitments under allotments, and an account with the estimated cash surplus or deficit, so as to show at all times the status of the budget fund.

   (b) A subsidiary appropriation ledger for each fund from which appropriations are made, embracing an account with each appropriation, and designed to show the budget unit to which the appropriation was made, the purpose of the appropriation, the amount appropriated, the additions to the appropriation, the allotments from the appropriation, the unallotted balance of the appropriation, the commitments charged to allotments, and the free balances of the total amount allotted.

   (c) A set of general controlling proprietary and operating accounts for each fund, so as to record the transactions to the fund in summary form and to show the actual current assets, prepaid expenses, current liabilities, deferred credits to income, reserves, actual income, actual expenditures, and the current surplus or deficit.

(d) A uniform classification of the sources of revenue and nonrevenue receipts.

(e) Standard classifications of the expenditures of the budget units.

(f) A standard classification of the budget units.

(g) Such other accounts, records, and devices as the Finance and Administration Cabinet deems necessary for the production of needed information respecting financial condition, financial operations and costs.

(2) The accounts provided for in paragraphs (a), (b) and (c) of subsection (1) of this section or summary records shall be maintained by the Finance and Administration Cabinet.

(3) The Finance and Administration Cabinet shall keep controlling accounts with receipts, payments and state depositories[~~ entirely independent of those maintained by the State Treasurer~~]. The cabinet shall obtain from the State Treasurer the figures for the entries required to open ***the***[~~such~~] accounts, and thereafter it shall obtain the information required for the keeping of ***the***[~~such~~] accounts from ***deposits***[~~the pay-in vouchers~~], lists of warrants drawn under appropriations, and vouchers requesting transfers of deposits among state depositories.

(4) The accounting system prescribed and installed by the Finance and Administration Cabinet shall provide for the settlement of transactions between budget units by making debit and credit entries on the books of the cabinet on the basis of adequate expenditure vouchers, without the issuance of warrants.

(5) The accounting system prescribed and installed by the Finance and Administration Cabinet shall include the following fund classifications:

(a) Governmental fund: This classification shall include those funds through which most governmental functions typically are financed including, but not limited to, the general fund, the road fund, bond debt related fund, federal fund, agency receipts funds, and the capital construction fund.

(b) Proprietary fund: This classification shall account for governmental activities which are similar to those activities found in the private sector. Activities which provide services to other governmental units and activities which provide services principally to the private sector are included.

(c) Fiduciary fund: This classification shall account for assets held by a governmental unit in a trustee capacity or as an agent for individuals, private organizations, other governmental units, or other funds. These include expendable trust funds, nonexpendable trust funds, pension trust funds and agency funds.

(d) Loan fund: This classification shall account for funds advanced or to be advanced to other governments, other governmental agencies or private organizations or individuals.

(6) Account groups. In order to establish accounting control and accountability for general fixed assets and the unmatured principal of general long-term debt, a general fixed assets account group and a general long-term debt account group may be established.

Section 17. KRS 45.310 is amended to read as follows:

The Finance and Administration Cabinet shall keep an accurate ***account***[~~record~~] of all warrants and certificates drawn or issued by the cabinet, showing in due succession the date[~~, number,~~] and amount of each warrant, and for what and to whom issued. The cabinet shall also keep ***records***[~~a record~~] of all receipts paid into the State Treasury.

Section 18. KRS 45.454 is amended to read as follows:

An interest penalty of one percent (1%) of any amount approved and unpaid shall be added to the amount approved for each month or fraction thereof after the thirty (30) working days which followed receipt of the ***goods or services or*** vendor's invoice by a purchasing agency.

Section 19. KRS 45A.655 is amended to read as follows:

(1) Subject to the provisions of this code, any budget unit may establish one (1) or more imprest cash funds when provided for by appropriation or when authorized by the Finance and Administration Cabinet for the purpose of making disbursements requiring prompt cash outlay, and to carry out the provisions of this code. The State Treasurer, upon warrants of the Finance and Administration Cabinet based upon a requisition from the head of the budget unit, shall pay to the head of ***the***[~~such~~] budget unit the amount necessary to establish[~~ such~~] a fund.

(2) A custodian shall be designated by the head of the budget unit and, after appropriate instruction and testing, certified by the Finance and Administration Cabinet as qualified to administer the fund. The custodian shall file with the Finance and Administration Cabinet a schedule of the disbursements from the fund as often as may be necessary to replenish the fund and at least once each month. The schedule of disbursements shall be accompanied by appropriate vouchers and statements of indebtedness therefor approved by the head of the budget unit, and by a certificate as to the condition of the fund. The amount of the total of the approved voucher shall be paid to the custodian of the fund on the warrant of the Finance and Administration Cabinet, and the amount shall be devoted to reimbursement of the fund. Any question relative to the amount to be allowed in any imprest cash fund, the expenditure thereof, the accounting thereof, and the

repayment thereof to the State Treasurer, shall be determined by the Finance and Administration Cabinet.

(3) The agency head shall be responsible for expenditures authorized from ***the***[~~such~~] funds, and the custodian shall be responsible for administration of the fund. Each agency head and custodian shall be separately bonded in the amount by which the total authorization for the fund exceeds the state blanket bond for such officials.

(4) A post audit of each imprest fund shall be conducted as required by KRS 43.050.

(5) Each imprest fund shall lapse with the appropriation on which it is based but may be reestablished by appropriation for the next ensuing year or when authorized by the Finance and Administration Cabinet.

(6) If work not subject to the provisions of the law for competitive bidding is done on public projects by the state through the use of its own personnel or facilities in whole or in part, the budget unit having ***the***[~~such~~] work performed may, when authorized by the Finance and Administration Cabinet, establish an imprest cash fund for the purpose of defraying the expenses of the proposed project. This fund shall not exceed at any time an amount equal to twenty-five percent (25%) of the anticipated total cost of the project.

(7) Imprest cash funds may be authorized by the Finance and Administration Cabinet to operate within the unified and integrated system of accounts, as defined in Section 16 of this Act. These funds shall allow agencies to record expenses into the statewide system and to write the check at the agency site. The reimbursement and reconciliation processes shall be performed by the Treasurer.

Section 20. The following KRS section is repealed:

41.270 Monthly statements from depositories.

The Committee Substitute to **HB 427** is as follows:

AN ACT relating to financial administration.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 41.010 is amended to read as follows:

(1) As used in KRS 41.070, 41.110, 41.120, 41.130, 41.150, 41.160, 41.290, 41.300 or 41.990, unless the context requires otherwise, the terms "appropriation," "budget unit," "disbursements," "employee," "expenditures," "expenses," and "receipts" have the meaning given them by KRS 43.010 and 48.010.

(2) As used in this chapter***;***

(a) [~~, the words~~]"Bank" and "depository" include any qualified financial intermediary and savings and loan associations chartered by the State of Kentucky or the United States government ***designated to take custody of state funds on deposit, for periods greater than overnight, with the intent to honor presentments against those deposits;***

(b) "Warrant" means a printed or electronic authorization from the Finance and Administration Cabinet for the Treasurer to issue a check;

(c) "Form" or "report" means any written method of transporting data;

(d) "Writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

Section 2. KRS 41.070 is amended to read as follows:

(1) Unless otherwise expressly provided by law, no receipts from any source of state money or money for which the state is responsible shall be held, used, or deposited in any personal or special bank account, temporarily or otherwise, by any agent or employee of any budget unit, to meet expenditures or for any other purpose. All receipts of any character of any budget unit, all revenue collected for the state, and all public money and dues to the state shall be deposited in state depositories in the most prompt and cost-efficient manner available. However in the case of state departments or agencies located outside Frankfort, and all state institutions, the Finance and Administration Cabinet may permit temporary deposits to be made to the accounts maintained by the agency, department, or institution in a bank which has been designated as a depository for state funds for a period not to exceed thirty (30) days, and may require that the money be forwarded to the State Treasury at the time and in the manner and form prescribed by the cabinet. Nothing in this section shall be construed as authorizing any representative of any agency, department, or institution to enforce or cash, even for the purpose of a deposit, any check or other instrument of value payable to the Commonwealth or any agency thereof.

(2) Each agency depositing its receipts directly with the State Treasurer shall do so ***in the manner***[~~on a pay-in voucher form~~] approved by the State Treasurer as agent in charge of public fund deposits.

(3) The Revenue Cabinet may deposit[~~ tax~~] receipts to the credit of the State Treasury directly with a depository designated

by the Treasurer and utilized by the Commonwealth for its primary banking services. The State Treasurer, with the approval of the Finance and Administration Cabinet, may authorize other agencies to deposit receipts directly with a depository designated by the Treasury to the credit of the State Treasury if the Treasurer prescribes the manner in which the deposit is to be made, and the forms and reports to be filed with the Treasury Department. The Finance and Administration Cabinet shall prescribe the forms and reports to be filed with it when this type of deposit is made.

(4) Each department, agency, or other budget unit which receives funds to be deposited into the State Treasury shall maintain records to report adequately each amount received, from whom received, and date received. Agency records shall be easily reconcilable with the ***information***[~~pay-in vouchers~~] forwarded to the State Treasurer.

Section 3. KRS 41.100 is amended to read as follows:

The Treasurer shall receive ***notification from state agencies of*** all money due or payable to the state[~~, when tendered by a state agency~~]. ***The Treasurer***[~~He~~] shall ***provide acknowledgment of the notification***[~~receipt one (1) copy of the pay-in voucher and forward it~~] to the Finance and Administration Cabinet.

Section 4. KRS 41.120 is amended to read as follows:

All claims against the state shall be paid by the Treasurer on the warrants of the Finance and Administration Cabinet. All warrants issued in accordance with the provisions of this chapter shall, when signed by the secretary of the Finance and Administration Cabinet or an assistant designated by him, constitute full and sufficient authority to the Treasurer for the disbursement of public money in the amount set forth.[~~ Said~~] Signatures may be placed on the warrants by means of an approved mechanical device. A signed transmittal which lists warrants may be accepted in lieu of each warrant being signed. ***Electronic authorization, approved by the secretary of the Finance and Administration Cabinet, may be accepted in lieu of any signatures.***

Section 5. KRS 41.130 is amended to read as follows:

(1) Each warrant of the Finance and Administration Cabinet upon the Treasury shall specify the date,[~~ number,~~] amount, ***and*** person to whom payable[~~, on what account issued, and the particular appropriation against which it is drawn,~~] and no money shall be disbursed by the Treasurer unless the warrant contains these specifications.[~~ The Finance and Administration Cabinet shall date and number each warrant.~~]

(2) No warrant shall be issued unless the money to pay it has been appropriated by law. The Finance and Administration Cabinet may require any claimant to state on the face of his claim the law under which it is payable.

Section 6. KRS 41.140 is amended to read as follows:

All warrants issued by the Finance and Administration Cabinet shall be submitted to the Treasurer[~~, accompanied by a list of all the warrants submitted at any one (1) time~~], showing for each warrant the name of the payee ***and***[~~,~~] the amount[~~, and the fund against which drawn, and each list shall show the total of the amounts of all the warrants listed~~].

Section 7. KRS 41.160 is amended to read as follows:

No money shall be paid out of the Treasury except by the check of the Treasurer upon a state depository***, or through the provisions of Section 19 of this Act***.[~~ The Treasurer shall date and number his checks on each of the state depositories in the order in which they are issued.~~] Payments may be made direct by the Treasurer to the persons entitled to receive them, by mail or otherwise, or through the heads of the budget units which incurred the expenditures.

Section 8. KRS 41.165 is amended to read as follows:

(1) Notwithstanding the provisions of KRS 337.010 through 337.070 and 41.160, the Treasurer shall pay, by electronic fund transfer, the wages of any state employee who makes a prior written request to the ***employing state agency***[~~Department of the Treasury~~] to be paid by electronic fund transfer. The Treasurer may refuse to comply with the request of an employee if the financial institution designated by the employee does not have the capability of receiving electronic transfers of funds.

(2) The Department of Personnel shall provide forms on which to request wage payments by electronic transfer of funds. The Department of Personnel may, by regulations promulgated pursuant to KRS Chapter 13A, require information on the request forms for wage payment by electronic transfer of funds that sufficiently identifies the employee and the designated financial institution of the employee.

(3) Any state agencies which employ persons who have exercised the option authorized by subsection (1) of this section shall retain the forms described in subsection (2) of this section.

Section 9. KRS 41.167 is amended to read as follows:

(1) The State Treasurer may withdraw funds from or deposit funds in the State Treasury by means of electronic funds transfers. The ***Finance and Administration Cabinet***[~~Treasurer~~] shall obtain a payee's prior, written consent for the payment of funds due him from the State Treasury by means of direct deposit rather than by means of a paper check issued to him. A single authorization may be granted for multiple payments to a payee by means of direct deposit.

(2) For the purpose of implementing this section and unless the context requires a different meaning, the term "check" as used in this chapter shall mean either a paper check or a paperless entry on an electronic data processing medium that

substitutes for a paper check for the purposes of debiting or crediting an account and of which a permanent record is made.

Section 10. KRS 41.170 is amended to read as follows:

The Finance and Administration Cabinet shall ***record***[~~enter~~] all warrants ***in the unified and integrated system of accounts***[~~into a general ledger account for warrants payable~~]. After the Treasurer has issued a check to pay the warrant, ***the Treasurer***[~~he~~] shall notify the Finance and Administration Cabinet[~~ in writing~~]; a single notification may reflect all warrants paid each day.

Section 11. KRS 41.260 is amended to read as follows:

Whenever the Treasurer decides to transfer any deposit of public money from one (1) state depository bank to another, ***the Treasurer***[~~he~~] shall ***notify***[~~cause to be prepared and transmitted to~~] the Finance and Administration Cabinet***,***[~~ a voucher~~] describing the proposed transfer and the[~~ pay-in vouchers for the~~] deposit of[~~ the~~] money to be[~~ so~~] transferred. On receipt of ***the notification***[~~these documents~~] the Finance and Administration Cabinet shall register the proposed transfer[~~ in a book to be maintained for this purpose~~] and issue its warrant for the amounts specified by the Treasurer.[~~ The Finance and Administration Cabinet shall fill in on the warrant the bank at which it is payable as specified by the Treasurer and shall transmit the warrant accompanied by all copies of the pay-in vouchers to the Treasurer.~~] When the transfers have been completed the Treasurer shall immediately ***notify***[~~transmit receipted copies of the pay-in vouchers to~~] the Finance and Administration Cabinet.

Section 12. KRS 41.310 is amended to read as follows:

The Finance and Administration Cabinet shall furnish the Treasurer ***with information regarding***[~~reports which exhibit~~] the status of each receipt and expenditure account. At the end of each month, the Treasurer shall furnish the Finance and Administration Cabinet ***with information regarding***[~~a report showing~~] the accumulated receipts and a listing of all warrants unpaid as of the end of the last day of each month.

Section 13. KRS 41.350 is amended to read as follows:

(1) Canceled checks of the State Treasurer upon state depository banks shall be microfilmed and the original check preserved by the State Treasurer for a period of one (1) year. At the expiration of this period, unless required for the purpose of an action then pending, the checks shall be sold as waste paper or destroyed. Microfilm reproductions of Treasury Department checks shall be preserved for a period of five (5) years. Microfilm reproductions of ***printed*** warrants shall be preserved for a period of five (5) years.

(2) Microfilm reproductions of electronic fund transfer entries debiting state accounts transmitted to the State Treasurer by state depositories shall be preserved by the State Treasurer for a period of five (5) years. At the expiration of this period, unless required for the purpose of an action then pending, they may be destroyed.

Section 14. KRS 41.370 is amended to read as follows:

(1) Any check issued by the State Treasurer shall not be valid as an order for payment after one (1) year from its date of issue and this limitation shall appear on all checks issued. The State Treasurer is authorized to clear ***the***[~~his~~] records of all such unpaid checks and credit the amounts to the fund against which it was originally drawn.

(2) When any properly endorsed check issued by the State Treasurer is presented for payment more than one (1) year after its date of issue and within the period prescribed by KRS 413.120, the State Treasurer shall, upon satisfactory proof of ownership, cancel ***the***[~~such~~] check and forward it to the secretary of the Finance and Administration Cabinet with the date and ***identifying information***[~~number of the pay-in voucher~~] which credited the amount of ***the***[~~such~~] check to a particular fund. The secretary of the Finance and Administration Cabinet shall draw a warrant against the check. All endorsements on the surrendered check shall have the same effect as if the check were paid by the drawee. All checks paid in the manner herein set forth shall be charged against the fund against which they were originally drawn.

(3) There shall be a fee charged for each check presented for reissue. The fee shall be twenty-five dollars ($25). If the check to be reissued is less than twenty-five dollars ($25) and replacement is required, a check payable to the Kentucky State Treasurer shall accompany the request for reissue. Reissued checks greater than twenty-five dollars ($25) shall have the fee deducted from the face value of the original check.

(4) Fees collected by the Treasurer shall be deposited in the surplus account of the general fund.

SECTION 15. A NEW SECTION OF KRS CHAPTER 45 IS CREATED TO READ AS FOLLOWS:

As used in this chapter, "warrant" means a printed or electronic authorization from the Finance and Administration Cabinet for the Treasurer to issue a check.

Section 16. KRS 45.305 is amended to read as follows:

(1) The Finance and Administration Cabinet shall install a unified and integrated system of accounts for the state which shall comply with generally accepted accounting principles, and which shall be in addition to other accounts required by this chapter, and which shall include:

(a) A set of budgetary control accounts for each fund, comprising an account with the available cash of the fund, an account with the budget estimate of the amount of money to be derived from each source of revenue and nonrevenue receipts, an account with the total of the unallotted balances of appropriations, an account with the total of the free balances of allotments, an account with the total commitments under allotments, and an account with the estimated cash surplus or deficit, so as to show at all times the status of the budget fund.

(b) A subsidiary appropriation ledger for each fund from which appropriations are made, embracing an account with each appropriation, and designed to show the budget unit to which the appropriation was made, the purpose of the appropriation, the amount appropriated, the additions to the appropriation, the allotments from the appropriation, the unallotted balance of the appropriation, the commitments charged to allotments, and the free balances of the total amount allotted.

(c) A set of general controlling proprietary and operating accounts for each fund, so as to record the transactions to the fund in summary form and to show the actual current assets, prepaid expenses, current liabilities, deferred credits to income, reserves, actual income, actual expenditures, and the current surplus or deficit.

(d) A uniform classification of the sources of revenue and nonrevenue receipts.

(e) Standard classifications of the expenditures of the budget units.

(f) A standard classification of the budget units.

(g) Such other accounts, records***,*** and devices as the Finance and Administration Cabinet deems necessary for the production of needed information respecting financial condition, financial operations and costs.

(2) The accounts provided for in paragraphs (a), (b) and (c) of subsection (1) of this section or summary records shall be maintained by the Finance and Administration Cabinet.

(3) The Finance and Administration Cabinet shall keep controlling accounts with receipts, payments and state depositories[~~entirely independent of those maintained by the State Treasurer~~]. The cabinet shall obtain from the State Treasurer the figures for the entries required to open ***the***[~~such~~] accounts, and thereafter it shall obtain the information required for the keeping of ***the***[~~such~~] accounts from ***deposits***[~~the pay-in vouchers~~], lists of warrants drawn under appropriations, and vouchers requesting transfers of deposits among state depositories.

(4) The accounting system prescribed and installed by the Finance and Administration Cabinet shall provide for the settlement of transactions between budget units by making debit and credit entries on the books of the cabinet on the basis of adequate expenditure vouchers, without the issuance of warrants.

(5) The accounting system prescribed and installed by the Finance and Administration Cabinet shall include the following fund classifications:

(a) Governmental fund: This classification shall include those funds through which most governmental functions typically are financed including, but not limited to, the general fund, the road fund, bond debt related fund, federal fund, agency receipts funds, and the capital construction fund.

(b) Proprietary fund: This classification shall account for governmental activities which are similar to those activities found in the private sector. Activities which provide services to other governmental units and activities which provide services principally to the private sector are included.

(c) Fiduciary fund: This classification shall account for assets held by a governmental unit in a trustee capacity or as an agent for individuals, private organizations, other governmental units, or other funds. These include expendable trust funds, nonexpendable trust funds, pension trust funds and agency funds.

(d) Loan fund: This classification shall account for funds advanced or to be advanced to other governments, other governmental agencies or private organizations or individuals.

(6) Account groups. In order to establish accounting control and accountability for general fixed assets and the unmatured principal of general long-term debt, a general fixed assets account group and a general long-term debt account group may be established.

Section 17. KRS 45.310 is amended to read as follows:

The Finance and Administration Cabinet shall keep an accurate ***account***[~~record~~] of all warrants and certificates drawn or issued by the cabinet, showing in due succession the date[~~, number,~~] and amount of each warrant, and for what and to whom issued. The cabinet shall also keep ***records***[~~a record~~] of all receipts paid into the State Treasury.

Section 18. KRS 45.454 is amended to read as follows:

An interest penalty of one percent (1%) of any amount approved and unpaid shall be added to the amount approved for each month or fraction thereof after the thirty (30) working days which followed receipt of the ***goods or services or*** vendor's invoice by a purchasing agency.

Section 19. KRS 45A.655 is amended to read as follows:

(1) Subject to the provisions of this code, any budget unit may establish one (1) or more imprest cash funds when provided for by appropriation or when authorized by the Finance and Administration Cabinet for the purpose of making disbursements requiring prompt cash outlay, and to carry out the provisions of this code. The State Treasurer, upon warrants of the Finance and Administration Cabinet based upon a requisition from the head of the budget unit, shall pay

to the head of ***the***[~~such~~] budget unit the amount necessary to establish[~~ such~~] a fund.

(2) A custodian shall be designated by the head of the budget unit and, after appropriate instruction and testing, certified by the Finance and Administration Cabinet as qualified to administer the fund. The custodian shall file with the Finance and Administration Cabinet a schedule of the disbursements from the fund as often as may be necessary to replenish the fund and at least once each month. The schedule of disbursements shall be accompanied by appropriate vouchers and statements of indebtedness therefor approved by the head of the budget unit, and by a certificate as to the condition of the fund. The amount of the total of the approved voucher shall be paid to the custodian of the fund on the warrant of the Finance and Administration Cabinet, and the amount shall be devoted to reimbursement of the fund. Any question relative to the amount to be allowed in any imprest cash fund, the expenditure thereof, the accounting thereof, and the repayment thereof to the State Treasurer, shall be determined by the Finance and Administration Cabinet.

(3) The agency head shall be responsible for expenditures authorized from ***the***[~~such~~] funds, and the custodian shall be responsible for administration of the fund. Each agency head and custodian shall be separately bonded in the amount by which the total authorization for the fund exceeds the state blanket bond for such officials.

(4) A post audit of each imprest fund shall be conducted as required by KRS 43.050.

(5) Each imprest fund shall lapse with the appropriation on which it is based but may be reestablished by appropriation for the next ensuing year or when authorized by the Finance and Administration Cabinet.

(6) If work not subject to the provisions of the law for competitive bidding is done on public projects by the state through the use of its own personnel or facilities in whole or in part, the budget unit having ***the***[~~such~~] work performed may, when authorized by the Finance and Administration Cabinet, establish an imprest cash fund for the purpose of defraying the expenses of the proposed project. This fund shall not exceed at any time an amount equal to twenty-five percent (25%) of the anticipated total cost of the project.

(7) Imprest cash funds may be authorized by the Finance and Administration Cabinet to operate within the unified and integrated system of accounts, as defined in Section 16 of this Act. These funds shall allow agencies to record expenses into the statewide system and to write the check at the agency site. The reimbursement and reconciliation processes shall be performed by the Treasurer.

Section 20. The following KRS section is repealed:

41.270 Monthly statements from depositories.

HB 439, AN ACT relating to administrative authority.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 194.030 is amended to read as follows:

The Cabinet for Human Resources shall consist of the following major organizational units which are hereby created:

(1) Office of the Secretary;

(2) The Office for Policy and Budget. The Office for Policy and Budget shall provide the secretary with professional support in planning, budgeting, and policy analysis, including the appraisal of needs, the formulation of policy, and the evaluation of programs. The Office for Policy and Budget shall be headed by an administrator who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050;

(3) The Office of the Counsel. The Office of the Counsel shall provide legal advice and assistance to all units of the cabinet in any legal action in which it may be involved. The Office of the Counsel shall employ all attorneys of the cabinet who serve the cabinet in the capacity of attorney and shall administer all personal service contracts of the cabinet for legal services. The Office of the Counsel shall be headed by a general counsel who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050 and 12.210. The general counsel shall be the chief legal advisor to the secretary and shall be directly responsible to the secretary. The Attorney General, on the request of the secretary, may designate the general counsel as an assistant attorney general in accordance with the provisions of KRS 15.105;

(4) The Office of the Ombudsman. The Office of the Ombudsman shall provide a review of citizen complaints on services of the Cabinet for Human Resources when such complaints cannot be resolved through normal administrative remedies. The Office of the Ombudsman shall be headed by an ombudsman who shall be appointed by the Governor with the advice of the secretary. The ombudsman shall be directly responsible to the secretary;

(5) The Office of Administrative Services. The Office of Administrative Services shall be responsible for providing administrative support services within the Cabinet for Human Resources. All fiscal, facility, and information management functions of the cabinet shall be vested in the Office of Administrative Services. The Office of Administrative Services shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The executive director shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The executive director

shall exercise authority over the office of administrative services under the direction of the secretary and shall only fulfill such responsibilities as delegated by the secretary;

(6) The Department for Social Insurance. The Department for Social Insurance shall develop and operate programs of the cabinet that provide income maintenance or income supplementation services and social insurance benefit programs not assigned to another department. The Department for Social Insurance shall also be responsible for all eligibility determination and certification functions associated with these programs. The Department for Social Insurance shall be headed by a commissioner for social insurance who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for social insurance shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for social insurance shall exercise authority over the Department for Social Insurance under the direction of the secretary and shall only fulfill such responsibilities as delegated by the secretary;

(7) The Department for Medicaid Services. The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the federal Social Security Act. The Department for Medicaid Services shall be headed by a commissioner for Medicaid services who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for Medicaid services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for Medicaid services shall exercise authority over the Department for Medicaid Services under the direction of the secretary and shall only fulfill such responsibilities as delegated by the secretary;

(8) The Department for Health Services. The Department for Health Services shall develop and operate all programs of the cabinet that provide health services and all programs for the prevention, detection, care, and treatment of physical disability, illness, and disease. The Department for Health Services shall be headed by a commissioner for health services who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for health services shall be a duly-licensed physician who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner shall advise the head of each major organizational unit enumerated in this section on policies, plans, and programs relating to all matters of public health, including any actions necessary to safeguard the health of the citizens of the Commonwealth. The commissioner shall serve as chief medical officer of the Commonwealth. The commissioner for health services shall exercise authority over the Department for Health Services under the direction of the secretary and shall only fulfill such responsibilities as delegated by the secretary;

(9) The Department for Mental Health and Mental Retardation Services. The Department for Mental Health and Mental Retardation Services shall provide services for all programs for the prevention, detection, and treatment of mental disability, illness, and disease and administer all programs for the assistance of community treatment and prevention of such disability, illness, and disease. The Department for Mental Health and Mental Retardation Services shall be headed by a commissioner for mental health and mental retardation who shall be appointed by the secretary for human resources with the approval of the Governor in accordance with KRS 12.050. The commissioner for mental health and mental retardation shall be by training and experience in administration and management qualified to perform the duties of the office. The commissioner for mental health and mental retardation shall exercise authority over the department under the direction of the secretary for human resources and shall only fulfill such responsibilities as delegated by the secretary;

(10) The Department for Social Services. The Department for Social Services shall develop and operate all social service programs of the cabinet. The Department for Social Services shall be headed by a commissioner for social services who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The commissioner for social services shall be a person who by education, professional qualification, training, and experience in the administration and management of social service programs is qualified to perform the duties of this office. The commissioner for social services shall exercise authority over the Department for Social Services under the direction of the secretary and shall only fulfill such responsibilities as delegated by the secretary;

(11) The Office of the Inspector General. The Office of the Inspector General shall be responsible for:

(a) The conduct of audits and investigations for detecting the perpetration of fraud or abuse of any program by any client, or by any vendor of services with whom the cabinet has contracted; and the conduct of special investigations requested by the secretary, commissioners, or office heads of the Cabinet for Human Resources into matters related to the cabinet or its programs;

(b) Licensing and regulatory functions as the secretary may delegate;

(c) Review of health facilities participating in transplant programs, as determined by the secretary, for the purpose of determining any violations of KRS 311.165 to 311.247; and

(d) The notification and forwarding of any information relevant to possible criminal violations to the appropriate prosecuting authority.

The Office of the Inspector General shall be headed by an inspector general who shall be appointed by the secretary with the approval of the Governor. The inspector general shall be directly responsible to the secretary***. To carry out the duties***

of the Office of the Inspector General, the Inspector General shall have the power to issue subpoenas for witnesses and subpoena duces tecum relevant to a review, audit, or investigation; and

(12) The Commission for Children with Special Health Care Needs. The duties, responsibilities, and authority set out in KRS 200.460 to 200.490 shall be performed by the commission. The commission shall advocate the rights of children with disabilities, and to the extent that funds are available, shall provide such services and facilities for children with disabilities as are deemed appropriate by the commission. The commission shall be composed of seven (7) members appointed by the Governor to serve a term of office of four (4) years. The commission may promulgate such administrative regulations pursuant to KRS Chapter 13A as may be necessary to implement and administer its responsibilities. The duties, responsibilities, and authority of the Commission for Children with Special Health Care Needs shall be performed through the Office of the Executive Director of the Commission. The executive director shall be appointed by the Governor pursuant to KRS 12.040, and the commission may at any time recommend the removal of the executive director upon filing with the Governor a full written statement of its reasons for such removal. The executive director shall report directly to the Commission for Children with Special Health Care Needs and serve as the commission's secretary.

HB 440, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. The General Assembly confirms Executive Order 97-1609, dated December 10, 1997, which creates and establishes the Consumer Protection and Education Division within the Department of Insurance.

HB 451, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. The General Assembly hereby confirms Executive Order 97-1072, dated August 20, 1997, which designates the Council on Postsecondary Education as the state agency which shall have the responsibility and authority to direct and annually report on equal opportunities in postsecondary education, and that requires the council to establish the Committee on Equal Opportunities in Postsecondary Education to advise the council on strategies for achieving the equal opportunity and institutional performance objectives contained in "The 1997-2002 Kentucky Plan for Equal Opportunities in Higher Education," and that abolishes the Committee on Equal Opportunities, which was established under the former Kentucky Higher Education Desegregation Plan.

HB 453, AN ACT relating to emergency management.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. KRS CHAPTER 39A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

The General Assembly realizes the Commonwealth is subject at all times to disaster or emergency occurrences which can range from crises affecting limited areas to widespread catastrophic events, and that response to these occurrences is a fundamental responsibility of elected government in the Commonwealth. It is the intent of the General Assembly to establish and to support a statewide comprehensive emergency management program for the Commonwealth, and through it an integrated emergency management system, in order to provide for adequate assessment and mitigation of, preparation for, response to, and recovery from, the threats to public safety and the harmful effects or destruction resulting from all major hazards, including but not limited to: flood, flash flood, tornado, blizzard, ice storm, snow storm, wind storm, hail storm, or other severe storms; drought, extremes of temperature, earthquake, landslides, or other natural hazards; fire, forest fire or other conflagration; enemy attack, threats to public safety and health involving nuclear, chemical, or biological agents or weapons; sabotage, riot, civil disorder or acts of terrorism, and other domestic or national security emergencies; explosion, power failure or energy shortages, major utility system failure, dam failure, building collapse, other infrastructure failures, transportation-related emergencies on, over, or through the highways, railways, air, land, and waters in the Commonwealth, emergencies caused by spill or release of hazardous materials or substances, mass-casualty or mass-fatality emergencies; other technological, biological, etiological, radiological, environmental, industrial, or agricultural hazards; or other disaster or emergency occurrences; or catastrophe; or other causes; and the potential, threatened, or impending occurrence of any of these events; and in order to protect life and property of the people of the Commonwealth, and to protect public peace, health, safety, and welfare, and the environment; and in order to ensure the continuity and effectiveness of government in time of emergency, disaster, or catastrophe in the Commonwealth, it is hereby declared to be necessary:

(1) To create a Division of Emergency Management as the emergency management agency of state government and to authorize the creation of local emergency management agencies in the cities, counties, and urban-county or charter

county governments of the Commonwealth;

(2) To confer upon the Governor, the county judge/executives of the counties, the mayors of the cities and urban-county governments of the Commonwealth, and the chief executive of other local governments the emergency powers provided in KRS Chapters 39A to 39F;

(3) To establish provisions for mutual aid among the cities, counties, and urban-county or charter county governments of the Commonwealth, with other states, and with the federal government with respect to the performance of disaster and emergency preparedness, response, recovery, and mitigation functions; and

(4) To authorize the establishment of a statewide comprehensive emergency management program and integrated emergency management system, the promulgation of orders or administrative regulations, and the taking of other steps necessary and appropriate to carry out the provisions of KRS Chapters 39A to 39F.

SECTION 2. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

As used in KRS Chapters 39A to 39F, unless the context requires otherwise:

(1) "Adjutant General" means the executive head of the Department of Military Affairs vested with general direction and control authority for the department and the division of emergency management;

(2) "Catastrophe" means a disaster or series of concurrent disasters which adversely affect the entire Commonwealth of Kentucky or a major geographical portion thereof;

(3) "Comprehensive emergency management program" means the public safety program developed, organized, implemented, administered, maintained, and coordinated by the Division of Emergency Management and local emergency management agencies created pursuant to the provisions of KRS Chapters 39A to 39F, to assess, mitigate, prepare for, respond to, or recover from, an emergency, declared emergency, disaster, or catastrophe, or threat of any of those, as contemplated in Section 1 of this Act or as defined in this section;

(4) "Coordination" means having and exercising primary state or local executive branch oversight for the purpose of organizing, planning, and implementing;

(5) "Declared emergency" means any incident or situation declared to be an emergency by executive order of the Governor, or a county judge/executive, or a mayor, or the chief executive of other local governments in the Commonwealth pursuant to the provisions of KRS Chapters 39A to 39F;

(6) "Director" means the director of the Division of Emergency Management of the Department of Military Affairs;

(7) "Disaster" means any incident or situation declared as such by executive order of the Governor, or the President of the United States, pursuant to federal law;

(8) "Disaster and emergency response" means the performance of all emergency functions, other than war-related functions for which military forces are primarily responsible, including, but not limited to: direction and control, incident command or management; communications; fire protection services; police services; medical and health services; ambulance services; rescue; search and rescue or recovery; urban search and rescue; engineering; alerting and warning services; resource management; public works services; nuclear, chemical, biological, or other hazardous material or substance monitoring, containment, decontamination, neutralization, and disposal; emergency worker protection, site safety, site operations and response planning; evacuation of persons; emergency welfare services; emergency transportation; physical plant protection; temporary restoration of public utility services; emergency lighting and power services; emergency public information; incident investigation, hazards analysis, and damage assessment; and other functions related to effective reaction to a disaster or emergency or catastrophe, or the potential, threatened, or impending threat of any disaster or emergency or catastrophe, together with all other activities necessary or incidental to the preparation for and carrying out of the functions set out in this subsection;

(9) "Division" means the Division of Emergency Management of the Department of Military Affairs;

(10) "Emergency" means any incident or situation which poses a major threat to public safety so as to cause, or threaten to cause, loss of life, serious injury, significant damage to property, or major harm to public health or the environment;

(11) "Integrated emergency management system" means the unified and multi-disciplinary disaster and emergency response infrastructure developed in the Commonwealth, under the coordination of the division, using methods which align state or local administrative, organizational, and operational resources, to accomplish the mission, goals, and objectives of the comprehensive emergency management program of the Commonwealth;

(12) "Local disaster and emergency services organization" means that organization of public and private entities developed to carry out the multi-agency disaster and emergency response of a city, county, urban-county or charter county pursuant to KRS Chapters 39A to 39F;

(13) "Local emergency management agency" means the agency created, operated, and maintained to coordinate the

local comprehensive emergency management program and disaster and emergency response of a city, county, and urban-county or charter county government pursuant to KRS Chapters 39A to 39F;

(14) "Local emergency management director" or "Local director" means the executive head of the local emergency management agency, appointed pursuant to the provisions of KRS Chapters 39A to 39F;

(15) "State emergency management agency" means the Division of Emergency Management of the Department of Military Affairs; and

(16) "State emergency management director" means the director of the Division of Emergency Management.

SECTION 3. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

The General Assembly recognizes that the rationale and purpose of the comprehensive emergency management program of the Commonwealth has evolved from a program for response to threats to national security, enemy attack, and other national defense needs, to a program for response to all hazards, but primarily, domestic hazards and threats including natural, man-made, technological, industrial, or environmental emergencies or disasters, for which civil government is primarily responsible. Because of major changes in the rationale and necessity for emergency management capabilities, as well as the urgent requirement for multi-agency participation and inter-agency coordination to ensure timely, effective, and appropriate disaster and emergency response in the Commonwealth, and to otherwise modernize and improve the administration, effectiveness, and relevance of the comprehensive emergency management program for the contemporary needs of the citizens of the Commonwealth, the General Assembly declares:

(1) A Division of Emergency Management is hereby created as the emergency management agency of state government which shall develop the comprehensive emergency management program of the Commonwealth on behalf of the Governor, and in consultation with the cabinet secretaries of state government, other appropriate state agency heads, local elected chief executives, local emergency management directors, and local emergency planning committees, for the purpose of developing and enhancing comprehensive emergency management program policies, plans, or procedures to provide for a coordinated responsive, and integrated emergency management system in the Commonwealth;

(2) The division may accept on behalf of the Commonwealth any grant, contribution, or fund, federal or otherwise, made to assist in meeting the costs of carrying out the provisions and purposes of KRS Chapters 39A to 39F, and fully comply with all funding requirements imposed by the receipt and use of the grant, contribution, or fund; and

(3) The term "Division of Emergency Management" shall constitute and designate the official name of the emergency management agency of state government created pursuant to subsection (1) of this section and "Division of Emergency Management", in the exact order or form as specified in this subsection, shall not be utilized by or assigned to any other agency of state or local government, or other state or local entity, or any political subdivision of the Commonwealth to constitute or designate the official name of any such agency, entity, or political subdivision.

SECTION 4. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

The following administrative bodies shall be attached to the division for administrative purposes:

(1) Governor's Earthquake Hazards and Safety Technical Advisory Panel; and

(2) Kentucky Emergency Response Commission.

SECTION 5. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) The Division of Emergency Management shall coordinate for the Governor all matters pertaining to the comprehensive emergency management program and disaster and emergency response of the Commonwealth. The division shall be the executive branch agency of state government having primary jurisdiction, responsibility, and authority for the planning and execution of disaster and emergency assessment, mitigation, preparedness, response, and recovery for the Commonwealth; the coordination of all disaster and emergency response by and between all state agencies, all agencies of city, county, and urban-county or charter county government, all local entities, and all political subdivisions of the Commonwealth for an emergency, declared emergency, disaster, or catastrophe as contemplated in Section 1, 2, or 3 of this Act; the coordination of, and liaison with, related or concerned federal government agencies, elected officials of other states, private organizations or private sector companies dealing with disaster and emergency response; the coordination of all recovery operations and mitigation initiatives subsequent to disasters or emergencies; and the coordination of all public information activities regarding state government disaster and emergency response operations.

(2) The Division of Emergency Management shall have and exercise the following powers, authorities, and duties:

(a) To develop, administer, and maintain a statewide comprehensive emergency management program for the Commonwealth, and through it an integrated emergency management system for the disaster and emergency response of the Commonwealth, which shall be coordinated with the emergency management programs, and other related public safety, emergency response, mitigation, or disaster recovery programs, of all appropriate federal government agencies including the Federal Emergency Management Agency, the Department of

Transportation, the Environmental Protection Agency, the Occupational Safety and Health Administration, the Department of Defense, the National Oceanic and Atmospheric Administration, the Department of Justice, the Bureau of Alcohol, Tobacco, and Firearms, the National Transportation Safety Board, the Chemical Safety and Hazard Investigation Board, the Army Corps of Engineers, the National Security Council, the Department of Health and Human Services, the Federal Railroad Administration, the U.S. Geological Survey, the Department of Energy, the Nuclear Regulatory Commission, the Department of Agriculture, the Department of Housing and Urban Development, the American Red Cross, the other states, and other appropriate public or private agencies, to the fullest appropriate extent;

(b) To coordinate the development, implementation, and maintenance of comprehensive emergency management programs by local emergency management agencies in the cities, counties, and urban-county or charter county governments of the Commonwealth to ensure that all such programs, agencies, and organizations are organized, administered, and operated as functional components of the integrated emergency management system of the Commonwealth;

(c) To develop and maintain a comprehensive, risk-based, all-hazards disaster and emergency response plan entitled "Kentucky Emergency Operations Plan," the provisions of which shall establish the organizational structure to be utilized by state government for managing disaster and emergency response, and set forth the policies, procedures, and guidelines for the coordination and execution of all disaster and emergency response for an emergency, declared emergency, disaster, or catastrophe in the Commonwealth. The Kentucky Emergency Operations Plan shall be submitted to the Governor for approval when the Governor assumes office following each gubernatorial election, or at other times as the director deems appropriate. The Governor shall provide written approval of the Kentucky Emergency Operations Plan through issuance of an executive order and the division shall file a copy of the executive order with the Legislative Research Commission. The Kentucky Emergency Operations Plan shall be the primary strategic disaster and emergency response planning component of the integrated emergency management system of the Commonwealth, and shall be utilized and followed by all state agencies, all local government agencies, all local public agencies or entities, and all other political subdivisions of the Commonwealth which may be involved in disaster and emergency response in the Commonwealth. The Kentucky Emergency Operations Plan shall be updated by the division not less than annually;

(d) To maintain and operate the State Emergency Operations Center facility, which shall be the official and primary state government twenty-four (24) hour warning point, communications, and command center, from which the Governor, cabinet secretaries, department heads, and other state agency officials can, at any time, rapidly, adequately, and effectively manage the disaster and emergency response of the Commonwealth. The State Emergency Operations Center facility shall be the primary state direction and control component of the integrated emergency management system of the Commonwealth for the coordination of all disaster and emergency response in the Commonwealth;

(e) To develop, monitor, and operate, on a twenty-four (24) hour per day basis, the appropriate alerting or warning systems, public safety telecommunications systems or radio networks, any state trunked, fiber, or interactive communication systems, computer, fax, other telecommunications or information networks and systems needed for communication and coordination with all necessary or appropriate federal, state, or local public safety, law enforcement, emergency management, or other disaster and emergency response agencies, and state or local dispatch centers in the Commonwealth, and other appropriate interests, and through these agencies and systems to receive or disseminate emergency information, or to receive timely notification of, and continual assessment of, all threatened or actual emergency incidents or disaster situations occurring anywhere in or near the Commonwealth;

(f) To immediately notify the Governor and the Adjutant General, in the event of any major emergency incidents or disaster occurrences, or the threatened or impending occurrence of any of these events, and to keep the Governor and the Adjutant General informed of all actions being taken in response to these events;

(g) To respond to the scenes of emergencies or disasters, or their threatened or impending occurrence and to directly and immediately investigate, analyze, and assess the nature and seriousness of these situations; to convene meetings, gather information, conduct briefings, and evaluate on-going emergency response activities; take actions to execute the appropriate provisions of the Kentucky Emergency Operations Plan; coordinate the establishment and operation of a state incident management system; establish or manage sub-state or area emergency operations centers, or on-scene command posts; and fully expedite and coordinate the disaster and emergency response of the Commonwealth;

(h) To establish and operate area field offices of the division, each office to be headed by an area manager, responsible for administering the policies, plans, programs, and duties of the division in specific geographic areas of the Commonwealth, including the coordination of comprehensive emergency management programs developed by the cities, counties, or urban-county governments in the areas;

(i) To provide funds to the cities, counties, and urban-county or charter county governments of the Commonwealth to

support the development, administration, operation, and maintenance of local emergency management agencies created pursuant to KRS Chapters 39A to 39F;

(j) To require the regular submission of program administration data, records, materials, reports, or documents from local emergency management agencies as may be necessary and sufficient to conduct performance reviews and assessments to ensure compliance with all state or federal funding and program requirements, and to ensure local program compatibility and consistency with the mission, goals, and objectives of the comprehensive emergency management program and integrated emergency management system of the Commonwealth;

(k) To ascertain the requirements of the Commonwealth and its cities and counties for emergency resources and the necessities of life in the event of disaster or emergency; institute an emergency resource management plan and procure emergency supplies, materials, and equipment; and use or employ in time of emergency any of the property, services, and resources of state or local government in the Commonwealth, for the purposes set forth in KRS Chapters 39A to 39F;

(l) To institute public information and education programs, emergency management training programs, and exercise programs to test and evaluate emergency operations plans and disaster and emergency response and recovery capabilities; and

(m) To promulgate administrative regulations to carry out the provisions of KRS Chapters 39A to 39F.

SECTION 6. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

The General Assembly recognizes that the nature and scope of the activities necessary to develop and to administer a statewide comprehensive emergency management program, together with an integrated emergency management system requires the full support, cooperation, and active participation of all cabinets, departments, divisions, offices, or agencies of state government, local elected officials, local public agencies or entities, special districts, political subdivisions of the Commonwealth, volunteer organizations, individual citizens, and the private sector in this Commonwealth. To provide effective executive leadership for a program area of such broad scope and to ensure the professional administration of the comprehensive emergency management program and integrated emergency management system of the Commonwealth, the General Assembly declares:

(1) The Division of Emergency Management shall be headed by a director recommended by the Adjutant General and appointed by the Governor; and

(2) The director shall have the powers, rights, responsibilities, and authorities, as provided in KRS Chapters 39A to 39F, or other laws, and shall carry out all duties under the general direction of the Adjutant General of the Department of Military Affairs.

SECTION 7. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

The director, with the approval of the Adjutant General, shall exercise the following powers, responsibilities, and duties:

(1) To represent the Governor on all matters pertaining to the comprehensive emergency management program and the disaster and emergency response of the Commonwealth;

(2) To coordinate the development of a statewide comprehensive emergency management program, and through it, an integrated emergency management system for the disaster and emergency response of the Commonwealth;

(3) To promulgate administrative regulations and issue orders, directives, standards, rules, procedures, guidance, or recommended practices necessary to coordinate the development, administration, organization, operation, implementation, and maintenance of the statewide comprehensive emergency management program and the integrated emergency management system of the Commonwealth;

(4) To coordinate the development of comprehensive emergency management programs by the cities, counties, and urban-county or charter county governments as functional components of the integrated emergency management system of the Commonwealth;

(5) To supervise the development and maintenance of the Kentucky Emergency Operations Plan, and to review and give concurrence to local emergency operations plans required pursuant to KRS Chapters 39A to 39F;

(6) To coordinate the comprehensive emergency management program of the Commonwealth with the emergency management or other emergency response-related programs of the federal government, and of other states, to the fullest appropriate extent;

(7) To advise the Governor and the Adjutant General immediately of the occurrence or threatened or impending occurrence of any disaster or emergency, and to recommend to the Governor any emergency actions, written orders, emergency powers, or executive orders that the Governor should execute;

(8) To serve as the Governor's primary liaison with local officials in the event of the occurrence, or threatened or impending occurrence, of any disaster or emergency in the cities, counties, urban-counties, or charter counties of the Commonwealth;

(9) To take any other preparedness or response actions deemed necessary for adequate response to a disaster or emergency situation to include: requesting increased readiness activities by state or local agencies in advance of an actual disaster or emergency; requesting implementation of local emergency operations plans or the activation of local emergency operations centers; requesting reports from state or local agencies regarding emergency situations, damage assessments, or the taking of emergency response actions; and requesting the mobilization or deployment of any trained and equipped forces of state or local government for the disaster and emergency response purposes set forth in KRS Chapters 39A to 39F;

(10) To request and utilize the personnel, equipment, services, and facilities of existing officers and agencies of the Commonwealth and of all political subdivisions and special districts. All these officers and agencies shall fully cooperate with and extend their resources to the director as requested;

(11) To employ measures and give directions to the state or local boards of health as necessary for the purpose of securing compliance with the provisions of KRS Chapters 39A to 39F, or with the findings or recommendations of the boards of health, because of conditions arising from disasters, emergency situations, national security emergencies, or the threat thereof;

(12) To request and utilize the services of state and local law enforcement officers for the purpose of securing compliance with the provisions of KRS Chapters 39A to 39F, or any order of the Governor pertaining to disaster and emergency response;

(13) On behalf of this Commonwealth, with the approval of the Governor or act of the General Assembly, to enter into reciprocal aid agreements or compacts with other states and the federal government, either on a statewide, local, county, or city basis, or with other states or a province of a foreign country. The mutual aid agreements shall be limited to the furnishing or exchange of food, clothing, medicine, and other supplies; engineering services; emergency housing; police services; national guard personnel and resources while under the control of the state; health, medical, and related services; firefighting; rescue; search and rescue or recovery; urban search and rescue; hazardous materials response services, transportation and construction services and equipment; personnel necessary to provide or conduct these services and other supplies, equipment, facilities, personnel, and services as needed; the reimbursement of costs and expenses for equipment, supplies, personnel, and similar items for mobile support units, firefighting, search and rescue and police units and health units; and on the terms and conditions deemed necessary;

(14) To sponsor and develop mutual aid plans and agreements among the urban-county or charter county governments, counties, cities, and other political subdivisions and special districts of the Commonwealth, similar to the mutual aid arrangements with other states referred to in subsection (13) of this section;

(15) To procure motor vehicles, radio, and telecommunications equipment, protective clothing, safety equipment, and other necessary supplies and materials to meet the emergency response, operational, and administrative needs of the division;

(16) To identify deficiencies existing in the emergency management program organization, facilities, and capabilities of the Commonwealth, including but not limited to: personnel and administrative resources; state, sub-state, area, or local emergency operations centers; mobile command posts; emergency telecommunications and computer systems; alerting and warning systems; stockpiles of critical resources; or any other necessary elements, and to recommend to the Adjutant General, for consideration by the Governor or the General Assembly or other appropriate funding authority, the administrative or operational funding requirements, and long range capital construction or improvement projects, needed to meet the emergency management infrastructure needs of the Commonwealth;

(17) To serve as the state coordinating officer and notify the Governor of the appropriations necessary to fund the expected emergency operational or response costs of the division, and the Commonwealth's share of the grants provided by PL 93-288, Title V, Federal Disaster Assistance Programs as amended by PL 100-707, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, or successor Acts or Titles, and further, take action necessary to ensure entitlement to all other federal relief or assistance programs;

(18) To cooperate with the President of the United States, the Federal Emergency Management Agency, and other appropriate federal offices and agencies, and the offices and agencies of other states in matters pertaining to the comprehensive emergency management program of the Commonwealth and nation; and in connection with these, to take any measures considered necessary to implement any request of the President and the appropriate federal officers and agencies, for any action requiring effective disaster and emergency response, including the direction or control and mobilization of disaster and emergency response forces; tests and exercises, warnings, and signals for drills or other emergency response activities and the mechanical devices to be used in connection with these; the shutting off of water mains, gas mains, electric power connections, and the suspension of all other utility services; the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, prior, and subsequent to a drill, emergency, declared emergency or disaster; public meetings or gatherings; and the evacuation and sheltering of the civilian population; and

(19) To delegate any authority vested in the director under KRS Chapters 39A to 39F and to provide for the subdelegation of any such authority.

SECTION 8. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

The Governor may make, amend, and rescind any executive orders as deemed necessary to carry out the provisions of KRS Chapters 39A to 39F.

SECTION 9. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) In the event of the occurrence or threatened or impending occurrence of any of the situations or events contemplated by Section 1, 2, or 3 of this Act, the Governor may declare, in writing, that a state of emergency exists. The Governor shall have and may exercise the following emergency powers during the period in which the state of emergency exists:

(a) To enforce all laws, and administrative regulations relating to disaster and emergency response and to assume direct operational control of all disaster and emergency response forces and activities in the Commonwealth;

(b) To require state agencies and to request local governments, local agencies, and special districts to respond to the emergency or disaster in the manner directed;

(c) To seize, take, or condemn property for the protection of the public or at the request of the President, the Armed Forces, or the Federal Emergency Management Agency of the United States, including:

1. All means of transportation and communication;

2. All stocks of fuel of whatever nature;

3. Food, clothing, equipment, materials, medicines, and all supplies; and

4. Facilities, including buildings and plants;

(d) To sell, lend, give, or distribute any of the property under paragraph (c) of this subsection among the inhabitants of the Commonwealth and to account to the State Treasurer for any funds received for the property;

(e) To make compensation for the property seized, taken, or condemned under paragraph (c) of this subsection;

(f) To exclude all nonessential, unauthorized, disruptive, or otherwise uncooperative personnel from the scene of the emergency, and to command those persons or groups assembled at the scene to disperse. A person who refuses to leave an area in which a written order of evacuation has been issued in accordance with a written declaration of emergency or a disaster may be forcibly removed to a place of safety or shelter, or may, if this is resisted, be arrested by a peace officer. Forcible removal or arrest shall not be exercised as options until all reasonable efforts for voluntary compliance have been exhausted;

(g) To declare curfews and establish their limits;

(h) To prohibit or limit the sale or consumption of goods or commodities for the duration of the emergency;

(i) To perform and exercise other functions, powers, and duties deemed necessary to promote and secure the safety and protection of the civilian population; and

(j) To request any assistance from agencies of the United States as necessary and appropriate to meet the needs of the people of the Commonwealth.

(2) In the event of the occurrence or threatened or impending occurrence of any of the situations or events contemplated by Section 1, 2, or 3 of this Act, which in the judgment of a local chief executive officer is of such severity or complexity as to require the exercise of extraordinary emergency measures, the county judge/executive of a county other than an urban-county government, or mayor of a city or urban-county government, or chief executive of other local governments or their designees as provided by ordinance of the affected county, city, or urban-county may declare in writing that a state of emergency exists, and thereafter, subject to any orders of the Governor, shall have and may exercise for the period as the state of emergency exists or continues, the following emergency powers:

(a) To enforce all laws and administrative regulations relating to disaster and emergency response and to direct all local disaster and emergency response forces and operations in the affected county, city, urban-county, or charter county;

(b) To exclude all nonessential, unauthorized, disruptive, or uncooperative personnel from the scene of the emergency, and to command persons or groups of persons at the scene to disperse. A person who refuses to leave an area in which a written order of evacuation has been issued in accordance with a written declaration of emergency or a disaster may be forcibly removed to a place of safety or shelter, or may, if this is resisted, be arrested by a peace officer. Forcible removal or arrest shall not be exercised as options until all reasonable efforts for voluntary compliance have been exhausted;

(c) To declare curfews and establish their limits;

(d) To order immediate purchase or rental of, contract for, or otherwise procure, without regard to procurement codes or budget requirements, the goods and services essential for protection of public health and safety or to maintain or to restore essential public services; and

(e) To request emergency assistance from any local government or special district and, through the Governor, to request emergency assistance from any state agency and to initiate requests for federal assistance as are necessary for protection of public health and safety or for continuation of essential public services.

SECTION 10. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

If property is taken for temporary use, pursuant to the provisions of this chapter, the Governor shall, within thirty (30) days of the taking, fix the amount of compensation to be paid for the property. If the property is returned to the owner in a damaged condition or is not returned to the owner, the Governor shall, within thirty (30) days after the taking, fix the amount of compensation to be paid for the damage or failure to return. When the Governor deems it advisable for the state to take title to property taken under this section, the owner shall be notified in writing by certified mail, return receipt requested, and a copy of the notice shall be filed with the Secretary of State.

SECTION 11. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

If the owner of any property seized, taken, or condemned pursuant to Section 10 of this Act refuses to accept as adequate the compensation fixed by the Governor, the owner may present a claim to the Board of Claims, which shall hear and determine it according to the provisions of KRS Chapter 44 and the administrative regulations of the board.

SECTION 12. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) The owner of property seized, taken, or condemned may appeal from the award of the Board of Claims to the Circuit Court of the county of the owner's residence. The Rules of Civil Procedure shall, so far as applicable, govern the procedure on appeal. A trial de novo shall not be allowed unless the record on appeal is not sufficient to determine the matter from the record, but if the action is tried it shall be tried according to the practice prescribed for the trial of jury cases.

(2) An appeal from the judgment of Circuit Court may be taken to the Court of Appeals.

SECTION 13. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) If the owner of property seized, taken, or condemned accepts as adequate the compensation fixed by the Governor, the owner shall file a statement of the amount of compensation from the Governor with the Finance and Administration Cabinet, which shall draw a warrant on the State Treasurer for the amount of the compensation in favor of the person entitled to payment.

(2) If the compensation is determined by award of the Board of Claims or judgment of a court, as provided in Sections 10, 11, and 12 of this Act, a certified copy of the award or judgment shall be filed with the Finance and Administration Cabinet which shall draw a warrant on the State Treasurer for the amount of the award or judgment.

(3) The State Treasurer shall pay the warrants out of any money in the Treasury not otherwise appropriated.

SECTION 14. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Emergency Operations Plan and local emergency operations plans shall include measures for, and the Governor for the state or portion thereof, the county judge/executive for a county other than an urban-county, or a portion thereof, and the mayor for a city or an urban-county or portion thereof, may issue written executive orders providing for:

  (a) The control of traffic in order to provide for rapid and safe movement in evacuation over public highways and streets during any disaster or emergency;

  (b) The control and alteration of speed limits and traffic regulations on public highways during any disaster or emergency; and

  (c) The prohibition or limitation of use of motor vehicles on public highways during any disaster or emergency.

(2) The Governor may extend the provisions of subsection (1) of this section to the public thoroughfares of any political subdivision of the Commonwealth.

(3) The Governor may order agencies of state government and political subdivisions of the Commonwealth to take steps necessary to effectuate plans made or orders issued pursuant to this section.

(4) During a declared emergency or disaster the Governor, county judge/executive, or mayor, may, for their respective jurisdictions, place these plans in effect.

SECTION 15. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

For the purpose of making surveys and investigations and obtaining information which may be necessary to the operation or enforcement of KRS Chapters 39A to 39F, the Governor, or the director with the written approval of the Governor, may *compel by subpoena the attendance of witnesses, and the production of books, papers, records, and documents of individuals, firms, associations, and corporations. All officers, boards, commissions, and divisions of the state, the political subdivisions thereof, and special districts, having information which is the subject of the investigation, shall cooperate with and assist the Governor or the director in making the investigation and surveys.*

SECTION 16. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding any inconsistent provision of law, the Governor may, when it is found to be in the public interest:

(a) Authorize any division or agency of the state to lease or lend, on such terms and conditions as deemed necessary to promote the public welfare and protect the interests of the state, any real or personal property of the state government to the President of the United States, the chiefs of the Armed Forces, or to the Federal Emergency Management Agency;

(b) Enter into a contract on behalf of the state for the lease or loan to any political subdivision of the state on such terms and conditions as may be deemed necessary to promote the public welfare and protect the interests of the state, of any real or personal property of the state government, or the temporary transfer or employment of personnel of the state government to or by any political subdivision of the state; and

(c) Permit state employees to engage in disaster and emergency response activities, within or without the state, for the division, or for a local jurisdiction upon request of a local emergency management agency to the division. State employees assigned to or volunteering for this duty shall be considered as being employed by the agency by which they are regularly employed and shall continue to receive salary and benefits while engaging in disaster and emergency response work.

(2) The permission of the Governor for the use of state employees in the manner specified in subsection (1)(c) of this section shall be presumed, and shall be automatic unless the Governor specifies otherwise with regard to the use of a specific employee or employees.

(3) The Chief Justice for the Court of Justice and the Director of the Legislative Research Commission, with regard to employees of their respective branches of government, may permit Court of Justice and legislative employees to engage in disaster and emergency services work under the same terms and conditions as specified in subsections (1) and (2) of this section.

SECTION 17. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) The political subdivisions of the state and other agencies designated or appointed by the Governor may make, amend, and rescind orders and promulgate administrative regulations necessary for disaster and emergency response purposes, and to supplement the carrying out of the provisions of this chapter, if not inconsistent with any orders or administrative regulations promulgated by the Governor or by any state agency exercising a power delegated to it by the Governor.

(2) All written orders and administrative regulations promulgated by the Governor, the director, or by any political subdivision or other agency authorized by KRS Chapters 39A to 39F to make orders and promulgate administrative regulations, shall have the full force of law, when, if issued by the Governor, the director, or any state agency, a copy is filed with the Legislative Research Commission, or, if promulgated by an agency or political subdivision of the state, when filed in the office of the clerk of that political subdivision or agency. All existing laws, ordinances, and administrative regulations inconsistent with the provisions of KRS Chapters 39A to 39F, or of any order or administrative regulation issued under the authority of KRS Chapters 39A to 39F, shall be suspended during the period of time and to the extent that the conflict exists.

(3) The law enforcement authorities of the state and of its counties, urban-counties, charter counties, and cities shall enforce the written orders and administrative regulations issued pursuant to KRS Chapters 39A to 39F.

SECTION 18. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

A peace officer may arrest without a warrant any person violating or attempting to violate in the officer's presence any order or administrative regulation made pursuant to this chapter, or KRS Chapter 39B, 39C, 39D, 39E, or 39F.

SECTION 19. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

When the federal government or any agency or officer thereof shall offer to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of disaster and emergency response, the state, acting through the Governor, or the political subdivision, acting through its chief executive or governing body, may accept the offer and upon acceptance the Governor of the state or chief executive or governing body of the political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive the services, equipment, supplies, materials, or funds on behalf of the state or the political subdivision, and subject to the terms of the offer.

SECTION 20. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

The director of the Division of Emergency Management, and the local director of any local emergency management *agency, shall at the time of appointment and before entering upon his or her assigned duties, take an oath, in writing, before a person authorized to administer oaths in this Commonwealth, which shall be as follows:*

> *"I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of this Commonwealth and be faithful and true to the Commonwealth of Kentucky so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my ability, the office of emergency management director according to law;*
>
> *And I do further solemnly swear (or affirm) that since the adoption of the present Constitution, I, being a citizen of this state, have not fought a duel with deadly weapons within this state, nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, nor aided or assisted any person thus offended, so help me God."*

SECTION 21. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) Each agency, board, or commission of state government, unless the requirement is waived, in writing, by the director, shall develop agency emergency operations procedures which are consistent with and which meet the requirements of the Kentucky Emergency Operations Plan. The agency emergency operations procedures shall be updated not less than yearly.

(2) Each agency, board, or commission of state government shall take those measures necessary to ensure that it can continue to operate during times of disaster or emergency, that it can protect its vital records, and that it has designated at least four (4) persons, preferably by title, who may act for the agency, and for its major component operations, during an emergency or disaster if the primary person with the power to make necessary decisions is unavailable for any reason.

(3) In carrying out the provisions of subsections (1) and (2) of this section, each agency, board, or commission of state government shall follow the general planning guidance of the division and the requirements of administrative regulations promulgated by the division.

(4) Each agency, board, or commission of state government shall train its employees with regard to the contents of the agency emergency operations procedures, and shall give any additional training necessary to implement the procedures during times of emergency or disaster.

(5) Each agency, board, or commission of state government shall, upon request of the director, send an employee of the agency with full authority to take any action on behalf of the agency to the State Emergency Operations Center, area offices of the division, state command posts or other designated location during periods of emergency or disaster.

(6) As used in this section, agency, board, or commission means all agencies, unless the requirement is waived, in writing, by the director, listed in KRS 12.020, other state bodies created by executive order of the Governor, the Legislative Research Commission, and the Court of Justice and its agencies.

SECTION 22. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Emergency Operations Plan shall include procedures for one multi-risk, multi-agency, unified incident command or management system to be used by all state agencies responding to the scene of an emergency, declared emergency, disaster, or catastrophe, as contemplated by Section 1, 2, or 3 of this Act.

(2) Local emergency operations plans shall include procedures for:

- *(a) An incident command or management system to be used by individual local agencies or departments when responding to the scene of day-to-day, routine emergency incidents; and*
- *(b) One unified incident command or management system to be used by all local agencies or departments when responding to the scene of a multi-agency or multi-jurisdictional emergency, declared emergency, disaster, or catastrophe, as contemplated by Section 1, 2, or 3 of this Act.*

(3) All incident command or management system procedures required pursuant to subsections (1) or (2) of this section shall be based upon or utilize the five (5) functions of: command, operations, planning, logistics, and finance.

SECTION 23. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) The division shall maintain the State Emergency Operations Center and those alternate locations deemed necessary, and shall activate the State Emergency Operations Center when deemed necessary by the director, the Adjutant General, or the Governor.

(2) Each cabinet of state government, and each independent agency of state government, and other organizations provided for in the Kentucky Emergency Operations Plan shall immediately send a designated person to the State Emergency Operations Center upon request of the director, during a time of emergency or disaster or the threatened or impending happening of such an incident. They shall remain at the State Emergency Operations Center until relieved and replaced, unless released by the director.

(3) Persons representing agencies of state government or other organizations assigned to the State Emergency

Operations Center during times of emergency or disaster or the threatened or impending happening thereof may obligate the funds, equipment, and personnel of the organization which they represent, and make decisions on behalf of the organization which they represent.

SECTION 24. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) Disaster and emergency response functions provided by a state or local emergency management agency, or any emergency management agency-supervised operating units or personnel officially affiliated with a local disaster and emergency services organization pursuant to Section 35 of this Act, shall not, in itself, be deemed to be the making of a promise, or the undertaking of a special duty, towards any person for the services, or any particular level of, or manner of providing, the services; nor shall the provision of or failure to provide these services be deemed to create a special relationship or duty towards any person upon which an action in negligence or other tort might be founded. Specifically:

(a) The failure to respond to a disaster or other emergency, or to undertake particular inspections or types of inspections, or to maintain any particular level of personnel, equipment, or facilities, shall not be a breach of any duty to persons affected by any disaster or other emergency.

(b) When a state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization, does undertake to respond to a disaster or other emergency, the failure to provide the same level or manner of service, or equivalent availability or allocation of resources as may or could be provided, shall not be a breach of any duty to persons affected by that disaster or other emergency.

(c) A state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization shall not have or assume any duty towards any person to adopt, use, or avoid any particular strategy or tactic in responding to a disaster or other emergency.

(d) A state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization, in undertaking disaster and emergency preparedness or prevention activities including inspections, or in undertaking to respond to a disaster or other emergency, shall not have voluntarily assumed any special duty with respect to any risks which were not created or caused by it, nor with respect to any risks which might have existed even in the absence of that activity or response, nor shall any person have a right to rely on such an assumption of duty.

(2) Neither the state nor any political subdivision of the state, nor the agents or representatives of the state or any of its political subdivisions, shall be liable for personal injury or property damage sustained by any person appointed or acting as a volunteer emergency management agency member, or disaster and emergency services member, or disaster and emergency response worker, or member of any agency engaged in any emergency management or disaster and emergency services or disaster and emergency response activity. This immunity shall not affect the right of any person to receive benefits or compensation to which the person might otherwise be entitled under the Workers' Compensation Law, or this chapter, or any pension law, or any act of Congress.

(3) Neither the state nor any political subdivision of the state nor, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or any of its political divisions, nor any volunteer or auxiliary emergency management agency or disaster and emergency services organization member or disaster and emergency response worker or member of any agency engaged in any emergency management or disaster and emergency services or disaster and emergency response activity, complying with or reasonably attempting to comply with this chapter or any order or administrative regulation promulgated pursuant to the provisions of this chapter, or other precautionary measures enacted by any city of the state, shall be liable for the death of or injury to persons, or for damage to property, as a result of that activity.

(4) Decisions of the director, his subordinates or employees, a local emergency management director, or the local director's subordinates or employees, a rescue chief or the chief's subordinates, concerning the allocation and assignment of personnel and equipment, and the strategies and tactics used, shall be the exercise of a discretionary, policy function for which neither the officer nor the state, county, urban-county, charter county, or city, or local emergency management agency-supervised operating unit formally affiliated with a local disaster and emergency services organization, shall be held liable in the absence of malice or bad faith, even when those decisions are made rapidly in response to the exigencies of an emergency.

(5) Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part of the real estate or premises for the purpose of sheltering persons during an actual, impending, mock, or practice disaster or emergency, together with his or her successors in interest, shall not be civilly liable for negligently causing the death

of, or injury to, any person on or about the real estate or premises for loss of, or damage to, the property of that person.

SECTION 25. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) The division may enter into agreements with other states with regard to mutual aid for routine provision of emergency management services or for mutual aid during times of emergency or disaster, or any combination of these.

(2) Kentucky emergency management personnel, either working for the state or local government or affiliated with the state or a local government, paid or volunteer, shall, to the extent provided by the law of the host state, have the same rights and privileges as they have in Kentucky.

(3) Emergency management personnel, either working for the state or a local government or affiliated with the state or a local government of another state, paid or volunteer, shall, to the extent provided by Kentucky law, have the same rights and privileges as do Kentucky emergency management personnel working for the state or local government or affiliated with the state or a local government, whether paid or volunteer. This provision shall not apply to the provision of peace officer services, unless approved in writing by the Governor, or the General Assembly, as appropriate for the specific incident.

(4) Kentucky emergency management-provided workers' compensation shall apply to a state or local emergency management agency worker, paid or volunteer, or worker in an operating unit officially affiliated with the division, or worker in a local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization pursuant to Section 35 of this Act, who is serving in another state pursuant to an agreement consummated under this section.

(5) An emergency management worker from another state, paid or volunteer, who is working for or affiliated with the state emergency management agency and who is serving in Kentucky pursuant to an agreement consummated under this section may be accorded Kentucky emergency management workers' compensation coverage by action of the director.

(6) The provisions of subsections (4) and (5) of this section shall not apply to hazardous materials emergency response operations defined in 29 C.F.R. 1910.120 which are above the first-responder operations level, on-scene incident commander level excluded.

(7) An emergency management worker from another state, paid or volunteer, who is working for the state emergency management agency or a local emergency management agency or a worker in an organization affiliated with the state or local emergency management agency of another state who holds license or certification from the worker's state to practice a profession, or paraprofessional activity, or other activity for which a license or certification is required to practice that activity in Kentucky shall be, for the period of that work, under an agreement consummated pursuant to this chapter, considered as properly licensed or certified in Kentucky to perform the services granted by the worker's license or certification. The worker shall, however, while in Kentucky, be subject to discipline by the appropriate Kentucky licensing or certifying agency for acts of misconduct or negligence which are committed in Kentucky.

(8) City, county, urban-county, or charter county emergency management agencies in Kentucky may make written agreements with similar local emergency management agencies in adjoining states if the agreements are submitted to the state emergency management agencies of both states and are approved in writing by the directors of both agencies. Agreements pursuant to this section shall be subject to the same rights and privileges as state agreements under this section, but shall be limited to two (2) years, unless renewed by submission of a new agreement for approval.

(9) The provisions of this section shall be subject to the provisions of all applicable federal law.

SECTION 26. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) During the threatened or impending happening of a disaster or emergency, the Governor, the Adjutant General, or the Director may authorize the use of public employees, equipment, supplies, materials, funds, or any other publicly owned or supported resources to assist in the mitigation of the potential effects of the disaster or emergency, regardless of whether the use is on public or private property.

(2) During the actual happening of and any part of the response phase of a disaster or emergency the Governor, the Adjutant General, or the Director, shall, when necessary or desirable, authorize the use of public employees, equipment, supplies, materials, funds, or any other publicly owned or supported resource to assist in the operations of government, or the private sector, necessary to deal with the disaster or emergency, regardless of whether the use is on public or private property.

(3) After the active or response phase of the disaster or emergency has passed and the recovery phase has begun, the Governor, the Adjutant General, or the Director may authorize the use of public employees, equipment, supplies,

funds, or any other publicly owned or supported resources to assist in the recovery phase of the disaster or emergency, regardless of whether the use is on public or private property.

(4) A formal declaration of disaster or emergency shall not be necessary to invoke the provisions of subsection (1) or (2) of this section.

SECTION 27. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

Any person violating any provision of this chapter or any administrative regulation or order promulgated pursuant to this chapter for which another penalty is not specified shall be guilty of a Class A misdemeanor.

SECTION 28. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

The definitions and other provisions of this chapter shall apply to this chapter and to KRS Chapters 39B, 39C, 39D, 39E, and 39F unless the language or context of a particular statute requires otherwise.

SECTION 29. KRS CHAPTER 39B IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

(1) Each city, county, urban-county or charter county government of this Commonwealth shall create, support, and maintain a local emergency management agency, which shall serve the public safety interest of the local government within the territorial boundaries of the city or county where the agency is created. Each local emergency management agency shall develop, implement, and maintain a local comprehensive emergency management program, including a local emergency operations plan, in accordance with the provisions of KRS Chapters 39A to 39F. The local emergency management agency shall be an integral component of the statewide integrated emergency management system of this Commonwealth, and shall fully comply with all applicable provisions of KRS Chapters 39A to 39F, the comprehensive emergency management program requirements of the Commonwealth, the provisions of the Kentucky Emergency Operations Plan, and all administrative regulations promulgated by the Division of Emergency Management.

(2) Each county government, and the urban-county, charter county, or city governments located within the territorial boundaries of a county, are encouraged to jointly create a single, unified local emergency management agency to serve all local governments collectively, and therefore may, in lieu of creating individual and separate local agencies, jointly create a single, unified local emergency management agency, provided the agency and its program:

(a) Fully comply with all the provisions of KRS Chapters 39A to 39F;

(b) Comply with the Interlocal Cooperation Act or locally adopted memorandums of agreement, as necessary and appropriate; and

(c) Are determined to be in compliance with all requirements of KRS Chapters 39A to 39F by the director of the Division of Emergency Management.

(3) The local emergency management agency shall be an organizational unit of the executive branch of city, county, and urban-county or charter county government and shall have primary jurisdiction, responsibility, and authority for all matters pertaining to the local comprehensive emergency management program and, under the general supervision of the local emergency management director, shall serve as a direct function of the office of county judge/executive or mayor. In accordance with the policies of the state-local finance officer, a separate emergency management agency fund account shall be designated and included in the city, county, and urban-county or charter county budget ledgers, and all financial matters of a local emergency management agency, involving funds provided through the Division of Emergency Management, shall be handled through the county, urban-county, or charter county treasury and financial system.

(4) City, county, and urban-county or charter county governments may use the term "emergency management" in a manner or form appropriate to constitute and designate the official name of the local emergency management agency established pursuant to this chapter, except for any use of the term "Division of Emergency Management" specified to constitute and designate the official name of the state emergency management agency pursuant to Section 3 of this Act. The term "emergency management" may be used in a manner or form appropriate to constitute and designate the official name of a local emergency management council, or the statewide association of emergency management agencies or personnel, but shall not be utilized by, assigned to, or otherwise specified by any local unit, agency, or department, or any political subdivision of the Commonwealth in any manner or form to constitute or designate the official name of the local unit, agency, or department, or political subdivision, except as authorized in this subsection.

(5) All local emergency management agencies or local disaster and emergency services organizations in the Commonwealth, and the local directors, and members of each, shall, for all purposes, be under the direction of the director of the division, and of the Governor when the latter deems that action necessary.

SECTION 30. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

(1) The county judge/executive of each county, the mayor of each city or urban-county government, or the chief

executive of other local government, within thirty (30) days of assuming office following their election, shall appoint a local emergency management director who meets all qualifications criteria pursuant to KRS Chapters 39A to 39F, and shall immediately notify the director of the Division of Emergency Management of the appointment.

(2) In lieu of appointing a separate local emergency management director for each jurisdiction, the county judge/executive of a county and mayors of cities or urban-county governments, or the chief executive of other local government located within the territorial boundaries of the same county may jointly appoint a single local emergency management director who meets all the qualifications criteria pursuant to KRS Chapters 39A to 39F. It is the policy of the Division of Emergency Management to encourage and support the joint appointment of a single local director in each territorial county of the Commonwealth. The duly appointed local emergency management director shall direct, control, and manage all the affairs of the local emergency management agency and comprehensive emergency management program of the jurisdictions wherein appointed.

(3) A local emergency management director appointed under the provisions of subsections (1) or (2) of this section shall serve at the pleasure of the appointing authority, but shall serve not longer than four (4) years without reappointment and, in addition to any local requirements, shall meet the qualification requirements listed in this subsection:

(a) The local director shall be a high school graduate with an additional three (3) years of experience in business administration, government planning, industrial or commercial planning, public safety, management of emergency services, or related community or governmental service. Management level experience may not be substituted for high school education. Education at an accredited college or university may be substituted for experience on a year-for-year basis.

(b) The local director shall be a resident of the Commonwealth of Kentucky and the county served.

(c) The local director shall hold no partisan elective office, nor file for, seek, or campaign for any partisan elective office while holding the position of local emergency management director.

(d) The local director shall be routinely available to respond to emergency scenes, command posts, or emergency operations centers to coordinate emergency response of all local public and private agencies and organizations; to perform necessary administrative, planning, and organizational duties; to complete and submit required reports, records, emergency operations plans, and documents; to attend required training; and attend meetings convened by the appointing authority or the area manager of the division.

1. If the local director is also a full-time or part-time employee of the federal or state government, the local director shall have written authorization from the appropriate appointing authority to hold the position of local emergency management director and to fully comply with the provisions of paragraph (d) of this subsection. A copy of the written authorization shall be submitted to the division at the time of appointment.

2. If the local director is also a full-time or part-time employee of a city, county, urban-county government or charter county government in another capacity, that government shall enact an official city or county order or ordinance specifying that the individual appointed as local emergency management director shall fully comply with the provisions of paragraph (d) of this subsection. The order or ordinance shall also specify that the individual, when performing the duties of local emergency management director, shall relinquish all authorities and responsibilities associated with any other governmental employment and shall indicate another person, by name or position, to assume those authorities and responsibilities until such time as the local director shall cease to function as local emergency management director. A copy of the enacted order or ordinance shall be submitted to the division at the time of appointment. The city, county, or urban-county government, or charter county government shall not seek reimbursement from the division for the local director's salary for any time spent in another capacity.

3. If the local director is also a full-time or part-time employee in the private sector, the local director shall have a letter from each employer stating that the local director shall, without penalty or exception, be permitted to fully comply with the provisions of paragraph (d) of this subsection. A copy of the letter from each employer shall be submitted to the division at the time of appointment.

4. If the local director is self-employed, the local director shall certify at the time of appointment, by letter to the director of the division, that the local director's schedule shall permit full compliance with the provisions of paragraph (d) of this subsection.

(4) A local director whose salary has been reimbursed by the division prior to January 1, 1994, shall not be subject to the provisions of subsection (3)(a) of this section, so long as remaining continuously in that position for the appointing jurisdiction.

(5) A local director whose salary is reimbursed in part or in full by the Division of Emergency Management pursuant to

Sections 40 and 41 of this Act, shall also meet any other requirements of KRS Chapters 39A to 39F and any requirements which may be imposed by the Federal Emergency Management Agency, or its successor.

SECTION 31. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

A local emergency management director, appointed pursuant to this chapter, shall have the following powers, authorities, rights, and duties:

(1) To represent the county judge/executive or mayor on all matters pertaining to the comprehensive emergency management program and the disaster and emergency response of the county, urban-county, charter county, or the county and the cities therein, unless there is a local director appointed for a city in accordance with this chapter, who represents that city;

(2) To be the executive head and chief administrative officer of the local emergency management agency, and to direct, control, supervise, and manage, the development, preparation, organization, administration, operation, implementation, and maintenance of the comprehensive emergency management program of the county, urban-county government, charter county government, or the county and the cities therein, and to coordinate all local disaster and emergency response, unless there is a local director appointed for a city in accordance with this chapter, who represents that city;

(3) To develop and maintain a local emergency operations plan entitled "county emergency operations plan," or "city emergency operations plan," or "city/county emergency operations plan," as appropriate, the provisions of which shall establish the organizational structure to be utilized by local government to manage disaster and emergency response, and set forth the policies, procedures, and guidelines for the coordination of all disaster and emergency response in the county and all the cities therein for an emergency, declared emergency, disaster, or catastrophe. The local emergency operations plan shall be developed consistent with the appropriate provisions of the Kentucky emergency operations plan, the provisions of KRS Chapters 39A to 39F, planning guidance issued by the division, and administrative regulations promulgated by the division. The local emergency operations plan shall be officially adopted by signed executive order of the county judge/executive or mayor. The executive order shall be filed with the office of the clerk for the local jurisdiction and a copy placed in the local emergency operations plan. A copy of the local emergency operations plan, and all revisions or updates thereto, shall be submitted by the local director to the Division of Emergency Management for concurrence review and reference. The local emergency operations plan shall be a component of the integrated emergency management system of the Commonwealth, and subject to the Kentucky Emergency Operations Plan, shall be the primary local strategic planning document governing the coordination of all disaster and emergency response in the county, city, or the county and the cities therein, and shall be applicable to, utilized by, and adhered to by, all local emergency response departments, agencies, and officials of the local disaster and emergency services organization in the county and the cities therein. The local emergency operations plan shall be updated not less than annually;

(4) To establish and maintain a local disaster and emergency services organization in accordance with the local emergency operations plan, the Kentucky Emergency Operations Plan, and the provisions of Section 34 of this Act;

(5) To notify the county judge/executive, mayor, or executive authority of other local governments and the Division of Emergency Management immediately of the occurrence, or threatened or impending occurrence, of any emergency or disaster, and recommend any emergency actions which should be executed;

(6) To be the chief advisor to, and the primary on-scene representative of, the county judge/executive, mayor, or executive authority of other local governments in the event of occurrence of any emergency, declared emergency, disaster, or catastrophe within the local jurisdiction;

(7) To respond and have full access to the scenes of an emergency, declared emergency, disaster, or catastrophe to immediately investigate, analyze, or assess the seriousness of all situations; to take or direct immediate actions to protect the public safety; to coordinate the establishment and operation of a local incident command or management system; to execute the local emergency operations plan, as appropriate; to activate the local emergency operations center or on-scene command post; to convene meetings, gather information, conduct briefings, and to notify the division of on-going response actions; and fully expedite and coordinate the disaster and emergency response of all local public and private agencies, or to have a staff assistant do so;

(8) To act as an official representative of the division in emergency situations when specifically requested by the director;

(9) To report directly to the county judge/executive, mayor, or executive authority of other local governments act in an official policy-making capacity when carrying out the duties of local emergency management director, and exercise full signatory authority for execution of all contracts, agreements, or other official documents pertaining to the administration and operation of the local emergency management agency and program;

(10) To direct or supervise all paid or volunteer emergency management staff assistants or other local emergency management agency workers, and all operating units or personnel officially appointed and affiliated with the local

disaster and emergency services organization pursuant to Section 35 of this Act;

(11) To prepare and submit regular or scheduled program activity reports to the area manager of the division and local chief executives;

(12) To execute bond, if appropriate, in the amount determined by the appointing authorities;

(13) Annually, by the first day of March, to prepare and submit a program budget request to the county judge/executive and mayor;

(14) Annually, by the fifteenth day of July, to prepare and submit to the division a locally-approved, fiscal year program paper and budget request;

(15) To perform all administrative, organizational, or operational tasks required by the provisions of this chapter, or administrative regulations, or program guidance pertaining thereto;

(16) To be a registered member of the Kentucky Emergency Management Association or other professional emergency management organization; and

(17) To carry out all other emergency management-related duties as required by KRS Chapters 39A to 39F, administrative regulations, or local orders or ordinances.

SECTION 32. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

(1) The local director of each local emergency management agency in the Commonwealth may develop or cause to be developed mutual aid arrangements with special districts and other public and private agencies within this Commonwealth for reciprocal disaster and emergency response aid and assistance in case of disaster or other emergency too great to be dealt with unassisted. The arrangements shall be consistent with the Kentucky Emergency Operations Plan, the local emergency operations plan, and the comprehensive emergency management program of the Commonwealth, and in time of emergency it shall be the duty of each local disaster and emergency services organizational unit, including each special district, and each public or private agency, to render assistance in accordance with the provisions of these mutual aid arrangements.

(2) The local director of each local emergency management agency in the Commonwealth may assist the division, acting on behalf of the Governor, in negotiation of reciprocal mutual aid agreements between the Commonwealth and other states, including foreign states or provinces, or their political subdivisions, and shall carry out the arrangements or any agreements relating to the local political subdivision.

SECTION 33. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

(1) Each local emergency management director shall establish and maintain a local disaster and emergency services organization in accordance with a city or county or city/county emergency operations plan required pursuant to KRS Chapters 39A to 39F. The local disaster and emergency services organization shall be comprised of the following members and participants:

- *(a) The county judge/executive and mayors, or the chief executive of other local governments;*
- *(b) Elected legislative officials of the county and cities;*
- *(c) The local emergency management director and all local emergency management agency staff members and workers, or emergency management agency-supervised operating units or personnel;*
- *(d) All regular or volunteer public safety or emergency services department heads or agency chiefs in the cities or county;*
- *(e) All regular or volunteer public safety or emergency services department or agency members in the cities or county;*
- *(f) All districts, corporations, public agencies, groups, or political subdivisions of the state and special districts within the county or the cities thereof, which are organized under the laws of the Commonwealth to provide an emergency response service or related function in the interest of public safety; and*
- *(g) All private sector personnel, agencies, organizations, companies, businesses, or individuals and citizens who agree to provide their assets, resources, talents, services, or supplies in aid to the local disaster and emergency services organization of the cities or county in accordance with the approved local emergency operations plan of the city, county, urban-county government, or charter county government.*

(2) The local disaster and emergency services organization shall have responsibility for the performance of all disaster and emergency response functions contemplated in Section 1, 2, or 3 of this Act and as listed or assigned in the city, county, or city/county emergency operations plan. Disaster and emergency response functions may be assigned within the local disaster and emergency services organization to existing agencies and organizations, public and private. It shall not be necessary for the local disaster and emergency services organization to create, provide, or maintain an additional or auxiliary capability for any existing function or service deemed adequate to local needs.

(3) The local disaster and emergency services organization shall be the primary disaster and emergency response force of city, county, urban-county government, or charter county government and an organizational component of the integrated emergency management system of the Commonwealth. The local emergency management director shall have primary responsibility for the coordination of all disaster and emergency response of the local disaster and emergency services organization for an emergency, declared emergency, disaster, or catastrophe.

SECTION 34. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

(1) The city or county or city/county emergency operations plan developed pursuant to the provisions of KRS Chapters 39A to 39F shall include adequate provisions or procedures to assess, mitigate, prepare for, respond to, and recover from all disaster or emergency incidents contemplated by Section 1, 2, or 3 of this Act and shall provide for all functions contemplated by these sections.

(2) The local emergency operations plan shall be submitted by the local director to the county judge/executive, mayor, or chief executive of other local governments immediately following each regular election for these offices, for approval and adoption by the local chief executives through issuance of an executive order pursuant to the provisions of KRS Chapters 39A to 39F.

(3) In the event of a conflict between a city emergency operations plan and a county emergency operations plan and decisions made thereunder:

- *(a) The decision made pursuant to the county plan shall prevail if the incident, its consequences, or the threat thereof, extend beyond the boundaries of the city;*
- *(b) The decision made pursuant to the city plan shall prevail if the incident, its consequences, or the threat of the incident, do not extend beyond the boundaries of the city; and*
- *(c) The same precedence shall govern plans of urban-counties and charter counties.*

SECTION 35. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

Each city, county, urban-county government, or charter county government may:

(1) Through the county judge/executive of a county other than an urban-county government, mayor of an urban-county government, chief executive of other local governments, or mayor of a city, or their designees as provided by ordinance, declare in writing a state of emergency when required, and thereafter execute any emergency powers granted under this chapter to provide for adequate and appropriate response to any occurrence or situation or any impending event or situation resulting from any of the situations or events contemplated by Section 1, 2, or 3 of this Act;

(2) Appropriate and expend funds, make contracts, enact cost-recovery ordinances, obtain and distribute equipment, materials, and supplies for disaster and emergency response purposes; provide for the health and safety of persons and property, including emergency assistance to the victims of any disaster or emergency; review or approve local emergency operations plans; and enact orders or ordinances pertaining to local emergency management programs in accordance with the policies and plans prescribed by the federal and state emergency management agencies and the provisions of KRS Chapters 39A to 39F;

(3) Appoint, employ, remove, or provide, with or without compensation, staff assistants to the local emergency management director, and clerical, administrative, technical or other local emergency management agency staff personnel, and local emergency management agency-supervised operating units officially affiliated with the local disaster and emergency services organization by city or county order or ordinance including rescue squads, auxiliary fire, police, and medical personnel, urban search and rescue teams, severe weather spotters teams, damage assessment teams, amateur radio or communications personnel, or other emergency response groups, teams, or personnel, and other disaster and emergency response workers;

(4) Establish a primary and one (1) or more secondary emergency operations centers or on-scene command posts to serve as official local government command posts during an emergency, declared emergency, disaster, or catastrophe;

(5) Subject to the order of the Governor, or the chief executive of the county, urban-county government, charter county government, or city, to assign and make available for duty, the employees, property, or equipment of the county or city relating to firefighting, engineering, rescue, health, medical and related services, police, transportation, construction, and similar items or services for disaster and emergency response purposes within or outside of the physical limits of the county, urban-county government, charter county government, or city;

(6) In the event of a national emergency or state of declared emergency or declared disaster or catastrophe, as provided in Section 9 of this Act, waive procedures and formalities otherwise required by the law pertaining to: the performance of public work; entering into contracts; the incurring of obligations; the employment of permanent and temporary workers; the utilization of volunteer workers; the rental of equipment; the purchase and distribution, with or without compensation, of supplies, materials, and facilities; the appropriation and expenditure of public funds;

and the demolition and removal of damaged public and private structures; and

(7) Confer or authorize the conferring upon members of the auxiliary police the powers of peace officers, subject to the provisions of KRS 61.300, and any other restrictions imposed by the appointing authority.

SECTION 36. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

When the employees of any county, urban-county, charter county, or city are rendering outside aid pursuant to the authority contained in this chapter, the employees shall have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in the jurisdiction in which they are normally employed.

SECTION 37. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

(1) The city, county, urban-county government or charter county government, in which any equipment is used pursuant to this chapter shall be liable for any loss or damage thereto and shall pay any expense incurred in the operation and maintenance thereof. No claim for loss, damage, or expense shall be allowed unless, within sixty (60) days after it is sustained or incurred, an itemized written notice of the claim under oath is served by mail or otherwise upon the chief fiscal officer of the county, urban-county, charter county, or city where the equipment was used. The county, urban-county, charter county, or city which is aided pursuant to this chapter shall also reimburse the county, urban-county, charter county, or city furnishing the aid for the compensation paid to employees furnished under this chapter during the time of the rendition of the aid, and shall defray the actual traveling and maintenance expenses of the employees while they are rendering the aid. Reimbursement shall include any amounts paid or due to compensation due to personal injury or death while employees are engaged in rendering aid. The term "employee" as used in this section shall mean, and the provisions of the section shall apply with equal effect to, paid, volunteer, or auxiliary employees, and other local emergency management agency or disaster and emergency response workers.

(2) The rights, privileges, and obligations set out in this section shall also apply if aid is rendered outside the Commonwealth. Payment or reimbursement in this case shall be made by the state or political subdivision receiving the aid pursuant to a reciprocal mutual aid agreement or compact with another state or by the federal government.

SECTION 38. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

The chief executive or governing body of each political subdivision of the state may:

(1) Enter into a contract or lease with the state, or accept any loan, or employ personnel, and the political subdivision may equip, maintain, utilize, and operate any property and employ necessary personnel therefor in accordance with the purposes for which the contract is executed; and

(2) Do all things and perform all acts deemed necessary to effectuate the purpose for which the contract was entered into in accordance with the Kentucky Emergency Operations Plan.

SECTION 39. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

Any person violating any provision of this chapter or any administrative regulation or order promulgated pursuant to this chapter for which another penalty is not specified shall be guilty of a Class A misdemeanor.

SECTION 40. KRS CHAPTER 39C IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

In order to develop and maintain effective local emergency management agencies, and comprehensive emergency management programs and related activities, it is declared to be the policy of the Commonwealth of Kentucky to encourage and assist the counties, cities, urban-county governments or charter county governments of the Commonwealth by authorizing, and there is hereby authorized, the expenditure of supplementary state funds for local emergency management agencies which are created, administered, operated, and maintained pursuant to KRS Chapters 39A to 39F, and are integral components of the integrated emergency management system of this Commonwealth.

SECTION 41. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

Supplementary state funds appropriated to the division shall be allocated by the division to local emergency management agencies on a reimbursement basis in amounts not to exceed fifty percent (50%) of the total local funds expended by the local agencies in any given year for the institution, administration, or support of the comprehensive emergency management programs of the city, county, urban-county government or charter county government.

SECTION 42. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

The purpose of the supplementary state fund established in Sections 40 and 41 of this Act is to:

(1) Assist local emergency management agencies established pursuant to KRS Chapters 39A to 39F to develop adequate comprehensive emergency management programs and disaster and emergency response capabilities;

(2) Maintain and improve these agencies, programs, and capabilities through enhanced training, planning, staffing, administration, operations, and equipment acquisition; and

(3) Benefit the Commonwealth as a whole, through creation of an effective and responsive statewide integrated

emergency management system.

SECTION 43. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

(1) The Director of the Division of Emergency Management shall have overall responsibility for policy, guidance, administration, and proper utilization of the supplementary fund established in Sections 40 and 41 of this Act.

(2) The director shall serve as the principal liaison between the division and local officials participating in programs affected by this fund.

(3) The director shall appoint an advisory committee consisting of seven (7) members, including no more than four (4) employees of the staff of the division, to assist in making initial funding allocations each fiscal year and in making quarterly adjustments, based upon program and financial reviews. The members of the committee shall serve at the pleasure of the director, but for no more than four (4) years without reappointment, and shall serve without reimbursement, except when funded through the emergency management assistance programs. The decisions of the committees shall be advisory only and not binding upon the director.

(4) The director, with the advice of the advisory committee, shall make determinations related to fund allocations.

(5) Area managers of the division shall fully explain program opportunities and requirements to local elected officials and local directors, review budget and program submissions, and make recommendations to the director.

(6) Funds pursuant to Sections 40 and 41 of this Act shall be made available to not more than one (1) local emergency management agency in any county on a reimbursement basis up to fifty percent (50%) of the total local funds expended in any given year by the local emergency management agency created pursuant to KRS Chapters 39A to 39F.

SECTION 44. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

Local emergency management agencies created pursuant to Section 29 of this Act shall be eligible to apply for benefits from the fund created pursuant to Sections 40 and 41 of this chapter if they meet the following criteria:

(1) The local emergency management agency shall have a qualified, duly-appointed local director who is capable of fully executing the duties of the position pursuant to Section 31 of this Act. Unless the local director has already completed an introductory emergency management course or is determined by the director to be suitably qualified, during the first year of participation in the funding program, the local director, whether serving on a voluntary or paid basis, shall have successfully completed all correspondence courses specified by the division by administrative regulation. The local director shall also participate in an emergency management workshop when offered. Unless the local director has already completed an introductory emergency management course or is determined by the director to be suitably qualified, each local director shall also attend an introductory emergency management course when offered.

   (a) In each following year, each local director shall attend an emergency management workshop, when offered.

   (b) In subsequent years, a local director shall continue his or her education by annually completing advanced instruction offered by the division, including the training courses and the Emergency Management Development Program as required by administrative regulations promulgated by the division. The requirements of this section may be met by successfully completing related courses offered by federal agencies and other organizations, as approved by the division.

(2) Each local emergency management agency employee, other than the local director, whose salary is reimbursed in part by this fund, shall attend one (1) emergency management workshop at least every other year, and shall complete other instruction offered by the division as required by administrative regulations promulgated by the division.

(3) The local director appointed pursuant to KRS Chapters 39A to 39F, shall develop a local emergency operations plan and appropriate annexes. This plan shall be subject to concurrence review by the director of the division. In subsequent years, the plan and all annexes shall annually be reviewed, updated, approved, and officially adopted in accordance with the provisions of KRS Chapters 39A to 39F.

(4) During the second and each subsequent year of participation in the program, the local director shall conduct an exercise to test the local emergency operations plan in accordance with exercise program requirements and guidelines of the Federal Emergency Management Agency or the division.

(5) Each local emergency management agency created pursuant to KRS Chapters 39A to 39F shall provide for an organized and designated emergency operating center in the local jurisdiction from which all operations of the local disaster and emergency services organization shall be coordinated. This center shall provide resources for communications, information management, and other operational capabilities necessary to ensure the coordination of all disaster and emergency response in the local jurisdiction. The local emergency operations center shall be a direction and control component of the integrated emergency management system of the Commonwealth.

(6) Each local emergency management agency shall develop, and submit annually to the division, a program paper detailing agency administrative data, current staff personnel listings, a specific work plan of program objectives

scheduled for accomplishment during the next fiscal year, and a budget request. Forms and guidance materials for this report shall be provided by the division.

(7) Each employee of a local emergency management agency created pursuant to this chapter with the exception of the local director and each deputy, if the deputy functions in a policymaking capacity, whose salary is reimbursed in part or in total with these funds, shall meet the standards of the Kentucky merit system, or the standards of the federal Office of Personnel Management or its successor or local equivalent, when recognized by the director.

(8) In order for a local emergency management agency to participate in the funding program, one (1) of the following persons shall attend an annual emergency management workshop:

- *(a) The county judge/executive;*
- *(b) The deputy county judge/executive;*
- *(c) The mayor of an urban-county government or the largest city in the county, or the mayor of the city which is the county seat of the county, or the chief executive of other local government;*
- *(d) The city manager;*
- *(e) The local emergency management deputy director; or*
- *(f) A member of the fiscal court or urban-county council of the county.*

(9) The division shall determine by administrative regulation:

- *(a) Public officials and disaster and emergency services personnel who may be reimbursed for attendance at emergency management workshops or other activities; and*
- *(b) Reimbursements for attending courses and workshops, which shall be limited as follows:*
  - *1. Reimbursement rates for meals and travel mileage shall not exceed those for state employees.*
  - *2. Reimbursement shall be made for attending the workshop or course nearest to the participant's residence. A participant may attend a workshop at a greater distance but will be reimbursed for meals and mileage equal to that of attending the nearest workshop or course. In cases of extreme hardship, the nearest course or workshop requirement may be waived, in writing, by the director.*

(10) The division shall:

- *(a) Publicize all available state and federal emergency management agency training courses to mayors, county judges/executive, and local directors; and*
- *(b) Assist local personnel listed in this section in gaining entrance to state and federal emergency management agency training courses.*

(11) If, at any time, the director of the division determines that a local emergency management agency or a local director does not comply with the eligibility requirements of this section, the director shall notify that local director, and the appointing authorities, in writing, of the intent to deny financial assistance to the local emergency management agency. The local director shall have ten (10) working days to come into compliance or otherwise provide information to the director to justify eligibility for funding. If the director continues to determine that the local emergency management agency or the local director does not meet eligibility requirements, the local emergency management agency shall be ineligible for funds and the director shall notify the local director and the appointing authorities, of the determination. A local director aggrieved by a decision of the director may appeal to the Franklin Circuit Court within twenty (20) days of the receipt of the director's decision. The court's review shall be from the record and shall not be de novo.

SECTION 45. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

(1) Local emergency management agencies requesting financial aid from the fund created pursuant to Sections 40 and 41 of this Act, shall submit, not later than July 15 of each year, a local "Annual Program Paper" application to the area manager of the division.

(2) The area manager shall review the application and accompanying documents and forward them to the director of the division along with the area manager's assessments and recommendations, not later than August 15 of each year.

(3) The director shall submit the request for financial aid to the advisory committee for its review and recommendations. The advisory committee shall review the application, accompanying documents, and the assessment and recommendation of the area manager and make a recommendation to the director with regard to the application and the request for funding.

(4) Requests for funding shall be evaluated by the following criteria:

- *(a) Meeting the eligibility criteria specified in Section 44 of this Act, unless some aspect thereof has been waived as provided in Section 48 of this Act.*

(b) Meeting all the requirements specified by the division for developing, preparing, maintaining, and submitting the annual program paper.

(c) Local emergency operations plans submitted and a determination of their conformity to the Kentucky Emergency Operations Plan, and an assessment of their capability, state of currency, sign of official adoption, and general adequacy to provide for the coordination of disaster and emergency response operations.

(d) Past program performance of the local director in fully carrying out the duties of local director as specified in Section 31 of this Act, and overall program performance as it relates to completeness, adequacy, and timeliness in accomplishing program tasks, objectives, or goals.

(e) Historical spending records for this and similar programs.

(f) Local resources committed to the program on a per capita basis.

(5) If available funds do not meet the total funds requested by all local emergency management agencies, then funding allocations may be reduced after a reevaluation of the criteria set forth in subsection (4) of this section.

(6) The director of the Division of Emergency Management shall then review and evaluate each application, together with the recommendations thereon, and not later than September 15 of each year, designate and approve funds for eligible local emergency management agencies and notify the local director.

SECTION 46. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

(1) Within fifteen (15) days of the end of each month, the local emergency management agency shall submit a completed claim of reimbursement with supporting documentation to the area manager of the division. After review, the area manager shall forward the documentation for administrative review and a reimbursement check shall be returned to the jurisdiction. Reimbursement shall be at the predetermined rate.

(2) Requests to utilize these funds to purchase any item of emergency management-related administrative or office equipment having a total cost in excess of five hundred dollars ($500) shall be submitted to the director for approval or denial before the purchase. To obtain approval, the local emergency management agency shall submit a project application to the area manager, who shall review it and forward it to the director, together with the area manager's recommendations in reference thereto. If the application is approved by the director, the local emergency management agency shall be notified of the approval and, after making the purchase, may submit a reimbursement claim.

SECTION 47. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

(1) The performance of each local emergency management agency or local director receiving funding pursuant to Sections 40 and 41 of this Act shall be evaluated quarterly as to compliance with the provisions of KRS Chapters 39A to 39F, satisfactory program administration, and the achievement of scheduled program objectives by the local emergency management agency or local director. Based upon this evaluation:

(a) Programs which are judged deficient, or otherwise not in compliance with KRS Chapters 39A to 39F, or program guidance of the division, may have funds withheld and those funds which have been withheld may be transferred to other local emergency management agencies. .

(b) Programs which meet or exceed their minimum program objectives and have needs for additional funds for program improvements may be granted additional requested funds, or portions thereof, for use by the local emergency management agency in making the improvements, subject to the availability of funds.

(2) Within fifteen (15) days after the end of each quarter, the local emergency management director shall prepare and submit all documentation, records, or reports required by the division to substantiate and document the work activity of the local director and the local emergency management agency in performing official duties or work plan objectives during each quarter.

(3) Program progress and compliance shall be reviewed quarterly by the area manager of the geographical area in which the local emergency management agency is located. The area manager shall review training records, exercise reports, financial records and budget expenditure rates, all work plan documentation reports or materials submitted by the local director at the end of each quarter, program guidance materials, or other sources of information, and make an assessment as to whether the local emergency management agency or local director is in compliance with current program requirements or guidance, or is making satisfactory progress toward the full achievement of the objectives outlined in the work plan of the annual program paper. The area manager shall transmit an assessment report to the director of the division together with any recommendations thereon.

(4) The director shall then review the material submitted, together with the area manager's recommendations, and submit it to the advisory committee for its evaluation and recommendations with regard thereto.

(5) The advisory committee shall transmit to the director its determination of the local emergency management agency's state of compliance or progress, and that of the local director, and the committee's recommendations with regard

thereto. The director shall review the report and all recommendations thereon. The director shall then make a final determination with regard to compliance and progress and, if a deficiency is found, the measures which shall be taken to assure compliance.

(6) Local emergency management agencies or local directors determined not to be making satisfactory progress toward the accomplishment or completion of work plan objectives as outlined in the annual program paper, or not performing in accordance with the written program guidance or the requirements of KRS Chapters 39A to 39F, shall be given thirty (30) days to correct the deficiencies in the manner outlined by the director.

(7) A local emergency management agency aggrieved by a decision of the director may appeal to the Franklin Circuit Court within twenty (20) days of the receipt of the director's decision. The court's review shall be from the record and shall not be de novo, unless the record is insufficient.

(8) If a decision has been made by the director to withhold funding from the local emergency management agency, that funding shall remain withheld during the pendency of any appeals of the decision.

(9) At the end of the thirty (30) day period further funding may be withdrawn by the director, if the deficiencies have not been corrected. The funds may then be reallocated to other local emergency management agencies.

(10) The director, during the review process outlined in this section, shall also review the expenditure rate of each local emergency management agency receiving funds. If it is determined that a local agency will not utilize all allocated funds, appropriate portions of the allocation may be withdrawn and reallocated to another local emergency management agency.

SECTION 48. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

Requests for the waiver of any requirement of Sections 44, 45, 46, and 47 of this Act or any criteria of KRS Chapter 39F may be submitted with appropriate justification to the director of the division. The director may grant waivers only upon the finding that the justification merits special action and failure to grant the waiver would jeopardize the continuation or development of a viable local emergency management agency and program. In every case, the director shall insure that the local agency and program continues to meet the basic intent of KRS Chapter 39B. Waivers shall apply on a one (1) time basis relating to a specific request and shall not be construed to establish precedents.

SECTION 49. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

The division shall administer the supplementary state funding program authorized in Sections 40 and 41 of this Act and the division shall, by administrative regulations, promulgate and apply eligibility requirements and standards of performance to be achieved by all local emergency management agencies. The division may promulgate other administrative regulations, and issue any program guidance, necessary to carry out the provisions of Sections 40 and 41 of this Act.

SECTION 50. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

Local emergency management agencies, including local directors or their deputies, and other local emergency management agency staff personnel and workers, and local emergency management agency-supervised operating units or personnel officially affiliated with the local disaster and emergency services organizations pursuant to Section 35 of this Act, paid or volunteer, for the purpose of receiving workers' compensation benefits paid by the division, shall be covered by those benefits when performing emergency assessment, mitigation, preparedness, response, or recovery functions, with the following limitations:

(1) The local emergency management agencies, including local directors or staff personnel and workers, and local emergency management agency-supervised operating units or personnel, shall not be covered when performing fundraising functions, unless all proceeds of the function are to be dedicated to the administration or operation of the local emergency management agency or operating unit.

(2) No person shall be covered when performing hazardous materials emergency response operations defined in 29 C.F.R. 1910.120 which are above the first-responder operations level, on-scene incident commander level excluded, except as provided in subsection (3) of this section.

(3) A volunteer hazardous materials response team as defined in 29 C.F.R. 1910.120 which meets all provisions of 29 C.F.R. 1910.120(q), operates on a regional basis, and is supervised by a local emergency management agency may, by action of the director pursuant to administrative regulations, be provided Kentucky emergency management workers' compensation coverage. Such hazardous materials response teams shall take no actions involving environmental clean-up, removal, or transportation of hazardous substances or materials except as may be essential for initial emergency control or initial emergency stabilization when there is a clear and evident risk of harm to people.

(4) No person shall be covered unless enrolled on a workers' compensation enrollment form that is filed with the area manager of the division, except when the magnitude of an emergency, or a preparedness exercise activity, is so great that a local director must solicit additional workers. At these times, the local director may develop and maintain a list of workers, to include names, Social Security account numbers, missions assigned, and dates covered, and

submit a copy of the list to the area manager within twenty-four (24) hours of the conclusion of the emergency, or the preparedness exercise activity.

SECTION 51. A NEW SECTION OF KRS CHAPTER 39D IS CREATED TO READ AS FOLLOWS:

Any person violating any provision of this chapter or any administrative regulation promulgated or order issued pursuant to this chapter for which another penalty is not specified shall be guilty of a Class A misdemeanor.

SECTION 52. KRS CHAPTER 39D IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

(1) When, during a state of emergency, it becomes imprudent, inexpedient, or impossible to conduct the affairs of state government at the state capital, the Governor shall, as often as the exigencies of the situation require, by proclamation, designate a temporary location for the seat of government at the place within this Commonwealth deemed advisable, and shall take action and issue orders necessary for an orderly transition of the affairs of state government to the temporary location. If practicable, the temporary location designated by the Governor shall conform to that provided for in the current Kentucky Emergency Operations Plan. The temporary location shall remain as the seat of government until the Governor establishes a new location under this section, or until the emergency is ended and the seat of government is returned to its normal location.

(2) While the seat of government remains at the temporary location, all official acts required by law to be performed at the seat of government by any officer, independent agency, division, or authority of this Commonwealth, including the convening and meeting of the General Assembly in regular or special session, shall be as valid and binding when performed at that temporary location as if performed at the normal location.

SECTION 53. A NEW SECTION OF KRS CHAPTER 39D IS CREATED TO READ AS FOLLOWS:

(1) When, during a state of emergency, it becomes imprudent, inexpedient, or impossible to conduct the affairs of local government at the regular or usual places, the governing body of each county, urban-county, charter county, and city of this Commonwealth may meet at any place within or without the territorial limits of that political subdivision, at the direction of the elected chief executive officer or his or her successor, and shall proceed to establish and designate by ordinance, resolution, or other manner, alternate or substitute places as the temporary locations of government where all, or any part, of the public business may be transacted and conducted during the emergency situation. The alternate or substitute places may be within or without the territorial limits of the county, urban-county, charter county, and city, and shall be within those of the state. If practicable, they shall be the places designated as the temporary locations of government in the current local emergency operations plan.

(2) While the public business is being conducted at a temporary location, the governing body and other officers of a county, urban-county, charter county, and city of this Commonwealth shall have and exercise, at that location, all of the executive, legislative, administrative, and judicial powers and functions conferred upon that body and officers under state law. The powers and functions, except judicial, may be exercised in the light of the exigencies of the emergency situation without regard to or compliance with time-consuming procedures and formalities prescribed by law and pertaining thereto. All acts of the body and officers shall be as valid and binding as if performed within the territorial limits of their county, urban-county, charter county and city.

(3) This section shall control notwithstanding any statutory charter or ordinance provision to the contrary.

SECTION 54. A NEW SECTION OF KRS CHAPTER 39D IS CREATED TO READ AS FOLLOWS:

The governing body of each county, urban-county government, charter county government, and city shall enact the ordinances and resolutions necessary to provide for the continuity of government throughout the duration of a state of emergency. The ordinances and resolutions shall provide a method by which temporary emergency appointments to public office are made, except as limited by express constitutional provisions, and shall define the scope of the powers and duties which may be exercised, and provide for termination of the appointment so made. This section shall control notwithstanding any statutory provision to the contrary.

SECTION 55. A NEW SECTION OF KRS CHAPTER 39D IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, unless the context clearly requires otherwise:

  (a) "Emergency interim successor" means a person designated under this section, if an officer is unavailable, to exercise the powers and discharge the duties of that office until a successor is appointed or elected and qualified as provided by law, or until the lawful incumbent is able to resume the exercise of the powers and discharge the duties of the office.

  (b) "Office" includes all state and local offices, the powers and duties of which are defined by law, except the office of Governor, and except those in the General Assembly and the judiciary. An "officer" is a person who holds an office.

  (c) "Political subdivision" includes counties, urban-counties, charter counties, cities, special districts, authorities, and other public corporations and entities whether organized and existing under charter or

general law.

(d) "Unavailable" means that during a state of emergency either:

1. A vacancy in office exists and there is no deputy authorized to exercise all of the powers and discharge the duties of the office; or

2. That the lawful incumbent of the office and any duly authorized deputy are absent or unable to exercise the powers and discharge the duties of the office.

(2) Subject to administrative regulations of the Governor, all state officers, shall, in addition to any deputy authorized to exercise all of the powers and discharge the duties of the office, designate by title emergency interim successors and specify their order of succession. The officer shall review and revise, as necessary, designations made pursuant to this section to ensure their current status. The officer shall designate a sufficient number of emergency interim successors so that there will be not fewer than three (3) nor more than seven (7) deputies or emergency interim successors or any combination thereof, at any time. If any state officer is unavailable following an emergency, and if a deputy, if any, is also unavailable, the powers of office shall be exercised and the duties of office shall be discharged by any designated emergency interim successors in the order specified. The emergency interim successors shall exercise the powers and discharge the duties only until such time as the Governor under the Constitution or authority other than this section, or other official authorized under the Constitution or this section to exercise the powers and discharge the duties of the office of Governor has, where a vacancy exists, appointed a successor to fill the vacancy, or until a successor is otherwise appointed, or elected and qualified as provided by law, or until an officer or any deputy or a preceding named emergency interim successor becomes available to exercise, or resume the exercise and discharge of, the powers and duties of the office.

(3) Each cabinet and each department of state government, and each agency of state government shall appoint not fewer than three (3) nor more than seven (7) emergency interim successors for each position specified in the Kentucky Emergency Operations Plan and the internal emergency operations procedures for that department or agency. Emergency interim successors in the order of the succession shall have the full power to exercise all powers of their department or agency and to commit its resources during a time of emergency or disaster if the person normally exercising the position becomes unavailable. If the preceding emergency successor becomes unavailable he or she shall resume all duties from the emergency interim successor, unless he or she chooses to permit the emergency interim successor to remain in the position until relieved.

(4) The local legislative bodies of cities, counties, urban-counties, and charter counties shall enact ordinances or orders governing the manner in which vacancies in offices and employment shall be filled, and for the prompt filling thereof during times of disaster and emergency, if the filling of these vacancies is not otherwise provided for by law. The legislative bodies shall enact ordinances providing for the appointment of not fewer than three (3) nor more than seven (7) emergency interim successors for each local office, department, and agency specified in the Kentucky Emergency Operations Plan and local emergency operations plans and annexes thereto. Emergency interim successors, in the order of their successions, shall have the full power to exercise all powers of the office, department, or agency and to commit its resources during a time of emergency or disaster if the person normally exercising the position is unavailable. If the preceding emergency successor becomes available, he or she shall resume the duties being performed by the emergency interim successor, unless he or she chooses to permit the emergency interim successor to remain in the position until relieved. The administrative orders and ordinances shall not be inconsistent with this section.

(5) This section applies to officers of all special districts and political subdivisions not included in subsection (4) of this section. The officers, subject to such administrative regulations as the executive head of the political subdivision promulgates, shall designate by title, if feasible, or by named person, emergency interim successors and specify their order of succession. The officer shall review and revise, as necessary, designations made pursuant to this section to ensure their current status. The officer shall designate a sufficient number of persons so that there will be not fewer than three (3) nor more than seven (7) deputies or emergency interim successors or any combination thereof at any time. If any officer of any political subdivision or any deputy provided for pursuant to law is unavailable, the powers of the office shall be exercised and duties shall be discharged by the designated emergency interim successors in the order specified. The emergency interim successor shall exercise the powers and discharge the duties of the office to which designated until the time a vacancy which exists is filled in accordance with the Constitution or the KRS, or until the officer, a deputy, or a preceding emergency interim successor again becomes available to exercise the powers and discharge the duties of the office.

(6) No person shall be designated or serve as an emergency interim successor unless he or she is eligible under the Constitution and statutes to hold the office to which he or she is designated to succeed, but no statutory provision prohibiting local or state officials from holding another office shall be applicable to an emergency interim successor.

(7) Emergency interim successors shall take the oath required to exercise the powers and discharge the duties of the

office to which they may succeed. No person, as a prerequisite to the exercise of the powers or discharge of the duties of an office to which he or she succeeds, shall be required to comply with any other provision of law relative to taking office.

(8) Officials authorized to act as Governor pursuant to this section, and emergency interim successors are empowered to exercise the powers and discharge the duties of an office only during the continuance of an emergency. The General Assembly, by joint resolution, may at any time terminate the authority of the emergency interim successors to exercise the powers and discharge the duties of office.

(9) Until the persons designated as emergency interim successors shall exercise the powers and discharge the duties of an office in accordance with this section, the persons shall serve in their designated capacities at the pleasure of the designating authority.

(10) Any dispute concerning a question of fact arising under this section with respect to an office in the executive division of the state government, except a dispute of fact relative to the office of Governor, shall be adjudicated by the Governor or other official authorized under the Constitution to exercise the powers and discharge the duties of the office of Governor, and the decision reached shall be final.

SECTION 56. A NEW SECTION OF KRS CHAPTER 39D IS CREATED TO READ AS FOLLOWS:

The state Archives and Records Commission shall establish a system for the preservation of essential state public records necessary for the continuity of governmental functions in the event of an emergency, disaster, or catastrophe. The commission shall:

(1) Determine what records are essential for operation during a state of emergency and thereafter through consultation with all state cabinets, departments, and independent agencies and the administrator of state archives services and records, establish the manner in which the records shall be preserved, and provide for their preservation;

(2) Require every state cabinet, department, and independent agency to establish and maintain a preservation program for essential state public records;

(3) Provide for security storage of essential state records;

(4) Furnish state cabinets, departments, and independent agencies with copies of the final plan for preservation of essential public records; and

(5) Advise all political subdivisions of the Commonwealth on preservation of essential public records.

SECTION 57. A NEW SECTION OF KRS CHAPTER 39D IS CREATED TO READ AS FOLLOWS:

Any person violating any provision of this chapter or any administrative regulation promulgated or order issued pursuant to this chapter for which another penalty is not specified shall be guilty of a Class A misdemeanor.

SECTION 58. KRS CHAPTER 39E IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

The Kentucky Emergency Response Commission is established to:

(1) Implement all provisions of Title III, Pub. L. No. 99-499, associated federal regulations, and subsequent related legislation and regulations related to hazardous substances; develop policies related to the response of state and local governments to releases of hazardous substances; develop standards for planning for these events; develop reporting requirements for those who manufacture, use, transport, or store these substances; provide information to the public concerning hazardous substances in the community; develop training requirements; and develop requirements for local governments and covered facilities to exercise plans related to hazardous substance response; and

(2) Perform any other functions assigned by statute or by the chairman.

SECTION 59. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

As used in this chapter, unless the context requires otherwise:

(1) "Commission" means the Kentucky Emergency Response Commission and those persons appointed by the Governor to implement provisions of Title III, Pub. L. No. 99-499 and this chapter.

(2) "Local emergency planning committee," hereafter referred to as the "local committee," means those persons appointed by the commission to assist in the implementation of Title III, Pub. L. No. 99-499 and this chapter.

(3) "Release" means, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers and other closed receptacles, of any hazardous substance.

(4) "Reportable quantity" means an amount of hazardous substances released which requires notification to local and state warning points.

(5) "Hazardous substance" means a substance specified by Title III, Pub. L. No. 99-499, subsequent federal

regulations, this chapter, and subsequent administrative regulations as requiring notification if released or if stored, manufactured, or used.

(6) "Warning point" means that location, operated by state or local government, and identified by the state commission or local committee, and which is continuously staffed, and which has the capability or responsibility to contact governmental emergency response organizations and, if capability exists, to warn the public of hazards which may affect them.

(7) "Emergency response organization" means a unit of local government or a unit authorized by local government which may be called to make a response because of a release of a hazardous substance, and whose responsibilities are included in plans developed under this chapter.

(8) "Facility" means all buildings, equipment structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person, or by any person which controls, is controlled by, or under common control with such person, and which manufactures, stores, or uses substances covered under this chapter. For purposes of Section 76 of this Act, the term includes motor vehicles, rolling stock, and aircraft.

SECTION 60. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

(1) The commission shall be composed of not more than twenty-five (25) members and shall be chaired by the director of the Division of Emergency Management of the Department of Military Affairs, who shall also be a member. Other members shall include, but not be limited to, representatives of the Natural Resources and Environmental Protection Cabinet, the office of the state fire marshal, the Kentucky State Police, the Office of the Attorney General, affected industry, local government, health services, environmental interests, and other persons who have technical expertise in the emergency response field as the Governor deems appropriate.

(2) Members of the commission shall be appointed by the Governor. All appointments shall be for a term of two (2) years. Members shall serve until their successors are appointed and qualified and shall be eligible for reappointment.

(3) The commission shall meet not less than semi-annually, or as convened by the chairman.

(4) If a member misses three (3) consecutive meetings of the full commission or three (3) meetings in two (2) consecutive years, the position shall be declared vacant by the commission. In these cases, the Governor shall make an appointment to fill the unexpired term.

(5) The presence of thirteen (13) members shall constitute a quorum and actions taken at these meetings shall be considered as actions of the full commission.

(6) Members of the commission shall not receive a salary for serving on the commission, but travel and per diem may be paid if funds are appropriated or otherwise made available for these purposes.

SECTION 61. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

The commission shall:

(1) Appoint local emergency planning committees and revise these committees as it deems appropriate. The committees shall include, as a minimum, representatives from each of the following groups:

(a) Elected local officials;

(b) Law enforcement;

(c) Emergency management;

(d) Fire service;

(e) First aid;

(f) Health service;

(g) Local environmental;

(h) Hospital;

(i) Transportation;

(j) Broadcast and print media;

(k) Community groups; and

(l) Owners and operators of facilities subject to this chapter;

(2) Adopt standards and procedures for the operations of local committees;

(3) Develop reporting requirements and procedures consistent with those of Title III, Pub. L. No. 99-499, for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances;

(4) Develop guidance and standards for plans related to hazardous substances;

(5) Approve, disapprove, and, where necessary, make recommendations to improve plans developed by local emergency planning committees;

(6) Recommend administrative regulations to the director for issuance by the Division of Emergency Management to implement provisions of this chapter, consistent with Title III, Pub. L. No. 99-499;

(7) Receive from any source and authorize the expenditure of funds;

(8) Develop policies relating to the training of committees and persons subject to respond to releases of hazardous substances;

(9) Develop policies relating to exercising and testing plans developed by local emergency planning committees;

(10) Specify a warning point to which all required emergency notifications shall be made;

(11) Develop a procedure by which facilities may report the presence and inventories of hazardous substances and by which members of the public may obtain these reports;

(12) Annually review all commission policies and procedures and update them as necessary; and

(13) Adopt policies for the conduct of the business and duties of the commission.

SECTION 62. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

(1) The commission shall institute a fee system to assist in the administration of its programs and activities at both state and local levels.

(2) (a) Any facility required to report under the provisions of this chapter shall annually submit to the commission the required fee of forty dollars ($40) no later than March 1. This paragraph shall not apply to facilities that pay a fee pursuant to paragraph (b) of this subsection.

(b) Any facility required to report under the provisions of this chapter and which meets any of the following standards shall annually submit to the commission the required fee of two hundred fifty dollars ($250) no later than March 1:

1. The facility has any of the extremely hazardous substances identified in 40 C.F.R. Part 355, as amended;

2. The facility has eleven (11) or more hazardous substances as defined in Section 59 of this Act; or

3. The facility has a total inventory of hazardous substances as defined in Section 59 of this Act of over four hundred ninety-nine thousand nine hundred ninety-nine (499,999) pounds.

(c) If the same owner or owners own two (2) or more facilities in a single county and all of the facilities are required to submit fees pursuant to paragraph (a) of this subsection, the fees due from the owner or owners shall not exceed a total of two hundred fifty dollars ($250) for all those facilities in that county.

(d) The provisions of this subsection shall not apply to a facility owned or operated by local, state, or federal government.

(3) The funds derived from the fee system shall be placed in a trust and agency account, which shall be known as the "Kentucky Emergency Response Commission Fee Account," and which shall not lapse. The funds in the account shall be expended only for the purpose specified in subsection (1) of this section.

(4) The commission shall promulgate administrative regulations to implement the provisions of this section, for issuance by the Division of Emergency Management.

SECTION 63. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

The commission may undertake other activities that are:

(1) Required by federal law or regulation;

(2) Authorized by federal law or regulation;

(3) Authorized by executive order of the Governor;

(4) Clearly adjunct to the duties specified in Section 60 of this Act;

(5) Necessary to approve or disapprove actions of the local committees;

(6) Necessary to effectively implement the requirements of Title III, Pub. L. No. 99-499; and

(7) Necessary to commence a civil action against the owner or operator of a facility for failure to comply with the provisions of Section 326, Title III, Pub. L. No. 99-499.

SECTION 64. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

(1) The "SARA Title III Programs Account" is hereby established as a trust and agency account in the State Treasury for the purpose of assisting in the administration and operation of programs authorized by this chapter.

(2) Funds from civil and other penalties, donations, and sources other than fees shall be placed in the account. The account shall not lapse.

SECTION 65. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

(1) The Division of Emergency Management shall provide administrative support to the commission within the limitation of staff resources. The division may employ staff and may acquire technical or professional assistance as determined to be necessary by the director of the division, and for whom federal, state, or other funds have been provided.

(2) Persons employed under this section shall report to the director of the division and shall implement policies and directives of the commission as specified by the director. Other employees of the division may also support the commission and assist in the implementation of hazardous substance planning, reporting, investigation, training, and exercising as directed by the director. In cases when the commission develops policies or directives which cannot reasonably be implemented by division staff, the director may defer implementation until sufficient resources exist. In cases when the director advises the commission, in writing, that the division cannot provide requested resources, the commission may seek assistance from other agencies of state government.

(3) In no case shall the director devote division resources to support the commission if that support would result in the withdrawal of federal or state funds from the division.

(4) The division shall, upon concurrence by the director, promulgate administrative regulations recommended by the commission and consistent with Title III, Pub. L. No. 99-499. The regulations shall include, but not be limited to:

(a) Substances which require inventory reporting;

(b) Quantities of each substance covered; and

(c) Emergency notification procedures and requirements.

SECTION 66. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

Local emergency planning districts shall be consistent with county boundaries. The commission may authorize two (2) or more districts to combine, upon request of the committees of the affected districts. There shall be only one (1) emergency planning committee within a district.

SECTION 67. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

(1) Local emergency planning committees are created as part of the state commission.

(2) Local committee members shall be appointed by the commission, and shall be considered as agents of the state for all purposes, including purposes of liability protection.

SECTION 68. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

(1) Duties of the committees shall include:

(a) Development of plans to prepare emergency response organizations within cities, counties, urban-county governments, and charter county governments to respond effectively to releases of hazardous substances;

(b) Identification of a twenty-four (24) hour warning point within the district to which persons responsible for releases of hazardous substances must report those releases;

(c) Establishment of a method, consistent with federal law, commission policies, and administrative regulations, by which manufacturers, users, or storers of hazardous substances may report the presence of those substances, and by which members of the public may obtain information about those substances;

(d) Appointment of a committee chairman, from among its members, for a term of two (2) years. Chairmen may be reappointed;

(e) Development and maintenance of plans consistent with administrative regulations promulgated by the commission; and

(f) Development of procedures for the annual review of emergency plans and procedures developed under this chapter.

(2) Local committees shall advise the commission of their actions by providing a copy of minutes to the commission within thirty (30) days of the date of the meeting. If the minutes are later changed before approval, a copy of the revised minutes shall be submitted to the commission within thirty (30) days of the approval.

(3) Local committees may request the chief of the fire department with jurisdiction over a facility which has, or may have, substances subject to Title III, Pub. L. No. 99-499, to make on-site inspections of the facilities and to report all findings to the chairman of the committee.

(4) Members of local committees shall serve for terms as specified by the commission, though not to exceed four (4) years except by reappointment. Committees may establish attendance standards for continued membership and shall advise the commission of any additions or deletions from the membership that are desired. These changes may be

approved or disapproved by the commission.

(5) Committee meetings shall be subject to provisions of KRS 61.805 to 61.850 relating to public meetings and to KRS 61.870 to 61.884 relating to open records, provided that trade secrets, as determined by the United States Environmental Protection Agency, are processed in accordance with 42 U.S.C. sec. 11042.

(6) The local committee may, after consultation with the commission chairman, seek civil remedies prescribed in Section 326, Pub. L. No. 99-499.

(7) The local committee may, with the advice and consent of the commission chairman, submit information to the county attorney for prosecution.

(8) Consultations pursuant to subsection (6) of this section shall be made prior to the giving of notice of intent to commence a civil action.

SECTION 69. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

Owners or operators of facilities which manufacture, use, or store extremely hazardous substances, as identified in 40 C.F.R. Part 355, and in quantities as identified in administrative regulations promulgated by the Division of Emergency Management shall advise the commission, local committee, and fire department in whose jurisdiction the facility resides, of the name of the substance and its quantity, within sixty (60) days of the date the facility first receives the substance or substances in excess of the quantities as identified in the administrative regulations, or if there is a revision of these regulations and the facility has present a substance or substances on the revised list in excess of the quantity established for those substances, within sixty (60) days.

SECTION 70. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

Owners or operators of facilities covered under Section 69 of this Act shall identify, within thirty (30) days of notifying the commission that the facility is subject to this chapter, the name of a facility representative who will work with the local committee in the development of emergency plans, and that person shall provide information necessary to the development of those plans.

SECTION 71. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

(1) City, county, urban-county governments, and charter county governments, school districts, special purpose district boards, or other municipal corporations or political subdivisions of the state or local government shall participate in the planning process conducted by local emergency planning committees. This participation shall include, as a minimum, providing information concerning government-owned or controlled emergency response assets, reviewing plans developed by the committee, and concurring that the final plan can be executed with existing resources.

(2) In local governments where local emergency management agencies receive state or federal funds, those agencies shall provide administrative and planning support to the committee as specified by the director of the division.

(3) If state or federal funds are appropriated specifically to support emergency response planning or other portions of Pub. L. No. 99-499, these funds may be allocated to local emergency management agencies and may be expended as specified by the director.

(4) Local governments may enact ordinances specifying standards which owners or operators of facilities shall meet to provide warning of releases to workers and to the public which may be affected by a release.

SECTION 72. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

(1) Plans developed under the guidance of the state commission shall be a part of the local emergency operations plan's hazardous materials annex. These plans shall be consistent with the requirements and criteria prescribed by the Kentucky Emergency Operations Plan's hazardous materials annex and shall emphasize a coordinated response by all local emergency response organizations.

(2) If, in the judgment of the commission, the local plan is inadequate, or is inconsistent with the Kentucky Emergency Operations Plan, the local plan shall be returned to the committee and the committee shall revise the plan until approved by the commission.

(3) Local committees shall annually review and update, where appropriate, each plan and submit revisions to the commission.

SECTION 73. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

After the state commission approves plans developed by each local emergency planning committee, emergency response organizations of each city, county, urban-county government, and charter county government shall respond in a manner consistent with those plans.

SECTION 74. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

Agencies of state government shall respond, within the confines of the Kentucky Emergency Operations Plan and agency policies, to releases of hazardous substances. Each response shall be consistent with the hazardous materials annex of the

Kentucky Emergency Operations Plan. If an on-scene response is required by the Kentucky Emergency Operations Plan or by agency policy, state agencies shall cooperate with one another and with local emergency response organizations and with the party or parties responsible for that release.

SECTION 75. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

Any claims against the commission or committees or their members shall be filed with the State Board of Claims in accordance with KRS Chapter 44.

SECTION 76. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

When a release of a substance covered under Title III, Pub. L. No. 99-499 and administrative regulations promulgated under this chapter occurs in a reportable quantity, the owner or operator of the facility where the release occurs, or the owner or operator of the vehicle transporting the hazardous substance, shall notify the local and state warning points within times established by administrative regulation. These regulations shall also specify information to be provided upon initial report and in written follow-up reports.

SECTION 77. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

(1) The state commission shall, by administrative regulation promulgated by the Division of Emergency Management, establish warning and notification standards, which shall include, but not be limited to:

(a) The establishment of twenty-four (24) hour warning points;

(b) Public warning; and

(c) Notification of local emergency response organizations.

(2) Any notification made pursuant to this chapter shall not relieve the facility owner or operator or other responsible party of any notification required by other state or federal laws or regulations.

SECTION 78. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

The division shall, upon direction of the commission, promulgate administrative regulations requiring manufacturers, users, or storers of hazardous substances to report information concerning inventories and locations of those substances. These administrative regulations shall use, by reference, lists of extremely hazardous substances and forms issued by the United States Environmental Protection Agency or by the Kentucky Emergency Response Commission.

SECTION 79. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

Upon request of the commission or local committee, facilities covered by those administrative regulations required in Section 78 of this Act shall, within the time periods prescribed by federal law, provide additional information necessary for developing and implementing the emergency plan about each substance to include, but not be limited to, material safety data sheets.

SECTION 80. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

Reports to the commission or committee shall be available to the public upon request in accordance with the provisions of KRS 61.870 to 61.884 relating to open records, if this information is not protected from release to the general public as a trade secret under federal law. Reasonable fees, consistent with KRS 61.874, may be charged for reproduction of these reports.

SECTION 81. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

No section of this chapter shall be construed as repealing any other laws of the Commonwealth, but it shall be held and construed as ancillary and supplemental to those laws.

SECTION 82. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

(1) Any person violating any provision of this chapter or any administrative regulation promulgated or order issued pursuant to this chapter for which another penalty is not specified shall be guilty of a Class A misdemeanor.

(2) (a) When a person violates Section 69, 70, 76, or 79 of this Act, the commission chairman shall proceed against that person under paragraph (b) of this subsection or subsection (3) of this section but not both.

(b) Any person violating Section 69, 70, or 79 of this Act shall, upon the first conviction thereof, be fined not less than two hundred fifty dollars ($250) nor more than five hundred dollars ($500). If any offense is continued for more than one (1) day, each day upon which the offense occurs or is continued shall be considered and constitute a separate offense and a separate fine may be imposed. Any person violating Section 69, 70 or 79 of this Act shall, upon subsequent convictions, be fined not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000). If any offense is continued for more than one (1) day, each day upon which such offense occurs or is continued shall be considered and constitute a separate offense and a separate fine may be imposed. Any person violating Section 76 of this Act shall, upon the first conviction, be fined not less than one thousand dollars ($1,000) nor more than two thousand five hundred dollars ($2,500). If any offense is continued for more than one (1) day, each day upon which the offense occurs or is

continued shall be considered and constitute a separate offense and a separate fine may be imposed. Any person violating Section 76 of this Act shall, upon subsequent conviction, be fined not less than two thousand five hundred dollars ($2,500) nor more than five thousand dollars ($5,000). If any offense is continued for more than one (1) day, each day upon which the offense occurs or is continued shall be considered and constitute a separate offense and a separate fine may be imposed.

(3) Any person violating any provision of this chapter shall be assessed a civil penalty of not less than two hundred fifty dollars ($250) nor more than five hundred dollars ($500). If any violation is continued for more than one (1) day, each day upon which the violation occurs or is continued shall be considered and constitute a separate violation and a separate civil penalty may be imposed therefor.

SECTION 83. KRS CHAPTER 39F IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

The following definitions apply in this chapter unless the context otherwise requires:

(1) "General rescue squad" means a rescue squad which performs one (1) or more of the following functions as a stated mission of the organization:

(a) Light duty rescue;

(b) Extrication of persons from vehicles;

(c) Water rescue and recovery operations not utilizing divers;

(d) Search for lost, trapped, or missing persons not utilizing dogs;

(e) Low angle rescue and recovery operations;

(f) High angle rescue and recovery operations.

(2) "Reports and notification" means the reporting and notification of any search and rescue mission to the appropriate agency or person in the manner as specified by this chapter.

(3) "Rescue" means gaining access, rendering appropriate care, and transporting of a person or persons by whatever means, to a safe environment for appropriate care.

(4) "Rescue squad" means any organization which engages in the search for lost persons, rescue of persons, rescue of persons who are trapped or who are in need of rescue services, search for and recovery of drowned persons, or any other rescue related activity. "Rescue squad" shall not include the rescue of persons from a fire by a fire department, the extrication of persons from a vehicle or other activities which an emergency medical technician, emergency medical technician first responder, or paramedic is authorized to perform pursuant to applicable statutes and administrative regulations, if the activities are performed by a person for an ambulance service or in the role of a first responder. If these activities are performed other than as a first responder or in the role of an ambulance service and are involved in rescue operations, they come within the purview of activities of a rescue squad.

(5) "Search" means the process of looking for a person or persons whose location is not precisely known, and who may be in distress.

(6) "Search and rescue" ("SAR") means the process of looking for a lost, missing, or overdue person or persons who may be in distress, and rendering care with the use of appropriately trained and adequately equipped personnel.

(7) "Search and rescue mission" includes, but is not limited to, searching for a missing or lost person or persons, cave rescue, high angle or rough terrain rescue, urban search and rescue, dive rescue and recovery of drowning victims, inland water search, rescue, and recovery. "Search and rescue" may also include any mission permitted pursuant to this chapter. A "search and rescue mission" does not include mine rescue missions under the jurisdiction of the Department of Mines and Minerals pursuant to KRS Chapter 351.

(8) "Specialized Rescue Squad" means a rescue squad which performs one (1) or more of the following functions as the primary or sole mission of the organization:

(a) Cave rescue;

(b) Search utilizing dogs for lost, trapped or missing persons;

(c) Search for lost, trapped or missing persons, aircraft, or vehicles, utilizing aircraft, but does not apply to licensed air ambulances, active or reserve military organizations, the National Guard, or the Civil Air Patrol; and

(d) Water rescue and recovery operations utilizing divers.

(9) "Victim Recovery" means the search for and the removal to the jurisdiction of the coroner of the remains of a person known or believed to be dead. If the person is found alive, it includes rescue of the person.

SECTION 84. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) Rescue squads may be formed and duly authorized to perform in the public interest. Authorization to operate within

a jurisdiction may be granted by the chief elected official of each urban-county government, charter county government, county, or city which the squad proposes to serve. Rescue squads shall have a formal affiliation with the local disaster and emergency services organization. The statement of affiliation shall be renewed annually.

(2) Except as provided in Section 86 of this Act, a rescue squad shall be composed of at least twelve (12) active members and shall maintain at least one (1) vehicle dedicated to rescue service. Squads may operate in conjunction with a fire division, or may operate as a separate unit.

(3) Each rescue squad shall develop and maintain bylaws and written procedures to specify, at a minimum, election or appointment, succession, and term of officers; financial accounting; property accountability; and rules of notification and response to emergencies.

(4) Rescue squads shall contribute to public safety and welfare by performing functions which may include but not be limited to: removal of victims trapped in vehicles or structures; search for lost or missing persons, except those sought for criminal acts; first aid; emergency evacuation; recovery of drowning victims; recovery of any corpse if not accessible by ambulance or hearse and if so authorized by the coroner; and traffic control at an accident scene when requested by law enforcement authorities. Rescue squads shall not engage in law enforcement activities other than traffic control.

(5) The division shall administer funds appropriated for rescue equipment and training and the division shall promulgate administrative regulations to be applied to all rescue squads that apply for financial assistance.

SECTION 85. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) A rescue squad which proposes to provide regional or statewide specialized rescue services may apply to the director for an alternative affiliation agreement and alternative vehicle and equipment requirements in lieu of those specified in Section 94 of this Act under the following terms and conditions:

(a) The rescue squad meets all of the requirements specified in Section 94 of this Act except for a local affiliation agreement, vehicle dedicated solely to rescue service, or possession of basic rescue equipment.

(b) The director accepts, in writing, that the rescue squad will provide a needed rescue service either on a regional or statewide basis.

(c) The rescue squad and the director execute an affiliation agreement containing the same information required in Section 94 of this Act for a local affiliation agreement.

(d) The rescue squad maintains specialized rescue equipment appropriate to its mission as specified in the affiliation agreement or an annex thereto.

(e) The requirement for a vehicle dedicated solely to rescue service may be waived, in writing, by the director upon determination that having a specific vehicle may be inappropriate to the mission of the rescue squad and that the rescue squad has adequate means of transportation enabling it to respond in an efficient manner.

(f) The rescue squad, when requested to provide services, shall immediately notify and coordinate activities with the local director and with the local rescue squads serving the county in which the response is requested.

(2) Agreements specified in subsection (1) of this section shall be renewed annually.

(3) Rescue squads participating in the alternative program specified in this section shall be eligible to participate in rescue grant funding, state sponsored workers' compensation, training, and other programs of the division.

(4) Rescue squads operating under an agreement pursuant to this section may respond in any county covered by the agreement, or statewide if the agreement permits. Rescue squads covered under an agreement pursuant to this section may respond in counties not covered by the agreement only by request of the rescue squad or public officials in that county or upon request of the director or his designee.

SECTION 86. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) One or more persons with search dogs and handlers may constitute a specialized rescue squad using search dogs, under the terms and conditions as specified in writing by the director;

(2) Each handler of a dog shall have a vehicle available for the transportation of the dog and handler to the scene of a search;

(3) Each handler shall meet the training requirements of the statutes and administrative regulations relating to searching with dogs;

(4) The primary dog utilized in responding to the search shall be certified in accordance with the statutes and administrative regulations;

(5) Each handler shall have the equipment required by statute or administrative regulation for searching with dogs; and

(6) No single search dog handler shall engage in general rescue squad activity or specialized rescue squad activity

unless he or she is a member of such an organization.

SECTION 87. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) A general rescue squad shall be organized pursuant to Sections 84 or 85 of this Act and shall engage in one or more of the activities listed in the definition of a general rescue squad. A general rescue squad may engage in any other activity, other than ones prohibited by law or administrative regulation, if the activity is specified in its mission statement.

(2) A general rescue squad shall not engage in a specialized rescue squad activity as a primary mission unless it meets the requirements of subsection (3) of this section. A general rescue squad may engage in a specialized rescue squad activity as an initial responding unit within its service area, however, upon responding to such an activity, the highest officer in command of the response shall cause the immediate notification of the appropriate specialized rescue squad, the local director, and the duty officer of the Division of Emergency Management.

(3) A general rescue squad may engage in a specialized rescue squad activity if:

(a) That activity is specified in its mission statement;

(b) The rescue squad has twelve (12) persons including a commanding officer from within its membership of the rescue squad whose mission statement is to engage in the specialized rescue squad activity;

(c) The persons assigned to the specialized rescue squad activity meet the training requirements specified by statute and by administrative regulation;

(d) The rescue squad has the equipment required by administrative regulation to engage in the specialized rescue squad activity listed in its mission statement; and

(e) The rescue squad has a vehicle for transporting the required equipment to the scene.

SECTION 88. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) A general rescue squad may engage in general and any specialized rescue squad activity utilizing one or more vehicles that hold all of the equipment required for both the general and specialized rescue squad activities specified in its mission statement.

(2) A specialized rescue squad may engage in one or more specialized rescue squad activities or general rescue squad activities utilizing one or more vehicles that hold all of the equipment required for the specialized, or general and specialized, rescue squad activities specified in its mission statement.

(3) The director may waive, in writing, the requirement, upon good cause shown, and upon written alternative plan submitted by a specialized rescue squad showing that adequate response equipment can be transported to the scene in an efficient manner without the necessity for a squad-owned vehicle.

SECTION 89. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) A specialized rescue squad shall engage in one or more of the activities listed in the definition of a specialized rescue squad. A specialized rescue squad may engage in any other activity, other than the ones prohibited by law or administrative regulation, if the activity is specified in its mission statement.

(2) A specialized rescue squad shall not engage in a general rescue squad activity as a primary mission unless it meets the requirements of subsection (3) of this section. A specialized rescue squad may engage in a general rescue squad activity as an initial responding unit within its service area, however, upon responding to that activity, the highest officer in command of the response shall cause the immediate notification of the appropriate general rescue squad for assistance, the local director, and the duty officer of the Division of Emergency Management.

(3) A specialized rescue squad may engage in a general rescue squad activity if:

(a) That activity is specified in its mission statement;

(b) The rescue squad has twelve (12) persons including a commanding officer from within the membership of the specialized rescue squad whose mission statement is to engage in the general rescue squad activity;

(c) The persons assigned to the general rescue squad activity meet the training requirements specified by statute and administrative regulation;

(d) The rescue squad has the equipment required by administrative regulation to engage in general rescue squad activity as listed in its mission statement; and

(e) The rescue squad has a vehicle for transporting the required equipment to the scene.

SECTION 90. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

The director of the Division of Emergency Management shall appoint a state coordinator of search and rescue, who shall:

(1) Identify, inventory, and coordinate resources available for searches and rescues;

(2) Investigate and apply for grants and other financial assistance for searches and rescues;

(3) Maintain statistics regarding searches and rescues;

(4) Coordinate assistance during searches and rescues;

(5) Act as liaison with other states' operations involving searches and rescues;

(6) Provide assistance, upon request, during searches and rescues;

(7) Prepare a plan for searches and rescues;

(8) Prepare and distribute publications relating to searches and rescues;

(9) Establish, by administrative regulation, recommendations for organizations specializing in search and rescue, and certify organizations which meet those recommendations at the appropriate level;

(10) Maintain a list of all certified organizations and resources;

(11) Coordinate training in techniques of search and rescue; and

(12) Coordinate requests for federal assistance with the Air Force Rescue Coordination Center.

SECTION 91. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) The local search and rescue coordinator of each political subdivision, appointed in accordance with Section 102 of this Act, shall be responsible for coordinating and planning for local search and rescue activities. Operation of search and rescue activities shall be in accordance with the Kentucky Emergency Operations Plan, and the local emergency operations plan approved by the elected chief executives of each local political subdivision. The local search and rescue coordinator shall notify the duty officer of the Division of Emergency Management of all search and rescue missions. The local search and rescue coordinator shall work in a coordinating capacity directly supporting all search and rescue activities in that political subdivision, and in registering emergency search and rescue workers. The chief of the appropriate law enforcement agency of each political subdivision may, upon request of the local director or local search and rescue coordinator, restrict access to a specific search and rescue area to personnel authorized by the local director. Access shall be restricted only for the period of time necessary to accomplish the search and rescue mission. An unauthorized person shall not interfere with a search and rescue mission.

(2) When search and rescue activities result in the discovery of a deceased person or search and rescue workers assist in the recovery of human remains, the chief law enforcement officer of the political subdivision shall insure compliance with the provisions of KRS Chapter 72.

SECTION 92. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

The Rescue Aid Program, which is administered pursuant to this chapter and appropriations in the state budget, is designed to:

(1) Reduce and prevent the loss of life by creating a better equipped, trained, and coordinated rescue force throughout the Commonwealth;

(2) Upgrade the capabilities of local rescue squads by providing financial assistance to be used to purchase equipment and obtain training; and

(3) Encourage the development of rescue squads where none exist.

SECTION 93. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) The director of the division shall have overall responsibility for policy, guidance, administration, implementation, and proper utilization of the rescue aid fund.

(2) The director shall serve as principal liaison between the division and local officials participating in programs affected by the rescue aid fund, and shall ensure proper utilization of the rescue aid fund.

(3) The director shall appoint an advisory committee consisting of seven (7) members, including no more than four (4) employees of the staff of the division to assist in making determinations related to rescue grant fund allocations, compliance with fund requirements, releasing equipment to rescue squads, and withdrawal and reallocation of equipment or funds. The members of the committee shall serve at the pleasure of the director, but for no more than four (4) years without reappointment, and shall serve without reimbursement, except when funded through the Emergency Management Assistance Program. The decisions of the committee shall be advisory only and shall not be binding upon the director.

(4) The director, with the advice of the advisory committee, shall make determinations relating to rescue grant fund applications, releasing equipment to rescue squads, and withdrawal and reallocation of equipment or funds.

(5) Area managers of the division shall fully explain rescue grant opportunities and requirements to local elected officials, local emergency management directors, and local rescue squads; review rescue grant fund applications, documentation and program submissions; and make recommendations to the director.

(6) Local emergency management directors shall be responsible for submitting rescue grant fund applications and

documentation of expenditures to the division, as required, and shall facilitate and ensure the coordination of local rescue programs to meet the needs of the communities served.

(7) The chief officer of the rescue squad shall initiate rescue grant fund applications, submit all applications or documentation to the local emergency management director, and ensure that all funds are expended for items or services as approved.

SECTION 94. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

In order to ensure that rescue squads seeking funding under the rescue grant program achieve and maintain compliance with the provisions of this chapter, the following requirements shall be met:

(1) Each rescue squad shall develop written bylaws to specify as a minimum:

(a) The mission of the rescue squad.

(b) The election or appointment, succession, and term of officers.

(c) Financial accounting and property accountability.

(d) Administrative procedures.

(e) Definition of active membership in the squad.

(2) Each rescue squad shall develop written standard operating procedures which specify as a minimum:

(a) Procedures and rules for notification and response to emergencies.

(b) Procedures for all operations and response activities of the squad in accordance with the mission statement.

(3) A current copy of the bylaws and a current copy of all standard operating procedures shall be sent by the squad to the division. Amendments to the bylaws and standard operating procedures shall be sent to the division within ten (10) working days of their adoption. The division shall maintain a file of rescue squad bylaws and standard operating procedures. These files shall be public records. Copies of the bylaws and standard operating procedures of the squad, updated as required in this subsection, shall also be sent concurrently to the local emergency management director.

(4) Each rescue squad shall have a vehicle dedicated solely to rescue service. The make, model, year, vehicle identification number, and license number of each vehicle used by the squad solely for rescue service shall be supplied to the local emergency management director and to the division. When a new vehicle is put in service, or a vehicle is withdrawn from service, both the local director and the division shall be notified within ten (10) working days.

(5) A minimum of twelve (12) persons shall be identified by name as active members of the rescue squad.

(6) The active membership list of the rescue squad shall be submitted quarterly to the division through the area manager with a copy of the same list submitted concurrently to the local emergency management director.

(7) The active membership list shall be continuously maintained in an accurate and current status by the rescue squad, and shall be available for inspection by state and local government officials, employees, and the public.

(8) Rescue squads shall maintain a formal training program appropriate to accomplish the mission of the rescue squad.

(a) The training program shall consist of not less than two (2) hours of formal training per month. Actual rescue missions shall not constitute training.

(b) To be eligible for continued funding, each squad shall report not less than one hundred sixty-eight (168) man-hours of training for its members annually. This training shall be reported on the incident and training reports submitted pursuant to this chapter.

(c) Training at a rescue school provided by an emergency management agency or other appropriate training may be utilized to meet the requirements of subsection (2)(b) of this section.

(9) Rescue squads shall be formally affiliated with the local disaster and emergency services organization through the following means:

(a) Execution of a city or county order or ordinance, the adoption of a written search and rescue plan pursuant to Section 101 of this Act, and the promulgation of a written statement of affiliation as the local charter of authorization signed by the county judge/executive or mayor, the local emergency management director, and the chief rescue officer outlining a specific working agreement. The statement of affiliation shall be subject to annual renewal. No statement of affiliation shall be subject to automatic renewal; it shall be an affirmative process. The document shall include, as a minimum, call out authority, chain of command, the responsibilities of each concerned party, terms and conditions of the local charter of authorization to operate in the jurisdiction, and procedures for revocation of the local charter, and shall be reviewed by the chief elected official of the government signing it and the local director. Both shall certify, if signing the document, that they have reviewed the mission statement of the rescue squad and the statement of affiliation

and that they find that the rescue squad possesses:

1. Adequate numbers of trained personnel to perform the mission;

2. Proper and adequate equipment, including at least all of the required equipment specified by administrative regulations of the division, to perform the mission, and that the equipment is in proper working order;

3. A rescue vehicle, dedicated solely to rescue purposes, which is adequate to perform the mission of the squad, and is in proper working order; and

4. Adequate command and control personnel, training, and policies to ensure that the squad can quickly and efficiently respond and perform its mission when called upon.

(b) Incorporation, into the statement of affiliation, of a finding by the chief elected official and the local director that, following review of the mission statement of the rescue squad and the statement of affiliation, the rescue squad is performing a function not performed by other agencies of government or private agencies or organizations. If other organizations are performing functions which are listed on the mission statement of the rescue squad, then the statement shall contain reasons why duplication of existing services of other organizations by the rescue squad is necessary; and

(c) Incorporation of the responsibilities of the rescue squad into the rescue services annex of the local emergency operations plan or other appropriate annex.

(10) If either the chief elected official or the local director declines to sign the statement of affiliation provided for in subsection (9) of this section, the rescue squad shall be without local charter and shall return to the division all equipment purchased with state funds. This return of equipment shall take place within five (5) days of the refusal of either designee to sign the statement of affiliation. Neither the chief elected official nor the local director shall be required to state a reason why they sign or decline to sign a statement of affiliation.

(11) When a rescue squad is not independent, but is incorporated within other emergency service agencies or divisions, such as a fire department or fire division, the squad members shall be available for and capable of performing rescue services not incidental to their primary mission.

(12) Rescue squads shall maintain a full complement of minimum equipment appropriate to the type of rescue to be undertaken. Minimum equipment lists and other requirements for rescue squads shall be promulgated by the director by administrative regulation.

(13) Rescue squads shall not assess fees or charges for any rescue activity.

SECTION 95. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) A rescue grant fund project application shall be initiated by the chief rescue officer and forwarded to the local emergency management director. The local director shall review all applications for completeness and accuracy, prioritize and consolidate the applications, and make recommendations thereon. In the absence of a local director, the county judge/executive shall fill this role.

(2) The local director shall forward all applications to the area manager of the division, who shall review them, make recommendations thereon, and forward documentation to the director.

(3) The director shall forward all applications to the advisory committee. The advisory committee shall meet during the months of April, August, and December on dates announced by the director, to assess applications and compliance and to make recommendations to the director with regard to allocations of funds, assessment of compliance, reallocations of funds, release of equipment, reallocation of equipment, and any other matters assigned by the director. The advisory committee shall:

(a) Hold only public meetings; and

(b) Maintain written minutes reflecting the actions of the advisory committee. All applications on file and all other matters pending shall be reviewed during each session and recommendations made thereon to the director.

(4) Requests for funding shall be evaluated by the following criteria:

(a) Meeting the minimum eligibility criteria of Section 84 or 94 and Section 85 of this Act, unless some aspect thereof has been waived as provided in Section 48 of this Act. In determining membership eligibility, no person may be counted as a member of more than one (1) rescue squad even though that person may be available to or a member of more than one (1) rescue squad. If possible, a squad of primary membership shall be determined and the person counted as a member of that squad. If this cannot be determined, the person shall not be counted as a member of any rescue squad;

(b) Unit and individual training;

(c) Number of rescue responses annually;

(d) Population served;

(e) Geographic area served;

(f) Number, type, and location of other rescue squads in the geographic area served;

(g) Equipment possessed by the squad; and

(h) The extent to which the rescue squad integrates its activities with the local emergency management program of the area served.

(5) The advisory committee shall forward the applications together with its recommendations thereon to the director for final decision and allocations of funds. The division's administrative officer shall ensure timely payment of the funds.

(6) The director shall maintain written reasons with regard to all funding decisions for a period of one (1) year from the time they are announced.

(7) The director shall provide applicants with written decisions with regard to their applications.

(8) Decisions and the reasons for any decisions regarding funding shall be made available to any person upon written request.

(9) The local emergency management director shall maintain file copies of all applications and decisions thereon for at least five (5) years.

SECTION 96. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) The rescue squad shall order or purchase with state or federal grant funds only the approved equipment, services, or training, and no other, within fifteen (15) days of the receipt of the grant funds and shall provide a copy of all paid invoices as well as proof of payment, (canceled check, cash paid receipt, or similar document), within ninety (90) days of the receipt of the grant funds. An extension of time periods may be granted for cause upon written application to the director. Requests for time extensions shall be submitted through the local emergency management director to the area manager, for transmittal to the director. The director may grant or deny extensions based upon need. Any funds not encumbered or expended during the grant period shall be returned to the division, unless authorized in writing by the director to make additional purchases with encumbered funds.

(2) All equipment purchased with rescue aid funds shall be selected from the minimum equipment list unless an exception is approved by the director. Optional items shall not be approved until all items on the required list have been acquired.

(3) The rescue squad shall be accountable to the Commonwealth of Kentucky for all equipment purchased in whole or in part with rescue aid funds, and shall ensure the storage or positioning of all equipment within the geographical boundaries of the Commonwealth at all times, except when being utilized on an out-of-state mission approved by the division . All equipment with a purchase price of three hundred dollars ($300) or more shall be assigned a serial number provided by the division which shall be engraved on the equipment. After five (5) years from the date of purchase, all equipment costing less than three hundred dollars ($300) shall be released to the squad. Equipment costing in excess of three hundred dollars ($300) may be released to the squad after approval has been granted by the director. Squads requesting release of equipment shall define in writing the rationale and justification for the release.

(4) Permission to dispose of unserviceable, obsolete, or damaged items, which have not been released to the squad pursuant to subsection (3) of this section, purchased in whole or in part with rescue aid funds, may be granted by the director. Requests for this action shall be submitted through the local emergency management director to the area manager for transmittal to the director.

(5) When a rescue squad is disbanded, loses its local charter to operate, or otherwise becomes, in the determination of the director, incapable of performing its duties as provided in Section 94 of this Act, all equipment purchased in whole or in part with rescue aid funds, and which has not been released to the squad pursuant to subsection (3) of this section, shall revert to the division for reallocation. If local funds were used to pay for a portion of the equipment or the equipment has depreciated, the squad may return the equipment to the division or repay an amount determined appropriate by the director. The option of repayment shall exist only upon the disbanding, loss of local charter, or determination of inability of the squad to perform its duties.

(6) In making determinations with regard to equipment which a rescue squad possesses either for funding or accountability purposes, equipment personally owned by members of a rescue squad shall not be counted for any purpose. Personally owned equipment shall not be used to fulfill the requirements of the minimum equipment list for the squad.

(7) Equipment which has been purchased in whole or in part with rescue aid funds, and which has not been released to the squad pursuant to subsection (3) of this section, shall be subject to inspection upon twenty-four (24) hours notice, by the local emergency management director, an area manager, or any other employee of the division.

(8) An inspection shall be made when accountable items are reported damaged, in need of replacement, or where there is evidence of misuse. Inspections may also be made upon the request of the local director, an area manager, or the director.

(9) An annual inspection of equipment purchased in whole or in part with rescue aid funds, and which has not been released to the squad pursuant to subsection (3) of this section, may be conducted by the local director, or an area manager. The review shall be made to ensure accountability, or proper maintenance and utilization of the equipment.

(10) All funds provided pursuant to Sections 92 to 98 of this Act shall be subject to state audit and rescue squads shall cooperate fully to provide necessary documentation and other support required for the audit.

(11) A rescue squad aggrieved by a decision of the division to withdraw funds or equipment allocated to the rescue squad pursuant to subsection (5) of this section may appeal the decision in the manner provided in Section 47 of this Act.

SECTION 97. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) A report shall be made by the chief officer of the rescue squad to the local director and the area manager of the division within forty-eight (48) hours when:

(a) Accountable equipment purchased with rescue aid funds is lost, stolen, or damaged; or

(b) The squad is disbanded, loses its local charter to operate, or is otherwise rendered incapable of performing its duties as outlined in this chapter.

(2) Local emergency management directors shall maintain a cumulative list of equipment owned by each rescue squad participating in the rescue aid program, denoting those items purchased with rescue aid funds. An updated list shall be submitted to the area manager each time a rescue aid grant application is submitted.

(3) Rescue squads participating in the rescue aid program or who receive workers' compensation benefits through the division shall complete quarterly incident and training reports reflecting rescue squad activity or the lack thereof, as appropriate, and submit these reports to the local director and the area manager within ten (10) days from the end of the quarter. The area manager shall transmit the reports together with any comments thereon to the director within ten (10) days of receipt thereof.

SECTION 98. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) A rescue squad taxing district may be created by the fiscal court pursuant to KRS 65.182 or 65.188.

(2) The ad valorem tax that may be imposed for the maintenance and operation of the district shall not exceed ten cents ($0.10) for each one hundred dollars ($100) of the assessed valuation of all property in the district.

(3) Upon the creation of a district, the district so established shall be a taxing district within the meaning of Section 157 of the Constitution of Kentucky.

(4) The district ad valorem taxes shall be collected by the sheriff in the same manner as county ad valorem taxes. The sheriff shall be entitled to a fee of four percent (4%) of the amount of the tax collected for the district.

(5) The affairs of the district shall be controlled by a board of directors appointed by the county judge/executive, the mayor of an urban-county, or the chief executive of another local government with the approval of the legislative body of that jurisdiction.

(a) If the district consists of one (1) county, three (3) directors shall be appointed;

(b) If the district consists of two (2) counties, the county judge/executive of the county having the greater portion of the population of the district shall appoint two (2) directors and the county judge/executive of the other county shall appoint the third director;

(c) If the district consists of more than two (2) counties, the county judge/executive of the county having the greatest portion of the population of the district shall appoint two (2) directors and the county judge/executive of the remaining counties comprising the district shall each appoint one (1) director;

(d) The legislative body of each city of the first three (3) classes, or if there is no such class of city, the city of the highest class located within the district shall appoint one (1) additional director.

(6) The board of directors shall be appointed within thirty (30) days after the establishment of the district. Each board member shall reside within the county or city for which appointed. Directors shall be appointed for terms of two (2) years each, except that initially the appointing authority shall appoint a minority of the board members for one (1) year terms. Subsequent terms shall all be for two (2) years. Any vacancies shall be filled by the appointing authority for the unexpired term.

(7) A majority of the membership of the board shall constitute a quorum.

(8) A member of the board of directors may be removed from office as provided by KRS 65.007.

(9) The board of directors shall provide rescue service to inhabitants of the district and may:

(a) Purchase vehicles and all other necessary equipment and employ trained personnel who meet all federal and state requirements;

(b) Adopt rules and regulations necessary to effectively and efficiently provide rescue service for the district. Rules and regulations shall be consistent with the provisions of this chapter;

(c) Employ persons to administer the daily operations of the rescue service;

(d) Compensate employees of the district at a rate determined by the board;

(e) Apply for and receive available funds from the state and federal government for the purpose of maintaining or improving the rescue service of the district; and

(f) Acquire by bequest, gift, grant, or purchase any real or personal property necessary to provide rescue service.

(10) A district shall be eligible for grants pursuant to Section 95 of this Act and workers' compensation coverage pursuant to Section 99 of this Act.

(11) Tax revenues of a rescue squad taxing district shall be used only for rescue services as described in this chapter. Tax revenues of a rescue squad taxing district shall be distributed among all rescue squads in the district in proportion to the percentage of the district's population served by each squad.

SECTION 99. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

Rescue squad organizations or members of them or individuals associated with them for the purposes of receiving workers' compensation benefits paid by the division shall be covered by those benefits when performing emergency preparedness, response, or recovery functions, with the following limitations:

(1) Rescue squad organizations and individuals shall not be covered when performing fundraising functions, unless all proceeds of the function are to be dedicated to the administration or operation of the rescue squad organization.

(2) Rescue squad organizations and individuals shall not be covered when involved in any law enforcement activity, including security or evidence recovery, except for traffic control at an accident scene or the recovery of evidence by diving or dragging when the assistance is requested by law enforcement authorities.

(3) Rescue squad organizations and individuals shall not be covered when the primary purpose of the mission is the provision of emergency medical care or first aid. However, coverage shall be extended when:

(a) A rescue squad provides emergency medical transportation when inclement weather or rough terrain prevents a regular ambulance from providing transportation. Transportation may be provided only upon request of the appropriate emergency medical services agency. The distance of travel shall be restricted to the nearest appropriate medical facility or ambulance;

(b) Additional personnel or equipment are required to supplement existing emergency medical services which have been overtaxed at an incident which is subsequently declared as an emergency by any official authorized to make such a determination; or

(c) A rescue squad provides first aid, or emergency medical care is rendered as a necessary function during a rescue mission, and the primary purpose of the mission was the rescue and not the provision of emergency medical care.

(4) Rescue squad organizations or individuals shall not be covered when engaging in firefighting unless the firefighting was performed as a secondary function to protect persons involved in a rescue mission.

(5) Rescue squad organizations or individuals shall not be covered when engaging in hazardous materials response, containment, cleanup, or other operations related to hazardous materials, when operating at the hazardous materials technician or hazardous materials specialist level of operation as defined in 29 C.F.R. 1910.120.

(6) No person shall be covered unless enrolled on a workers' compensation enrollment form and filed with the area manager of the division, except when the magnitude of an emergency, or a training exercise, is so great that a local emergency management director must solicit additional workers. At these times, the local director may develop and maintain a list of workers, to include names, Social Security account numbers, missions assigned, and dates covered and submit a copy of the list to the area manager of the division within twenty-four (24) hours of the conclusion of the emergency or the training exercise.

SECTION 100. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) All 911 centers and dispatch centers, law enforcement agencies, law enforcement dispatchers, fire departments, rescue squads, emergency medical service agencies, and emergency management agencies shall report the information required to be reported by administrative regulation, for all reports of persons missing, lost, or overdue, if a search for the lost person has lasted for more than two (2) hours to:

(a) The local emergency management director; and

(b) The local search and rescue coordinator for the jurisdiction in which the person is reported missing.

(2) Any search for a missing minor, as that term is defined in KRS 2.015, shall be reported to the Kentucky State Police by the person or organization to whom the missing minor is reported. The making of this report does not relieve the person or organization from the duty to make other notifications and reports required in this section.

(3) Any search and rescue mission which has lasted four (4) hours without the subject being located, shall be immediately reported to the duty officer of the Division of Emergency Management by telephone or radio.

(4) The results of each lost, missing, or overdue person report or search mission required to be reported under subsections (1) to (3) of this section shall be reported to the division and the local director on forms provided by the division and containing the information required by administrative regulation. The report shall be filed within twenty (20) days after:

- *(a) The search and rescue mission is discontinued; or*
- *(b) The victim has not been found and a decision is made to keep the case open or continue searching on a limited basis, whichever occurs earlier.*

(5) Each agency required to notify a local emergency management director or the division of a report of a missing person, or a search mission pursuant to this section shall develop a written standard operating procedure for handling and reporting requests to search for missing, lost, or overdue persons. This standard operating procedure shall be a public record.

(6) The contents of reports, information to be conveyed upon notification, and other matters relating to the administration of this section and the securing of information required hereby shall be specified by the division by administrative regulations.

SECTION 101. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) Each local search and rescue coordinator shall assist local rescue squads in developing a comprehensive written search and rescue plan which shall address as a minimum:

- *(a) Direction and control responsibilities or incident command system procedures;*
- *(b) Notification and reporting procedures and requirements;*
- *(c) Call-out procedures;*
- *(d) Resource identification;*
- *(e) Coordination of resources;*
- *(f) Mutual aid agreements;*
- *(g) Training requirements for search and rescue responders and managers;*
- *(h) Coordination of all on-scene operations with other local, state, and federal agencies; and*
- *(i) The provision of copies of topographical maps for search team members.*

(2) The local search and rescue plan shall be incorporated into the rescue services annex of the local emergency operations plan and submitted for review and adoption as part of the local emergency operations plan.

(3) The local search and rescue plan shall be a public record and shall be updated not less than annually. A copy of the plan shall be filed with the division not less than ten (10) days after each update or amendment.

SECTION 102. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

Each local emergency management director shall assume the duties of, or appoint with the concurrence of the fiscal court, city governing body, urban-county council, or governing body of other local government, a local search and rescue coordinator who shall be responsible for the coordination of all search and rescue resources and operations during all search and rescue missions within the city or county. The position of local search and rescue coordinator may be a volunteer position. The local search and rescue coordinator, if appointed by the local emergency management director, shall serve a similar term not to exceed four (4) years, but may be reappointed for a similar term upon the expiration of a previous term. The local search and rescue coordinator may be removed for cause at any time by the local director, with the concurrence of the fiscal court, city governing body, urban-county council or governing body of other local government. The local search and rescue coordinator shall successfully complete training in search management, search techniques, and incident command required by the division by administrative regulation.

SECTION 103. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

The Division of Emergency Management may promulgate administrative regulations which address minimum training requirements and standards of response for individuals, agencies, and organizations who respond to the following search and rescue missions:

(1) Searching for missing, lost, or overdue person or persons;

(2) Cave rescue;

(3) Dive rescue and recovery of drowning victims;

(4) Inland water search, rescue, and recovery;

(5) Search dogs and handlers; testing and certification;

(6) Urban search and rescue; and

(7) High angle or rough terrain rescue and recovery.

SECTION 104. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

Any person violating any provision of this chapter or any administrative regulation promulgated or order issued pursuant to this chapter for which another penalty is not specified shall be guilty of a Class A misdemeanor.

Section 105. KRS 186.1721 is amended to read as follows:

(1) Upon application to the county clerk of the county of his residence, any member of a local disaster and emergency services organization or volunteer rescue squad in the Commonwealth shall be issued a five (5) year license plate in the same form and character as license plates authorized by law to be used upon similar private vehicles registered in Kentucky, except that the license plates shall bear the inscription "Disaster and Emergency Services," a registration number and an appropriate standardized insignia. Each application shall be accompanied by proof of current service as furnished by the county judge/executive, mayor, or ***local emergency management director***[~~disaster and emergency services coordinator~~], and the payment of a fee of twenty-five dollars ($25). Annually thereafter, upon application to the county clerk of the county of his residence, together with proof of current service, and payment of an eleven dollar fifty cent ($11.50) registration fee, the clerk shall issue a current year renewal decal to the applicant to be affixed to the disaster and emergency services license plate originally issued to the applicant.

(2) Upon the sale, transfer, or termination of lease of a vehicle licensed as authorized by subsection (1) of this section, the owner or lessee shall remove the disaster and emergency services license plate and return it and the certificate of registration to the county clerk. The county clerk shall issue a regular license plate and certificate of registration upon payment of an eleven dollar fifty cent ($11.50) state fee and a three dollar ($3) clerk's fee. When the plate has been presented to the clerk, he shall reissue it free from payment to the Transportation Cabinet for use on any other vehicle of the same class and category owned or leased by the same applicant to whom a disaster and emergency services license plate was originally issued.

(3) Upon termination of membership as a member of the disaster and emergency services organization or volunteer rescue squad, an applicant to whom a disaster and emergency services license plate was issued under this section shall, within thirty (30) days, return the plate to the county clerk of the county of his residence.

(4) For the services performed in issuing the disaster and emergency services license plate and in annually issuing a current year renewal decal to be affixed to the disaster and emergency services license plate, the county clerk shall receive from each applicant a fee of three dollars ($3). A two dollar ($2) fee shall be charged for the reissuance of the license plate after the sale or transfer of the vehicle for which it was originally issued.

(5) Any applicant seeking a license plate according to this section for a vehicle provided to him pursuant to an occupation shall conform to the requirements set forth in KRS 186.050(14).

(6) Registration under this section shall expire December 31 of each year.

(7) The secretary of the Transportation Cabinet shall provide forms necessary to carry out the purpose of this section.

Section 106. KRS 189.910 is amended to read as follows:

(1) As used in KRS 189.920 to 189.950, "emergency vehicle" means any vehicle used for emergency purposes by a fire department; any vehicle used for emergency purposes by the State Police, a public police department, Department of Corrections, or sheriff's office; any vehicle used for emergency purposes by a rescue squad; any publicly owned vehicle used for emergency purposes by ***an emergency management***[~~a civil defense~~] agency; any vehicle used to respond to emergencies or to transport a patient with a critical medical condition if the vehicle is operated by a Cabinet for Human Resources licensed ambulance provider or medical first response provider; any vehicle commandeered by a police officer; or any motor vehicle used by a paid or volunteer fireman or paid or volunteer ambulance personnel ***or a paid or volunteer local emergency management director*** while responding to an emergency or to a location where an emergency vehicle is on emergency call.

(2) As used in KRS 189.920 to 189.950, "public safety vehicle" means public utility repair vehicle; wreckers; state, county, or municipal service vehicles and equipment; highway equipment which performs work that requires stopping and standing or moving at slow speeds within the traveled portions of highways; and vehicles which are escorting wide-load or slow-moving trailers or trucks.

Section 107. KRS 189.920 is amended to read as follows:

(1) All fire department, rescue squad, or publicly owned ***emergency management***[~~civil defense~~] agency emergency vehicles and all ambulances shall be equipped with one (1) or more flashing, rotating, or oscillating red lights, visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle, and a siren, whistle,

or bell, capable of emitting a sound audible under normal conditions from a distance of not less than five hundred (500) feet. This equipment shall be in addition to any other equipment required by the motor vehicle laws.

(2) All state, county, or municipal police vehicles and all sheriffs' vehicles used as emergency vehicles shall be equipped with one (1) or more flashing, rotating, or oscillating blue lights, visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle, and a siren, whistle, or bell, capable of emitting a sound audible under normal conditions from a distance of not less than five hundred (500) feet. This equipment shall be in addition to any other equipment required by the motor vehicle laws.

(3) By ordinance, the governing body of any city or county may direct that the police or sheriffs' vehicles in that jurisdiction be equipped with a combination of red and blue flashing, rotating, or oscillating lights.

(4) All public safety vehicles shall be equipped with one (1) or more flashing, rotating, or oscillating yellow lights, visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle. Yellow flashing, rotating, or oscillating lights may also be used by vehicles operated by mail carriers while on duty, funeral escort vehicles, and church buses.

(5) All Department of Corrections vehicles used as emergency vehicles shall be equipped with one (1) or more flashing, rotating, or oscillating blue lights, visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle. The Department of Corrections vehicles shall not be equipped with or use a siren, whistle, or bell. The equipment prescribed by this subsection shall be in addition to any other equipment required by motor vehicle laws.

(6) Red flashing lights may be used by school buses.

(7) No emergency vehicle, public safety vehicle, or any other vehicle covered by KRS 189.910 to 189.950 shall use any light of any other color than those specified by KRS 189.910 to 189.950. Sirens, whistles, and bells may not be used by vehicles other than those specified by KRS 189.910 to 189.950, except that any vehicle may be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.

(8) Vehicles used as command posts at incidents may be equipped with and use when on scene, a green rotating, oscillating, or flashing light. This light shall be in addition to the lights and sirens required in this section.

Section 108. KRS 304.18-060 is amended to read as follows:

"Blanket health insurance" is that form of health insurance covering groups of persons as enumerated in one (1) of the following subsections under a policy or contract issued to:

(1) Any common carrier or to any operator, owner or lessee of a means of transportation, who or which shall be deemed the policyholder, covering a group of persons who may become passengers defined by reference to their travel status on ***the***[~~such~~] common carrier or ***the***[~~such~~] means of transportation.

(2) An employer, who shall be deemed the policyholder, covering any group of employees, dependents or guests, defined by reference to specified hazards incident to an activity or activities or operations of the policyholder.

(3) A college, school or other institution of learning***;***[~~,~~] a school district or districts***; a***[~~, or~~] school jurisdictional unit***;***[~~,~~] or to the head, principal***,*** or governing board of any such educational unit, who or which shall be deemed the policyholder, covering students, teachers***,*** or employees.

(4) A religious, charitable, recreational, educational or civic organization[~~,~~] or branch thereof, which shall be deemed the policyholder covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by such policyholder.

(5) A sports team, camp***,*** or sponsor thereof, which shall be deemed the policyholder, covering members, campers, employees, officials***,*** or supervisors.

(6) A volunteer fire department, first aid, ***emergency management agency***[~~civil defense~~] or other such volunteer organization, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by ***the***[~~such~~] policyholder.

(7) A newspaper or other publisher, which shall be deemed the policyholder, covering its carriers.

(8) An association, including a labor union, which has a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by ***the***[~~such~~] policyholder.

(9) Any other person or group covering any other risk or class of risks which, in the discretion of the commissioner, may be properly eligible for blanket health insurance. The discretion of the commissioner may be exercised on an individual risk basis or class of risks, or both.

Section 109. KRS 342.140 is amended to read as follows:

The average weekly wage of the injured employee at the time of the injury or last injurious exposure shall be determined as follows:

(1) If at the time of the injury which resulted in death or disability or the last date of injurious exposure preceding death or disability from an occupational disease:

(a) The wages were fixed by the week, the amount so fixed shall be the average weekly wage;

(b) The wages were fixed by the month, the average weekly wage shall be the monthly wage so fixed multiplied by twelve (12) and divided by fifty-two (52);

(c) The wages were fixed by the year, the average weekly wage shall be the yearly wage so fixed divided by fifty-two (52);

(d) The wages were fixed by the day, hour, or by the output of the employee, the average weekly wage shall be the wage most favorable to the employee computed by dividing by thirteen (13) the wages (not including overtime or premium pay) of said employee earned in the employ of the employer in the first, second, third, or fourth period of thirteen (13) consecutive calendar weeks in the fifty-two (52) weeks immediately preceding the injury.

(e) The employee had been in the employ of the employer less than thirteen (13) calendar weeks immediately preceding the injury, his average weekly wage shall be computed under paragraph (d), taking the wages (not including overtime or premium pay) for that purpose to be the amount he would have earned had he been so employed by the employer the full thirteen (13) calendar weeks immediately preceding the injury and had worked, when work was available to other employees in a similar occupation.

(f) The hourly wage has not been fixed or cannot be ascertained, the wage for the purpose of calculating compensation shall be taken to be the usual wage for similar services where the services are rendered by paid employees.

(2) In occupations which are exclusively seasonal and therefore cannot be carried on throughout the year, the average weekly wage shall be taken to be one-fiftieth (1/50) of the total wages which the employee has earned from all occupations during the twelve (12) calendar months immediately preceding the injury.

(3) In the case of volunteer firemen, police, and ***emergency management agency***[~~civil defense~~] members or trainees, the income benefits shall be based on the average weekly wage in their regular employment.

(4) If the employee was a minor, apprentice, or trainee when injured, and it is established that under normal conditions his wages should be expected to increase during the period of disability, that fact may be considered in computing his average weekly wage.

(5) When the employee is working under concurrent contracts with two (2) or more employers and the defendant employer has knowledge of the employment prior to the injury, his wages from all the employers shall be considered as if earned from the employer liable for compensation.

(6) The term "wages" as used in this section and KRS 342.143 means, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, and fuel or similar advantage received from the employer, and gratuities received in the course of employment from others than the employer to the extent the gratuities are reported for income tax purposes.

(7) The commissioner shall, from time to time, based upon the best available information, determine by administrative regulation industries which ordinarily do not have a full working day for five (5) days in every week. In those industries, compensation shall be computed at the average weekly wage earned by the employee at the time of injury reckoning wages as earned while working full time. "At full time" as used in this subsection means a full working day for five (5) working days in every week regardless of whether the injured employee actually worked all or part of the time.

Section 110. KRS 342.640 is amended to read as follows:

The following shall constitute employees subject to the provisions of this chapter, except as exempted under KRS 342.650:

(1) Every person, including a minor, whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, express or implied, and all helpers and assistants of employees, whether paid by the employer or employee, if employed with the knowledge, actual or constructive, of the employer;

(2) Every executive officer of a corporation;

(3) Every person in the service of the state or any of its political subdivisions or agencies, or of any county, city of any class, school district, drainage district, tax district, public or quasipublic corporation, or other political entity, under any contract of hire, express or implied, and every official or officer of those entities, whether elected or appointed, while performing his official duties shall be considered an employee of the state. Every person who is a member of a volunteer ambulance service, fire, or police department shall be deemed, for the purposes of this chapter, to be in the employment of the political subdivision of the state where the department is organized. Every person who is a regularly-enrolled volunteer member or trainee of ***an emergency management agency***[~~the civil defense corps of this state~~], as established under KRS ***Chapters 39A to 39E***[~~Chapter 39~~], shall be deemed, for the purposes of this chapter, to be in the employment

of this state. Every person who is a member of the Kentucky National Guard, while the person is on state active duty as defined in KRS 38.010(4), shall be deemed, for the purposes of this chapter, to be in the employment of this state;

(4) Every person performing service in the course of the trade, business, profession, or occupation of an employer at the time of the injury; and

(5) Subject to the provisions in subsection (4) of this section, every person regularly selling or distributing newspapers on the street or to customers at their homes or places of business. For the purposes of this chapter, the person shall be deemed an employee of an independent news agency for whom he is selling or distributing newspapers, or, in the absence of an independent agency, of each publisher whose newspapers he sells or distributes.

Section 111. KRS 432.570 is amended to read as follows:

(1) It shall be unlawful for any person except a member of a police department or police force or an official with written authorization from the head of a department which regularly maintains a police radio system authorized or licensed by the Federal Communications Commission, to have in his or her possession, or in an automobile or other vehicle, or to equip or install in or on any automobile or other vehicle, any mobile radio set or apparatus capable of either receiving or transmitting radio or other messages or signals within the wave length or channel now or which may hereafter be allocated by the Federal Communications Commission, or its successor, for the purpose of police radios, or which may in any way intercept or interfere with the transmission of radio messages by any police or other peace officers. It shall be unlawful for any car, automobile, or other vehicle other than one publicly owned and entitled to an official license plate issued by the state issuing a license for the car, to have, or be equipped with the sets or apparatus even though the car is owned by an officer. This section shall not apply to any automobile or vehicle owned or operated by a member of a sheriff's department authorized by the fiscal court to operate a radio communications system that is licensed by the Federal Communications Commission or other federal agency having the authority to license same. Nothing in this section shall preclude a probation and parole officer employed by the Department of Corrections from carrying on his person or in a private vehicle while conducting his official duties an authorized, state-issued portable radio apparatus capable of transmitting or receiving signals.

(2) Any person guilty of violating any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than fifty dollars ($50) and not exceeding five hundred dollars ($500), or imprisonment not exceeding twelve (12) months, or both so fined and imprisoned.

(3) It shall be the duty of any and all peace officers to seize and hold for evidence any and all equipment had or used in violation of the provisions of this section, and, upon conviction of the person having, equipping or using such equipment, it shall be the duty of the trial court to order such equipment or apparatus destroyed, forfeited, or escheated to the Commonwealth of Kentucky, and said property may be ordered destroyed, forfeited, or escheated as above provided without a conviction of the person charged with violating this section.

(4) Nothing contained in this section shall prohibit the possession of a radio by:

(a) An individual who is a retailer or wholesaler and in the ordinary course of his business offers such radios for sale or resale;

(b) A commercial or educational radio or television station, licensed by the Federal Communications Commission, at its place of business; or

(c) An individual who possesses such a radio, provided it is capable of receiving radio transmissions only and is not capable of sending or transmitting radio messages, at his place of residence; licensed commercial auto towing trucks; newspaper reporters and photographers; ~~[disaster and]~~emergency ***management agency***~~[services]~~ personnel authorized in writing by the~~[state]~~ director of ***the division of***~~[disaster and]~~ emergency ***management***~~[service]~~ (for state personnel) or chief executive of the city or county (for their respective personnel); a person holding a valid license issued by the Federal Communications Commission in the amateur radio service; peace officers authorized in writing by the head of their law enforcement agency, Commonwealth's attorneys and their assistants, county attorneys and their assistants, except that it shall be unlawful to use such radio to facilitate any criminal activity or to avoid apprehension by law enforcement officers. Violation of this section shall, in addition to any other penalty prescribed by law, result in a forfeiture to the local law enforcement agency of such radio.

(5) The secretary of the Finance and Administration Cabinet is hereby empowered by issuance of a secretary's order to exempt from the prohibitions and penalties of this section the possession and use of any and all radio communication equipment that he finds is necessary to be owned and used by members of the general public and other nonpolice persons for utilization in the N.O.A.A. weather radio system.

Section 112. KRS 65.060 is amended to read as follows:

As used in KRS 65.008, 65.009, 65.065 and 65.070, the term "district" shall mean and the provisions of KRS 65.008, 65.009, 65.065 and 65.070 shall apply to any board, commission, or special district created pursuant to the following statutes: ***Sections 84 and 98 of this Act***~~[KRS 39.700]~~, 65.160, 65.162, 65.210 to 65.300, 65.510 to 65.650; KRS 74.010 to 74.416; KRS 75.010 to 75.260; KRS 76.005 to 76.210, 76.241 to 76.273, 76.274 to 76.279, 76.295 to 76.420, 76.600 to 76.640; KRS 77.005 to 77.305;

KRS 80.262 to 80.610; KRS 91A.350 to 91A.390; KRS 96A.010 to 96A.230; KRS 104.450 to 104.680; KRS 107.310 to 107.500; KRS 108.010 to 108.070, 108.080 to 108.180; KRS 109.056, 109.059, 109.115 to 109.190; KRS 147.610 to 147.705; KRS 147A.050 to 147A.120; KRS 154.50-301 to 154.50-346; KRS 164.605 to 164.675; KRS 173.450 to 173.650, 173.710 to 173.800; KRS 179.700 to 179.735; KRS 183.132 to 183.160; KRS 184.010 to 184.300; KRS 210.460 to 210.480; KRS 212.720 to 212.760; KRS 216.310 to 216.360; KRS 220.010 to 220.613; KRS 262.100 to 262.660, 262.700 to 262.990; KRS 266.010 to 266.990; KRS 267.010 to 267.990; KRS 268.010 to 268.990; or KRS 273.405 to 273.453.

Section 113. The following KRS sections are repealed:

39.400 Necessity for and purpose of provisions for disaster and emergency response.

39.401 Definitions.

39.407 Powers of adjutant general.

39.408 Executive orders.

39.409 Emergency powers of Governor, mayors, and county judges/executive.

39.410 Compensation for property taken for temporary use -- Notice to owner of property where title is taken.

39.411 Board of Claims to fix compensation if amount is in dispute.

39.412 Appeal from award of Board of Claims.

39.413 Procedure for payment of compensation.

39.414 Local mutual aid arrangements -- Assistance in negotiation of reciprocal agreements with adjoining states or their political subdivisions.

39.415 Local government to establish organizations -- Functions -- Areawide organizations -- Director, term, qualifications, duties, salary.

39.416 Disaster and emergency response powers of counties, urban-county governments, and cities.

39.417 Powers of county, metropolitan government, and city employees.

39.418 Reimbursement for loss, damage or expense -- Notice of claim -- Reimbursement where aid rendered outside state.

39.419 Owners of real estate used for sheltering persons not civilly liable for death, injury, loss or damage.

39.423 Investigative powers of Governor -- Subpoena.

39.424 Traffic control plans -- Executive orders.

39.425 Powers of Governor concerning lease or loan of state property and permitting state employees to engage in disaster and emergency response activities -- Permission for judicial and legislative employees.

39.426 Powers of political subdivision to contract with state for lease or loan of property.

39.427 Orders, rules and regulations.

39.429 Power of arrest for violation of orders, rules or regulations.

39.430 Authority to receive services, equipment, supplies, materials and funds from federal government.

39.431 Political activity forbidden.

39.432 Qualifications and oath of persons connected with disaster and emergency response organizations.

39.433 Exemption from liability.

39.450 Authority to execute Interstate Emergency Management and Disaster Compact.

39.460 Governor's actions under compact.

39.470 Policy for disaster and emergency services organizations.

39.480 Allocation of state funds.

39.481 Purpose of supplementary state fund.

39.482 State officers and their duties -- Funds to local units.

39.483 Criteria for funding local disaster and emergency services organizations.

39.484 Request for financial aid -- Review and evaluation criteria.

39.485 Reimbursement -- Claims and equipment purchase.

39.486 Performance evaluation -- Appeal process.

39.487 Requests for waiver of requirements.

39.490 Administration of supplementary state funding -- Power to make rules and regulations.

39.700 Rescue squads -- Rescue squad taxing districts.

39.710 Rescue Aid Program -- Purpose.

39.720 Rescue aid fund -- State officials' duties -- Local officials' duties.

39.730 Requirements for rescue grant funding -- Written standard operating procedures -- Bylaws -- Rescue vehicle -- Membership -- Training -- Affiliation -- Service fee prohibited.

39.740 Rescue and project funding -- Application and review process.

39.750 Purchase disposal and inspection of equipment -- Audit of funds.

39.760 Reports of lost, stolen or damaged equipment, or loss of capability to operate -- Quarterly incident and training reports -- Cumulative list of equipment.

39.770 Workers' compensation coverage -- Limitation on -- Enrollment.

39.780 Procedures for rescue squad taxing districts.

39.800 Kentucky Emergency Response Commission established -- General purposes.

39.805 Definitions.

39.810 Membership -- Meetings -- Reimbursement for meetings.

39.815 Duties of commission -- Appointment of local committees mandatory.

39.817 Fees -- Trust and agency account.

39.820 Permissive activities of commission.

39.825 Administrative support by Division of Disaster and Emergency Services -- Protection of federal funds -- Issuance of administrative regulations.

39.830 Local planning district boundaries.

39.835 Local emergency planning committees -- Relationship to state commission.

39.840 Duties of local emergency planning committees -- Terms of members -- Enforcement procedures.

39.845 Identification of covered facilities -- Reporting to public agencies.

39.850 Naming of facility representative -- Liaison duties.

39.855 Organizations required to participate in local planning process -- Adoption of local ordinances.

39.860 Plan development, approval and review.

39.865 Response to be consistent with plan.

39.870 State agency response.

39.875 Claims to be filed with Board of Claims.

39.880 Report of release of substance.

39.885 Establishment of warning and notification standards.

39.890 Report of inventories and locations of extremely hazardous substances.

39.895 Additional information may be required.

39.900 Reports available to public -- Protection of trade secrets.

39.905 KRS 39.800 to 39.905 supplemental to other laws.

39.990 Penalties.

Section 114. For the purposes of KRS Chapter 39E, the existing members of the Kentucky Emergency Response Commission created by KRS 39.810 shall continue in office for the remainder of their existing terms as the membership of the Kentucky Emergency Response Commission established by Sections 59 to 61 of this Act.

Section 115. In lieu of the official seal of the Commonwealth of Kentucky, the division shall be authorized to design, display and affix the distinctive seal and markings of the Division of Emergency Management on any and all state vehicles owned, leased or operated by the division for official purposes and operated by personnel of the division.

The Committee Substitute to **HB 453** is as follows:

AN ACT relating to emergency management.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. KRS CHAPTER 39A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

The General Assembly realizes the Commonwealth is subject at all times to disaster or emergency occurrences which can range from crises affecting limited areas to widespread catastrophic events, and that response to these occurrences is a fundamental responsibility of elected government in the Commonwealth. It is the intent of the General Assembly to

establish and to support a statewide comprehensive emergency management program for the Commonwealth, and through it an integrated emergency management system, in order to provide for adequate assessment and mitigation of, preparation for, response to, and recovery from, the threats to public safety and the harmful effects or destruction resulting from all major hazards, including but not limited to: flood, flash flood, tornado, blizzard, ice storm, snow storm, wind storm, hail storm, or other severe storms; drought, extremes of temperature, earthquake, landslides, or other natural hazards; fire, forest fire or other conflagration; enemy attack, threats to public safety and health involving nuclear, chemical, or biological agents or weapons; sabotage, riot, civil disorder or acts of terrorism, and other domestic or national security emergencies; explosion, power failure or energy shortages, major utility system failure, dam failure, building collapse, other infrastructure failures, transportation-related emergencies on, over, or through the highways, railways, air, land, and waters in the Commonwealth, emergencies caused by spill or release of hazardous materials or substances, mass-casualty or mass-fatality emergencies; other technological, biological, etiological, radiological, environmental, industrial, or agricultural hazards; or other disaster or emergency occurrences; or catastrophe; or other causes; and the potential, threatened, or impending occurrence of any of these events; and in order to protect life and property of the people of the Commonwealth, and to protect public peace, health, safety, and welfare, and the environment; and in order to ensure the continuity and effectiveness of government in time of emergency, disaster, or catastrophe in the Commonwealth, it is hereby declared to be necessary:

(1) To create a Division of Emergency Management as the emergency management agency of state government and to authorize the creation of local emergency management agencies in the cities, counties, and urban-county or charter county governments of the Commonwealth;

(2) To confer upon the Governor, the county judge/executives of the counties, the mayors of the cities and urban-county governments of the Commonwealth, and the chief executive of other local governments the emergency powers provided in KRS Chapters 39A to 39F;

(3) To establish provisions for mutual aid among the cities, counties, and urban-county or charter county governments of the Commonwealth, with other states, and with the federal government with respect to the performance of disaster and emergency preparedness, response, recovery, and mitigation functions; and

(4) To authorize the establishment of a statewide comprehensive emergency management program and integrated emergency management system, the promulgation of orders or administrative regulations, and the taking of other steps necessary and appropriate to carry out the provisions of KRS Chapters 39A to 39F.

SECTION 2. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

As used in KRS Chapters 39A to 39F, unless the context requires otherwise:

(1) "Adjutant General" means the executive head of the Department of Military Affairs vested with general direction and control authority for the department and the division of emergency management;

(2) "Catastrophe" means a disaster or series of concurrent disasters which adversely affect the entire Commonwealth of Kentucky or a major geographical portion thereof;

(3) "Comprehensive emergency management program" means the public safety program developed, organized, implemented, administered, maintained, and coordinated by the Division of Emergency Management and local emergency management agencies created pursuant to the provisions of KRS Chapters 39A to 39F, to assess, mitigate, prepare for, respond to, or recover from, an emergency, declared emergency, disaster, or catastrophe, or threat of any of those, as contemplated in Section 1 of this Act or as defined in this section;

(4) "Coordination" means having and exercising primary state or local executive branch oversight for the purpose of organizing, planning, and implementing;

(5) "Declared emergency" means any incident or situation declared to be an emergency by executive order of the Governor, or a county judge/executive, or a mayor, or the chief executive of other local governments in the Commonwealth pursuant to the provisions of KRS Chapters 39A to 39F;

(6) "Director" means the director of the Division of Emergency Management of the Department of Military Affairs;

(7) "Disaster" means any incident or situation declared as such by executive order of the Governor, or the President of the United States, pursuant to federal law;

(8) "Disaster and emergency response" means the performance of all emergency functions, other than war-related functions for which military forces are primarily responsible, including, but not limited to: direction and control, incident command or management; communications; fire protection services; police services; medical and health services; ambulance services; rescue; search and rescue or recovery; urban search and rescue; engineering; alerting and warning services; resource management; public works services; nuclear, chemical, biological, or other hazardous material or substance monitoring, containment, decontamination, neutralization, and disposal; emergency worker protection, site safety, site operations and response planning; evacuation of persons; emergency welfare services; emergency transportation; physical plant protection; temporary restoration of public utility

services; emergency lighting and power services; emergency public information; incident investigation, hazards analysis, and damage assessment; and other functions related to effective reaction to a disaster or emergency or catastrophe, or the potential, threatened, or impending threat of any disaster or emergency or catastrophe, together with all other activities necessary or incidental to the preparation for and carrying out of the functions set out in this subsection;

(9) "Division" means the Division of Emergency Management of the Department of Military Affairs;

(10) "Emergency" means any incident or situation which poses a major threat to public safety so as to cause, or threaten to cause, loss of life, serious injury, significant damage to property, or major harm to public health or the environment;

(11) "Integrated emergency management system" means the unified and multi-disciplinary disaster and emergency response infrastructure developed in the Commonwealth, under the coordination of the division, using methods which align state or local administrative, organizational, and operational resources, to accomplish the mission, goals, and objectives of the comprehensive emergency management program of the Commonwealth;

(12) "Local disaster and emergency services organization" means that organization of public and private entities developed to carry out the multi-agency disaster and emergency response of a city, county, urban-county or charter county pursuant to KRS Chapters 39A to 39F;

(13) "Local emergency management agency" means the agency created, operated, and maintained to coordinate the local comprehensive emergency management program and disaster and emergency response of a city, county, and urban-county or charter county government pursuant to KRS Chapters 39A to 39F;

(14) "Local emergency management director" or "Local director" means the executive head of the local emergency management agency, appointed pursuant to the provisions of KRS Chapters 39A to 39F;

(15) "State emergency management agency" means the Division of Emergency Management of the Department of Military Affairs; and

(16) "State emergency management director" means the director of the Division of Emergency Management.

SECTION 3. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

The General Assembly recognizes that the rationale and purpose of the comprehensive emergency management program of the Commonwealth has evolved from a program for response to threats to national security, enemy attack, and other national defense needs, to a program for response to all hazards, but primarily, domestic hazards and threats including natural, man-made, technological, industrial, or environmental emergencies or disasters, for which civil government is primarily responsible. Because of major changes in the rationale and necessity for emergency management capabilities, as well as the urgent requirement for multi-agency participation and inter-agency coordination to ensure timely, effective, and appropriate disaster and emergency response in the Commonwealth, and to otherwise modernize and improve the administration, effectiveness, and relevance of the comprehensive emergency management program for the contemporary needs of the citizens of the Commonwealth, the General Assembly declares:

(1) A Division of Emergency Management is hereby created as the emergency management agency of state government which shall develop the comprehensive emergency management program of the Commonwealth on behalf of the Governor, and in consultation with the cabinet secretaries of state government, other appropriate state agency heads, local elected chief executives, local emergency management directors, and local emergency planning committees, for the purpose of developing and enhancing comprehensive emergency management program policies, plans, or procedures to provide for a coordinated responsive, and integrated emergency management system in the Commonwealth;

(2) The division may accept on behalf of the Commonwealth any grant, contribution, or fund, federal or otherwise, made to assist in meeting the costs of carrying out the provisions and purposes of KRS Chapters 39A to 39F, and fully comply with all funding requirements imposed by the receipt and use of the grant, contribution, or fund; and

(3) The term "Division of Emergency Management" shall constitute and designate the official name of the emergency management agency of state government created pursuant to subsection (1) of this section and "Division of Emergency Management", in the exact order or form as specified in this subsection, shall not be utilized by or assigned to any other agency of state or local government, or other state or local entity, or any political subdivision of the Commonwealth to constitute or designate the official name of any such agency, entity, or political subdivision.

SECTION 4. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

The following administrative bodies shall be attached to the division for administrative purposes:

(1) Governor's Earthquake Hazards and Safety Technical Advisory Panel; and

(2) Kentucky Emergency Response Commission.

SECTION 5. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) The Division of Emergency Management shall coordinate for the Governor all matters pertaining to the comprehensive emergency management program and disaster and emergency response of the Commonwealth. The division shall be the executive branch agency of state government having primary jurisdiction, responsibility, and authority for the planning and execution of disaster and emergency assessment, mitigation, preparedness, response, and recovery for the Commonwealth; the coordination of all disaster and emergency response by and between all state agencies, all agencies of city, county, and urban-county or charter county government, all local entities, and all political subdivisions of the Commonwealth for an emergency, declared emergency, disaster, or catastrophe as contemplated in Section 1, 2, or 3 of this Act; the coordination of, and liaison with, related or concerned federal government agencies, elected officials of other states, private organizations or private sector companies dealing with disaster and emergency response; the coordination of all recovery operations and mitigation initiatives subsequent to disasters or emergencies; and the coordination of all public information activities regarding state government disaster and emergency response operations.

(2) The Division of Emergency Management shall have and exercise the following powers, authorities, and duties:

(a) To develop, administer, and maintain a statewide comprehensive emergency management program for the Commonwealth, and through it an integrated emergency management system for the disaster and emergency response of the Commonwealth, which shall be coordinated with the emergency management programs, and other related public safety, emergency response, mitigation, or disaster recovery programs, of all appropriate federal government agencies including the Federal Emergency Management Agency, the Department of Transportation, the Environmental Protection Agency, the Occupational Safety and Health Administration, the Department of Defense, the National Oceanic and Atmospheric Administration, the Department of Justice, the Bureau of Alcohol, Tobacco, and Firearms, the National Transportation Safety Board, the Chemical Safety and Hazard Investigation Board, the Army Corps of Engineers, the National Security Council, the Department of Health and Human Services, the Federal Railroad Administration, the U.S. Geological Survey, the Department of Energy, the Nuclear Regulatory Commission, the Department of Agriculture, the Department of Housing and Urban Development, the American Red Cross, the other states, and other appropriate public or private agencies, to the fullest appropriate extent;

(b) To coordinate the development, implementation, and maintenance of comprehensive emergency management programs by local emergency management agencies in the cities, counties, and urban-county or charter county governments of the Commonwealth to ensure that all such programs, agencies, and organizations are organized, administered, and operated as functional components of the integrated emergency management system of the Commonwealth;

(c) To develop and maintain a comprehensive, risk-based, all-hazards disaster and emergency response plan entitled "Kentucky Emergency Operations Plan," the provisions of which shall establish the organizational structure to be utilized by state government for managing disaster and emergency response, and set forth the policies, procedures, and guidelines for the coordination and execution of all disaster and emergency response for an emergency, declared emergency, disaster, or catastrophe in the Commonwealth. The Kentucky Emergency Operations Plan shall be submitted to the Governor for approval when the Governor assumes office following each gubernatorial election, or at other times as the director deems appropriate. The Governor shall provide written approval of the Kentucky Emergency Operations Plan through issuance of an executive order and the division shall file a copy of the executive order with the Legislative Research Commission. The Kentucky Emergency Operations Plan shall be the primary strategic disaster and emergency response planning component of the integrated emergency management system of the Commonwealth, and shall be utilized and followed by all state agencies, all local government agencies, all local public agencies or entities, and all other political subdivisions of the Commonwealth which may be involved in disaster and emergency response in the Commonwealth. The Kentucky Emergency Operations Plan shall be updated by the division not less than annually;

(d) To maintain and operate the State Emergency Operations Center facility, which shall be the official and primary state government twenty-four (24) hour warning point, communications, and command center, from which the Governor, cabinet secretaries, department heads, and other state agency officials can, at any time, rapidly, adequately, and effectively manage the disaster and emergency response of the Commonwealth. The State Emergency Operations Center facility shall be the primary state direction and control component of the integrated emergency management system of the Commonwealth for the coordination of all disaster and emergency response in the Commonwealth;

(e) To develop, monitor, and operate, on a twenty-four (24) hour per day basis, the appropriate alerting or warning systems, public safety telecommunications systems or radio networks, any state trunked, fiber, or interactive communication systems, computer, fax, other telecommunications or information networks and systems needed for communication and coordination with all necessary or appropriate federal, state, or local public safety, law enforcement, emergency management, or other disaster and emergency response agencies, and state or local dispatch centers in the Commonwealth, and other appropriate interests, and through these agencies and systems to

receive or disseminate emergency information, or to receive timely notification of, and continual assessment of, all threatened or actual emergency incidents or disaster situations occurring anywhere in or near the Commonwealth;

(f) To immediately notify the Governor and the Adjutant General, in the event of any major emergency incidents or disaster occurrences, or the threatened or impending occurrence of any of these events, and to keep the Governor and the Adjutant General informed of all actions being taken in response to these events;

(g) To respond to the scenes of emergencies or disasters, or their threatened or impending occurrence and to directly and immediately investigate, analyze, and assess the nature and seriousness of these situations; to convene meetings, gather information, conduct briefings, and evaluate on-going emergency response activities; take actions to execute the appropriate provisions of the Kentucky Emergency Operations Plan; coordinate the establishment and operation of a state incident management system; establish or manage sub-state or area emergency operations centers, or on-scene command posts; and fully expedite and coordinate the disaster and emergency response of the Commonwealth;

(h) To establish and operate area field offices of the division, each office to be headed by an area manager, responsible for administering the policies, plans, programs, and duties of the division in specific geographic areas of the Commonwealth, including the coordination of comprehensive emergency management programs developed by the cities, counties, urban-county, or charter county governments in the areas;

(i) To provide funds to the cities, counties, and urban-county or charter county governments of the Commonwealth to support the development, administration, operation, and maintenance of local emergency management agencies created pursuant to KRS Chapters 39A to 39F;

(j) To require the regular submission of program administration data, records, materials, reports, or documents from local emergency management agencies as may be necessary and sufficient to conduct performance reviews and assessments to ensure compliance with all state or federal funding and program requirements, and to ensure local program compatibility and consistency with the mission, goals, and objectives of the comprehensive emergency management program and integrated emergency management system of the Commonwealth;

(k) To ascertain the requirements of the Commonwealth and its cities and counties for emergency resources and the necessities of life in the event of disaster or emergency; institute an emergency resource management plan and procure emergency supplies, materials, and equipment; and use or employ in time of emergency any of the property, services, and resources of state or local government in the Commonwealth, for the purposes set forth in KRS Chapters 39A to 39F;

(l) To institute public information and education programs, emergency management training programs, and exercise programs to test and evaluate emergency operations plans and disaster and emergency response and recovery capabilities; and

(m) To promulgate administrative regulations to carry out the provisions of KRS Chapters 39A to 39F.

SECTION 6. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

The General Assembly recognizes that the nature and scope of the activities necessary to develop and to administer a statewide comprehensive emergency management program, together with an integrated emergency management system requires the full support, cooperation, and active participation of all cabinets, departments, divisions, offices, or agencies of state government, local elected officials, local public agencies or entities, special districts, political subdivisions of the Commonwealth, volunteer organizations, individual citizens, and the private sector in this Commonwealth. To provide effective executive leadership for a program area of such broad scope and to ensure the professional administration of the comprehensive emergency management program and integrated emergency management system of the Commonwealth, the General Assembly declares:

(1) The Division of Emergency Management shall be headed by a director recommended by the Adjutant General and appointed by the Governor; and

(2) The director shall have the powers, rights, responsibilities, and authorities, as provided in KRS Chapters 39A to 39F, or other laws, and shall carry out all duties under the general direction of the Adjutant General of the Department of Military Affairs.

SECTION 7. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

The director, with the approval of the Adjutant General, shall exercise the following powers, responsibilities, and duties:

(1) To represent the Governor on all matters pertaining to the comprehensive emergency management program and the disaster and emergency response of the Commonwealth;

(2) To coordinate the development of a statewide comprehensive emergency management program, and through it, an integrated emergency management system for the disaster and emergency response of the Commonwealth;

(3) To promulgate administrative regulations and issue orders, directives, standards, rules, procedures, guidance, or

recommended practices necessary to coordinate the development, administration, organization, operation, implementation, and maintenance of the statewide comprehensive emergency management program and the integrated emergency management system of the Commonwealth;

(4) To coordinate the development of comprehensive emergency management programs by the cities, counties, and urban-county or charter county governments as functional components of the integrated emergency management system of the Commonwealth;

(5) To supervise the development and maintenance of the Kentucky Emergency Operations Plan, and to review and give concurrence to local emergency operations plans required pursuant to KRS Chapters 39A to 39F;

(6) To coordinate the comprehensive emergency management program of the Commonwealth with the emergency management or other emergency response-related programs of the federal government, and of other states, to the fullest appropriate extent;

(7) To advise the Governor and the Adjutant General immediately of the occurrence or threatened or impending occurrence of any disaster or emergency, and to recommend to the Governor any emergency actions, written orders, emergency powers, or executive orders that the Governor should execute;

(8) To serve as the Governor's primary liaison with local officials in the event of the occurrence, or threatened or impending occurrence, of any disaster or emergency in the cities, counties, urban-counties, or charter counties of the Commonwealth;

(9) To take any other preparedness or response actions deemed necessary for adequate response to a disaster or emergency situation to include: requesting increased readiness activities by state or local agencies in advance of an actual disaster or emergency; requesting implementation of local emergency operations plans or the activation of local emergency operations centers; requesting reports from state or local agencies regarding emergency situations, damage assessments, or the taking of emergency response actions; and requesting the mobilization or deployment of any trained and equipped forces of state or local government for the disaster and emergency response purposes set forth in KRS Chapters 39A to 39F;

(10) To request and utilize the personnel, equipment, services, and facilities of existing officers and agencies of the Commonwealth and of all political subdivisions and special districts. All these officers and agencies shall fully cooperate with and extend their resources to the director as requested;

(11) To employ measures and give directions to the state or local boards of health as necessary for the purpose of securing compliance with the provisions of KRS Chapters 39A to 39F, or with the findings or recommendations of the boards of health, because of conditions arising from disasters, emergency situations, national security emergencies, or the threat thereof;

(12) To request and utilize the services of state and local law enforcement officers for the purpose of securing compliance with the provisions of KRS Chapters 39A to 39F, or any order of the Governor pertaining to disaster and emergency response;

(13) On behalf of this Commonwealth, with the approval of the Governor or act of the General Assembly, to enter into reciprocal aid agreements or compacts with other states and the federal government, either on a statewide, local, county, or city basis, or with other states or a province of a foreign country. The mutual aid agreements shall be limited to the furnishing or exchange of food, clothing, medicine, and other supplies; engineering services; emergency housing; police services; national guard personnel and resources while under the control of the state; health, medical, and related services; firefighting; rescue; search and rescue or recovery; urban search and rescue; hazardous materials response services, transportation and construction services and equipment; personnel necessary to provide or conduct these services and other supplies, equipment, facilities, personnel, and services as needed; the reimbursement of costs and expenses for equipment, supplies, personnel, and similar items for mobile support units, firefighting, search and rescue and police units and health units; and on the terms and conditions deemed necessary;

(14) To sponsor and develop mutual aid plans and agreements among the urban-county or charter county governments, counties, cities, and other political subdivisions and special districts of the Commonwealth, similar to the mutual aid arrangements with other states referred to in subsection (13) of this section;

(15) To procure motor vehicles, radio, and telecommunications equipment, protective clothing, safety equipment, and other necessary supplies and materials to meet the emergency response, operational, and administrative needs of the division;

(16) To identify deficiencies existing in the emergency management program organization, facilities, and capabilities of the Commonwealth, including but not limited to: personnel and administrative resources; state, sub-state, area, or local emergency operations centers; mobile command posts; emergency telecommunications and computer systems; alerting and warning systems; stockpiles of critical resources; or any other necessary elements, and to recommend to the Adjutant General, for consideration by the Governor or the General Assembly or other appropriate funding

authority, the administrative or operational funding requirements, and long range capital construction or improvement projects, needed to meet the emergency management infrastructure needs of the Commonwealth;

(17) To serve as the state coordinating officer and notify the Governor of the appropriations necessary to fund the expected emergency operational or response costs of the division, and the Commonwealth's share of the grants provided by PL 93-288, Title V, Federal Disaster Assistance Programs as amended by PL 100-707, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, or successor Acts or Titles, and further, take action necessary to ensure entitlement to all other federal relief or assistance programs;

(18) To cooperate with the President of the United States, the Federal Emergency Management Agency, and other appropriate federal offices and agencies, and the offices and agencies of other states in matters pertaining to the comprehensive emergency management program of the Commonwealth and nation; and in connection with these, to take any measures considered necessary to implement any request of the President and the appropriate federal offices and agencies, for any action requiring effective disaster and emergency response, including the direction or control and mobilization of disaster and emergency response forces; tests and exercises, warnings, and signals for drills or other emergency response activities and the mechanical devices to be used in connection with these; the shutting off of water mains, gas mains, electric power connections, and the suspension of all other utility services; the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, prior, and subsequent to a drill, emergency, declared emergency or disaster; public meetings or gatherings; and the evacuation and sheltering of the civilian population; and

(19) To delegate any authority vested in the director under KRS Chapters 39A to 39F and to provide for the subdelegation of any such authority.

SECTION 8. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

The Governor may make, amend, and rescind any executive orders as deemed necessary to carry out the provisions of KRS Chapters 39A to 39F.

SECTION 9. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) In the event of the occurrence or threatened or impending occurrence of any of the situations or events contemplated by Section 1, 2, or 3 of this Act, the Governor may declare, in writing, that a state of emergency exists. The Governor shall have and may exercise the following emergency powers during the period in which the state of emergency exists:

(a) To enforce all laws, and administrative regulations relating to disaster and emergency response and to assume direct operational control of all disaster and emergency response forces and activities in the Commonwealth;

(b) To require state agencies and to request local governments, local agencies, and special districts to respond to the emergency or disaster in the manner directed;

(c) To seize, take, or condemn property for the protection of the public or at the request of the President, the Armed Forces, or the Federal Emergency Management Agency of the United States, including:

1. All means of transportation and communication;

2. All stocks of fuel of whatever nature;

3. Food, clothing, equipment, materials, medicines, and all supplies; and

4. Facilities, including buildings and plants;

(d) To sell, lend, give, or distribute any of the property under paragraph (c) of this subsection among the inhabitants of the Commonwealth and to account to the State Treasurer for any funds received for the property;

(e) To make compensation for the property seized, taken, or condemned under paragraph (c) of this subsection;

(f) To exclude all nonessential, unauthorized, disruptive, or otherwise uncooperative personnel from the scene of the emergency, and to command those persons or groups assembled at the scene to disperse. A person who refuses to leave an area in which a written order of evacuation has been issued in accordance with a written declaration of emergency or a disaster may be forcibly removed to a place of safety or shelter, or may, if this is resisted, be arrested by a peace officer. Forcible removal or arrest shall not be exercised as options until all reasonable efforts for voluntary compliance have been exhausted;

(g) To declare curfews and establish their limits;

(h) To prohibit or limit the sale or consumption of goods or commodities for the duration of the emergency;

(i) To perform and exercise other functions, powers, and duties deemed necessary to promote and secure the safety and protection of the civilian population; and

(i) To request any assistance from agencies of the United States as necessary and appropriate to meet the needs of the people of the Commonwealth.

(2) In the event of the occurrence or threatened or impending occurrence of any of the situations or events contemplated by Section 1, 2, or 3 of this Act, which in the judgment of a local chief executive officer is of such severity or complexity as to require the exercise of extraordinary emergency measures, the county judge/executive of a county other than an urban-county government, or mayor of a city or urban-county government, or chief executive of other local governments or their designees as provided by ordinance of the affected county, city, or urban-county may declare in writing that a state of emergency exists, and thereafter, subject to any orders of the Governor, shall have and may exercise for the period as the state of emergency exists or continues, the following emergency powers:

(a) To enforce all laws and administrative regulations relating to disaster and emergency response and to direct all local disaster and emergency response forces and operations in the affected county, city, urban-county, or charter county;

(b) To exclude all nonessential, unauthorized, disruptive, or uncooperative personnel from the scene of the emergency, and to command persons or groups of persons at the scene to disperse. A person who refuses to leave an area in which a written order of evacuation has been issued in accordance with a written declaration of emergency or a disaster may be forcibly removed to a place of safety or shelter, or may, if this is resisted, be arrested by a peace officer. Forcible removal or arrest shall not be exercised as options until all reasonable efforts for voluntary compliance have been exhausted;

(c) To declare curfews and establish their limits;

(d) To order immediate purchase or rental of, contract for, or otherwise procure, without regard to procurement codes or budget requirements, the goods and services essential for protection of public health and safety or to maintain or to restore essential public services; and

(e) To request emergency assistance from any local government or special district and, through the Governor, to request emergency assistance from any state agency and to initiate requests for federal assistance as are necessary for protection of public health and safety or for continuation of essential public services.

SECTION 10. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

If property is taken for temporary use, pursuant to the provisions of this chapter, the Governor shall, within thirty (30) days of the taking, fix the amount of compensation to be paid for the property. If the property is returned to the owner in a damaged condition or is not returned to the owner, the Governor shall, within thirty (30) days after the taking, fix the amount of compensation to be paid for the damage or failure to return. When the Governor deems it advisable for the state to take title to property taken under this section, the owner shall be notified in writing by certified mail, return receipt requested, and a copy of the notice shall be filed with the Secretary of State.

SECTION 11. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

If the owner of any property seized, taken, or condemned pursuant to Section 10 of this Act refuses to accept as adequate the compensation fixed by the Governor, the owner may present a claim to the Board of Claims, which shall hear and determine it according to the provisions of KRS Chapter 44 and the administrative regulations of the board.

SECTION 12. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) The owner of property seized, taken, or condemned may appeal from the award of the Board of Claims to the Circuit Court of the county of the owner's residence. The Rules of Civil Procedure shall, so far as applicable, govern the procedure on appeal. A trial de novo shall not be allowed unless the record on appeal is not sufficient to determine the matter from the record, but if the action is tried it shall be tried according to the practice prescribed for the trial of jury cases.

(2) An appeal from the judgment of Circuit Court may be taken to the Court of Appeals.

SECTION 13. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) If the owner of property seized, taken, or condemned accepts as adequate the compensation fixed by the Governor, the owner shall file a statement of the amount of compensation from the Governor with the Finance and Administration Cabinet, which shall draw a warrant on the State Treasurer for the amount of the compensation in favor of the person entitled to payment.

(2) If the compensation is determined by award of the Board of Claims or judgment of a court, as provided in Sections 10, 11, and 12 of this Act, a certified copy of the award or judgment shall be filed with the Finance and Administration Cabinet which shall draw a warrant on the State Treasurer for the amount of the award or judgment.

(3) The State Treasurer shall pay the warrants out of any money in the Treasury not otherwise appropriated.

SECTION 14. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Emergency Operations Plan and local emergency operations plans shall include measures for, and the

Governor for the state or portion thereof, the county judge/executive for a county other than an urban-county, or a portion thereof, and the mayor for a city or an urban-county or portion thereof, may issue written executive orders providing for:

(a) The control of traffic in order to provide for rapid and safe movement in evacuation over public highways and streets during any disaster or emergency;

(b) The control and alteration of speed limits and traffic regulations on public highways during any disaster or emergency; and

(c) The prohibition or limitation of use of motor vehicles on public highways during any disaster or emergency.

(2) The Governor may extend the provisions of subsection (1) of this section to the public thoroughfares of any political subdivision of the Commonwealth.

(3) The Governor may order agencies of state government and political subdivisions of the Commonwealth to take steps necessary to effectuate plans made or orders issued pursuant to this section.

(4) During a declared emergency or disaster, the Governor, county judge/executive, or mayor, may, for their respective jurisdictions, place these plans in effect.

SECTION 15. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

For the purpose of making surveys and investigations and obtaining information which may be necessary to the operation or enforcement of KRS Chapters 39A to 39F, the Governor, or the director with the written approval of the Governor, may compel by subpoena the attendance of witnesses, and the production of books, papers, records, and documents of individuals, firms, associations, and corporations. All officers, boards, commissions, and divisions of the state, the political subdivisions thereof, and special districts, having information which is the subject of the investigation, shall cooperate with and assist the Governor or the director in making the investigation and surveys.

SECTION 16. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding any inconsistent provision of law, the Governor may, when it is found to be in the public interest:

(a) Authorize any division or agency of the state to lease or lend, on such terms and conditions as deemed necessary to promote the public welfare and protect the interests of the state, any real or personal property of the state government to the President of the United States, the chiefs of the Armed Forces, or to the Federal Emergency Management Agency;

(b) Enter into a contract on behalf of the state for the lease or loan to any political subdivision of the state on such terms and conditions as may be deemed necessary to promote the public welfare and protect the interests of the state, of any real or personal property of the state government, or the temporary transfer or employment of personnel of the state government to or by any political subdivision of the state; and

(c) Permit state employees to engage in disaster and emergency response activities, within or without the state, for the division, or for a local jurisdiction upon request of a local emergency management agency to the division. State employees assigned to or volunteering for this duty shall be considered as being employed by the agency by which they are regularly employed and shall continue to receive salary and benefits while engaging in disaster and emergency response work.

(2) The permission of the Governor for the use of state employees in the manner specified in subsection (1)(c) of this section shall be presumed, and shall be automatic unless the Governor specifies otherwise with regard to the use of a specific employee or employees.

(3) The Chief Justice for the Court of Justice and the Director of the Legislative Research Commission, with regard to employees of their respective branches of government, may permit Court of Justice and legislative employees to engage in disaster and emergency services work under the same terms and conditions as specified in subsections (1) and (2) of this section.

SECTION 17. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) The political subdivisions of the state and other agencies designated or appointed by the Governor may make, amend, and rescind orders and promulgate administrative regulations necessary for disaster and emergency response purposes, and to supplement the carrying out of the provisions of this chapter, if not inconsistent with any orders or administrative regulations promulgated by the Governor or by any state agency exercising a power delegated to it by the Governor.

(2) All written orders and administrative regulations promulgated by the Governor, the director, or by any political subdivision or other agency authorized by KRS Chapters 39A to 39F to make orders and promulgate administrative regulations, shall have the full force of law, when, if issued by the Governor, the director, or any state agency, a copy is filed with the Legislative Research Commission, or, if promulgated by an agency or political subdivision of the state, when filed in the office of the clerk of that political subdivision or agency. All existing laws, ordinances, and

administrative regulations inconsistent with the provisions of KRS Chapters 39A to 39F, or of any order or administrative regulation issued under the authority of KRS Chapters 39A to 39F, shall be suspended during the period of time and to the extent that the conflict exists.

(3) The law enforcement authorities of the state and of its counties, urban-counties, charter counties, and cities shall enforce the written orders and administrative regulations issued pursuant to KRS Chapters 39A to 39F.

SECTION 18. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

A peace officer may arrest without a warrant any person violating or attempting to violate in the officer's presence any order or administrative regulation made pursuant to this chapter, or KRS Chapter 39B, 39C, 39D, 39E, or 39F.

SECTION 19. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

When the federal government or any agency or officer thereof shall offer to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of disaster and emergency response, the state, acting through the Governor, or the political subdivision, acting through its chief executive or governing body, may accept the offer and upon acceptance the Governor of the state or chief executive or governing body of the political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive the services, equipment, supplies, materials, or funds on behalf of the state or the political subdivision, and subject to the terms of the offer.

SECTION 20. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

The director of the Division of Emergency Management, and the local director of any local emergency management agency, shall at the time of appointment and before entering upon his or her assigned duties, take an oath, in writing, before a person authorized to administer oaths in this Commonwealth, which shall be as follows:

> *"I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of this Commonwealth and be faithful and true to the Commonwealth of Kentucky so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my ability, the office of emergency management director according to law;*
>
> *And I do further solemnly swear (or affirm) that since the adoption of the present Constitution, I, being a citizen of this state, have not fought a duel with deadly weapons within this state, nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, nor aided or assisted any person thus offended, so help me God."*

SECTION 21. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) Each agency, board, or commission of state government, unless the requirement is waived, in writing, by the director, shall develop agency emergency operations procedures which are consistent with and which meet the requirements of the Kentucky Emergency Operations Plan. The agency emergency operations procedures shall be updated not less than yearly.

(2) Each agency, board, or commission of state government shall take those measures necessary to ensure that it can continue to operate during times of disaster or emergency, that it can protect its vital records, and that it has designated at least four (4) persons, preferably by title, who may act for the agency, and for its major component operations, during an emergency or disaster if the primary person with the power to make necessary decisions is unavailable for any reason.

(3) In carrying out the provisions of subsections (1) and (2) of this section, each agency, board, or commission of state government shall follow the general planning guidance of the division and the requirements of administrative regulations promulgated by the division.

(4) Each agency, board, or commission of state government shall train its employees with regard to the contents of the agency emergency operations procedures, and shall give any additional training necessary to implement the procedures during times of emergency or disaster.

(5) Each agency, board, or commission of state government shall, upon request of the director, send an employee of the agency with full authority to take any action on behalf of the agency to the State Emergency Operations Center, area offices of the division, state command posts or other designated location during periods of emergency or disaster.

(6) As used in this section, agency, board, or commission means all agencies, unless the requirement is waived, in writing, by the director, listed in KRS 12.020, other state bodies created by executive order of the Governor, the Legislative Research Commission, and the Court of Justice and its agencies.

SECTION 22. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Emergency Operations Plan shall include procedures for one multi-risk, multi-agency, unified incident command or management system to be used by all state agencies responding to the scene of an emergency, declared emergency, disaster, or catastrophe, as contemplated by Section 1, 2, or 3 of this Act.

(2) Local emergency operations plans shall include procedures for:

(a) An incident command or management system to be used by individual local agencies or departments when responding to the scene of day-to-day, routine emergency incidents; and

(b) One unified incident command or management system to be used by all local agencies or departments when responding to the scene of a multi-agency or multi-jurisdictional emergency, declared emergency, disaster, or catastrophe, as contemplated by Section 1, 2, or 3 of this Act.

(3) All incident command or management system procedures required pursuant to subsections (1) or (2) of this section shall be based upon or utilize the five (5) functions of: command, operations, planning, logistics, and finance.

SECTION 23. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) The division shall maintain the State Emergency Operations Center and those alternate locations deemed necessary, and shall activate the State Emergency Operations Center when deemed necessary by the director, the Adjutant General, or the Governor.

(2) Each cabinet of state government, and each independent agency of state government, and other organizations provided for in the Kentucky Emergency Operations Plan shall immediately send a designated person to the State Emergency Operations Center upon request of the director, during a time of emergency or disaster or the threatened or impending happening of such an incident. They shall remain at the State Emergency Operations Center until relieved and replaced, unless released by the director.

(3) Persons representing agencies of state government or other organizations assigned to the State Emergency Operations Center during times of emergency or disaster or the threatened or impending happening thereof may obligate the funds, equipment, and personnel of the organization which they represent, and make decisions on behalf of the organization which they represent.

SECTION 24. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) Disaster and emergency response functions provided by a state or local emergency management agency, or any emergency management agency-supervised operating units or personnel officially affiliated with a local disaster and emergency services organization pursuant to Section 35 of this Act, shall not, in itself, be deemed to be the making of a promise, or the undertaking of a special duty, towards any person for the services, or any particular level of, or manner of providing, the services; nor shall the provision of or failure to provide these services be deemed to create a special relationship or duty towards any person upon which an action in negligence or other tort might be founded. Specifically:

(a) The failure to respond to a disaster or other emergency, or to undertake particular inspections or types of inspections, or to maintain any particular level of personnel, equipment, or facilities, shall not be a breach of any duty to persons affected by any disaster or other emergency.

(b) When a state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization, does undertake to respond to a disaster or other emergency, the failure to provide the same level or manner of service, or equivalent availability or allocation of resources as may or could be provided, shall not be a breach of any duty to persons affected by that disaster or other emergency.

(c) A state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization shall not have or assume any duty towards any person to adopt, use, or avoid any particular strategy or tactic in responding to a disaster or other emergency.

(d) A state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization, in undertaking disaster and emergency preparedness or prevention activities including inspections, or in undertaking to respond to a disaster or other emergency, shall not have voluntarily assumed any special duty with respect to any risks which were not created or caused by it, nor with respect to any risks which might have existed even in the absence of that activity or response, nor shall any person have a right to rely on such an assumption of duty.

(2) Neither the state nor any political subdivision of the state, nor the agents or representatives of the state or any of its political subdivisions, shall be liable for personal injury or property damage sustained by any person appointed or acting as a volunteer emergency management agency member, or disaster and emergency services member, or disaster and emergency response worker, or member of any agency engaged in any emergency management or disaster and emergency services or disaster and emergency response activity. This immunity shall not affect the right of any person to receive benefits or compensation to which the person might otherwise be entitled under the Workers' Compensation Law, or this chapter, or any pension law, or any act of Congress.

(3) Neither the state nor any political subdivision of the state nor, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or any of its political divisions, nor any volunteer or auxiliary emergency management agency or disaster and emergency services organization member or disaster and emergency response worker or member of any agency engaged in any emergency management or disaster and emergency services or disaster and emergency response activity, complying with or reasonably attempting to comply with this chapter or any order or administrative regulation promulgated pursuant to the provisions of this chapter, or other precautionary measures enacted by any city of the state, shall be liable for the death of or injury to persons, or for damage to property, as a result of that activity.

(4) Decisions of the director, his subordinates or employees, a local emergency management director, or the local director's subordinates or employees, a rescue chief or the chief's subordinates, concerning the allocation and assignment of personnel and equipment, and the strategies and tactics used, shall be the exercise of a discretionary, policy function for which neither the officer nor the state, county, urban-county, charter county, or city, or local emergency management agency-supervised operating unit formally affiliated with a local disaster and emergency services organization, shall be held liable in the absence of malice or bad faith, even when those decisions are made rapidly in response to the exigencies of an emergency.

(5) Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part of the real estate or premises for the purpose of sheltering persons during an actual, impending, mock, or practice disaster or emergency, together with his or her successors in interest, shall not be civilly liable for negligently causing the death of, or injury to, any person on or about the real estate or premises for loss of, or damage to, the property of that person.

SECTION 25. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) The division may enter into agreements with other states with regard to mutual aid for routine provision of emergency management services or for mutual aid during times of emergency or disaster, or any combination of these.

(2) Kentucky emergency management personnel, either working for the state or local government or affiliated with the state or a local government, paid or volunteer, shall, to the extent provided by the law of the host state, have the same rights and privileges as they have in Kentucky.

(3) Emergency management personnel, either working for the state or a local government or affiliated with the state or a local government of another state, paid or volunteer, shall, to the extent provided by Kentucky law, have the same rights and privileges as do Kentucky emergency management personnel working for the state or local government or affiliated with the state or a local government, whether paid or volunteer. This provision shall not apply to the provision of peace officer services, unless approved in writing by the Governor, or the General Assembly, as appropriate for the specific incident.

(4) Kentucky emergency management-provided workers' compensation shall apply to a state or local emergency management agency worker, paid or volunteer, or worker in an operating unit officially affiliated with the division, or worker in a local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization pursuant to Section 35 of this Act, who is serving in another state pursuant to an agreement consummated under this section.

(5) An emergency management worker from another state, paid or volunteer, who is working for or affiliated with the state emergency management agency and who is serving in Kentucky pursuant to an agreement consummated under this section may be accorded Kentucky emergency management workers' compensation coverage by action of the director.

(6) The provisions of subsections (4) and (5) of this section shall not apply to hazardous materials emergency response operations defined in 29 C.F.R. 1910.120 which are above the first-responder operations level, on-scene incident commander level excluded.

(7) An emergency management worker from another state, paid or volunteer, who is working for the state emergency management agency or a local emergency management agency or a worker in an organization affiliated with the state or local emergency management agency of another state who holds license or certification from the worker's state to practice a profession, or paraprofessional activity, or other activity for which a license or certification is required to practice that activity in Kentucky shall be, for the period of that work, under an agreement consummated pursuant to this chapter, considered as properly licensed or certified in Kentucky to perform the services granted by the worker's license or certification. The worker shall, however, while in Kentucky, be subject to discipline by the appropriate Kentucky licensing or certifying agency for acts of misconduct or negligence which are committed in Kentucky.

(8) City, county, urban-county, or charter county emergency management agencies in Kentucky may make written

agreements with similar local emergency management agencies in adjoining states if the agreements are submitted to the state emergency management agencies of both states and are approved in writing by the directors of both agencies. Agreements pursuant to this section shall be subject to the same rights and privileges as state agreements under this section, but shall be limited to two (2) years, unless renewed by submission of a new agreement for approval.

(9) The provisions of this section shall be subject to the provisions of all applicable federal law.

SECTION 26. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) During the threatened or impending happening of a disaster or emergency, the Governor, the Adjutant General, or the Director may authorize the use of public employees, equipment, supplies, materials, funds, or any other publicly owned or supported resources to assist in the mitigation of the potential effects of the disaster or emergency, regardless of whether the use is on public or private property.

(2) During the actual happening of and any part of the response phase of a disaster or emergency the Governor, the Adjutant General, or the Director, shall, when necessary or desirable, authorize the use of public employees, equipment, supplies, materials, funds, or any other publicly owned or supported resource to assist in the operations of government, or the private sector, necessary to deal with the disaster or emergency, regardless of whether the use is on public or private property.

(3) After the active or response phase of the disaster or emergency has passed and the recovery phase has begun, the Governor, the Adjutant General, or the Director may authorize the use of public employees, equipment, supplies, funds, or any other publicly owned or supported resources to assist in the recovery phase of the disaster or emergency, regardless of whether the use is on public or private property.

(4) A formal declaration of disaster or emergency shall not be necessary to invoke the provisions of subsection (1) or (2) of this section.

SECTION 27. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

Any person violating any provision of this chapter or any administrative regulation or order promulgated pursuant to this chapter for which another penalty is not specified shall be guilty of a Class A misdemeanor.

SECTION 28. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

The definitions and other provisions of this chapter shall apply to this chapter and to KRS Chapters 39B, 39C, 39D, 39E, and 39F unless the language or context of a particular statute requires otherwise.

SECTION 29. KRS CHAPTER 39B IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

(1) Each city, county, urban-county or charter county government of this Commonwealth shall create, support, and maintain a local emergency management agency, which shall serve the public safety interest of the local government within the territorial boundaries of the city or county where the agency is created. Each local emergency management agency shall develop, implement, and maintain a local comprehensive emergency management program, including a local emergency operations plan, in accordance with the provisions of KRS Chapters 39A to 39F. The local emergency management agency shall be an integral component of the statewide integrated emergency management system of this Commonwealth, and shall fully comply with all applicable provisions of KRS Chapters 39A to 39F, the comprehensive emergency management program requirements of the Commonwealth, the provisions of the Kentucky Emergency Operations Plan, and all administrative regulations promulgated by the Division of Emergency Management.

(2) Each county government, and the urban-county, charter county, or city governments located within the territorial boundaries of a county, are encouraged to jointly create a single, unified local emergency management agency to serve all local governments collectively, and therefore may, in lieu of creating individual and separate local agencies, jointly create a single, unified local emergency management agency, provided the agency and its program:

- *(a) Fully comply with all the provisions of KRS Chapters 39A to 39F;*
- *(b) Comply with the Interlocal Cooperation Act or locally adopted memorandums of agreement, as necessary and appropriate; and*
- *(c) Are determined to be in compliance with all requirements of KRS Chapters 39A to 39F by the director of the Division of Emergency Management.*

(3) The local emergency management agency shall be an organizational unit of the executive branch of city, county, and urban-county or charter county government and shall have primary jurisdiction, responsibility, and authority for all matters pertaining to the local comprehensive emergency management program and, under the general supervision of the local emergency management director, shall serve as a direct function of the office of county judge/executive or mayor. In accordance with the policies of the state-local finance officer, a separate emergency management agency fund account shall be designated and included in the city, county, and urban-county or charter

county budget ledgers, and all financial matters of a local emergency management agency, involving funds provided through the Division of Emergency Management, shall be handled through the county, urban-county, or charter county treasury and financial system.

(4) City, county, and urban-county or charter county governments may use the term "emergency management" in a manner or form appropriate to constitute and designate the official name of the local emergency management agency established pursuant to this chapter, except for any use of the term "Division of Emergency Management" specified to constitute and designate the official name of the state emergency management agency pursuant to Section 3 of this Act. The term "emergency management" may be used in a manner or form appropriate to constitute and designate the official name of a local emergency management council, or the statewide association of emergency management agencies or personnel, but shall not be utilized by, assigned to, or otherwise specified by any local unit, agency, or department, or any political subdivision of the Commonwealth in any manner or form to constitute or designate the official name of the local unit, agency, or department, or political subdivision, except as authorized in this subsection.

(5) All local emergency management agencies or local disaster and emergency services organizations in the Commonwealth, and the local directors, and members of each, shall, for all purposes, be under the direction of the director of the division, and of the Governor when the latter deems that action necessary.

SECTION 30. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

(1) The county judge/executive of each county, the mayor of each city or urban-county government, or the chief executive of other local government, within thirty (30) days of assuming office following their election, shall appoint a local emergency management director who meets all qualifications criteria pursuant to KRS Chapters 39A to 39F, and shall immediately notify the director of the Division of Emergency Management of the appointment.

(2) In lieu of appointing a separate local emergency management director for each jurisdiction, the county judge/executive of a county and mayors of cities or urban-county governments, or the chief executive of other local government located within the territorial boundaries of the same county may jointly appoint a single local emergency management director who meets all the qualifications criteria pursuant to KRS Chapters 39A to 39F. It is the policy of the Division of Emergency Management to encourage and support the joint appointment of a single local director in each territorial county of the Commonwealth. The duly appointed local emergency management director shall direct, control, and manage all the affairs of the local emergency management agency and comprehensive emergency management program of the jurisdictions wherein appointed.

(3) A local emergency management director appointed under the provisions of subsections (1) or (2) of this section shall serve at the pleasure of the appointing authority, but shall serve not longer than four (4) years without reappointment and, in addition to any local requirements, shall meet the qualification requirements listed in this subsection:

- *(a) The local director shall be a high school graduate with an additional three (3) years of experience in business administration, government planning, industrial, or commercial planning, public safety, management of emergency services, or related community or governmental service. Management level experience may not be substituted for high school education. Education at an accredited college or university may be substituted for experience on a year-for-year basis.*
- *(b) The local director shall be a resident of the Commonwealth of Kentucky and the county served.*
- *(c) The local director shall hold no partisan elective office, nor file for, seek, or campaign for any partisan elective office while holding the position of local emergency management director.*
- *(d) The local director shall be routinely available to respond to emergency scenes, command posts, or emergency operations centers to coordinate emergency response of all local public and private agencies and organizations; to perform necessary administrative, planning, and organizational duties; to complete and submit required reports, records, emergency operations plans, and documents; to attend required training; and attend meetings convened by the appointing authority or the area manager of the division.*
    - *1. If the local director is also a full-time or part-time employee of the federal or state government, the local director shall have written authorization from the appropriate appointing authority to hold the position of local emergency management director and to fully comply with the provisions of paragraph (d) of this subsection. A copy of the written authorization shall be submitted to the division at the time of appointment.*
    - *2. If the local director is also a full-time or part-time employee of a city, county, urban-county government or charter county government in another capacity, that government shall enact an official city or county order or ordinance specifying that the individual appointed as local emergency management director shall fully comply with the provisions of paragraph (d) of this subsection. The order or ordinance shall also specify that the individual, when performing the duties of local*

emergency management director, shall relinquish all authorities and responsibilities associated with any other governmental employment and shall indicate another person, by name or position, to assume those authorities and responsibilities until such time as the local director shall cease to function as local emergency management director. A copy of the enacted order or ordinance shall be submitted to the division at the time of appointment. The city, county, or urban-county government, or charter county government shall not seek reimbursement from the division for the local director's salary for any time spent in another capacity.

3. If the local director is also a full-time or part-time employee in the private sector, the local director shall have a letter from each employer stating that the local director shall, without penalty or exception, be permitted to fully comply with the provisions of paragraph (d) of this subsection. A copy of the letter from each employer shall be submitted to the division at the time of appointment.

4. If the local director is self-employed, the local director shall certify at the time of appointment, by letter to the director of the division, that the local director's schedule shall permit full compliance with the provisions of paragraph (d) of this subsection.

(4) A local director whose salary has been reimbursed by the division prior to January 1, 1994, shall not be subject to the provisions of subsection (3)(a) of this section, so long as remaining continuously in that position for the appointing jurisdiction.

(5) A local director whose salary is reimbursed in part or in full by the Division of Emergency Management pursuant to Sections 40 and 41 of this Act, shall also meet any other requirements of KRS Chapters 39A to 39F and any requirements which may be imposed by the Federal Emergency Management Agency, or its successor.

SECTION 31. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

A local emergency management director, appointed pursuant to this chapter, shall have the following powers, authorities, rights, and duties:

(1) To represent the county judge/executive or mayor on all matters pertaining to the comprehensive emergency management program and the disaster and emergency response of the county, urban-county, charter county, or the county and the cities therein, unless there is a local director appointed for a city in accordance with this chapter, who represents that city;

(2) To be the executive head and chief administrative officer of the local emergency management agency, and to direct, control, supervise, and manage, the development, preparation, organization, administration, operation, implementation, and maintenance of the comprehensive emergency management program of the county, urban-county government, charter county government, or the county and the cities therein, and to coordinate all local disaster and emergency response, unless there is a local director appointed for a city in accordance with this chapter, who represents that city;

(3) To develop and maintain a local emergency operations plan entitled "county emergency operations plan," or "city emergency operations plan," or "city/county emergency operations plan," as appropriate, the provisions of which shall establish the organizational structure to be utilized by local government to manage disaster and emergency response, and set forth the policies, procedures, and guidelines for the coordination of all disaster and emergency response in the county and all the cities therein for an emergency, declared emergency, disaster, or catastrophe. The local emergency operations plan shall be developed consistent with the appropriate provisions of the Kentucky emergency operations plan, the provisions of KRS Chapters 39A to 39F, planning guidance issued by the division, and administrative regulations promulgated by the division. The local emergency operations plan shall be officially adopted by signed executive order of the county judge/executive or mayor. The executive order shall be filed with the office of the clerk for the local jurisdiction and a copy placed in the local emergency operations plan. A copy of the local emergency operations plan, and all revisions or updates thereto, shall be submitted by the local director to the Division of Emergency Management for concurrence review and reference. The local emergency operations plan shall be a component of the integrated emergency management system of the Commonwealth, and subject to the Kentucky Emergency Operations Plan, shall be the primary local strategic planning document governing the coordination of all disaster and emergency response in the county, city, or the county and the cities therein, and shall be applicable to, utilized by, and adhered to by, all local emergency response departments, agencies, and officials of the local disaster and emergency services organization in the county and the cities therein. The local emergency operations plan shall be updated not less than annually;

(4) To establish and maintain a local disaster and emergency services organization in accordance with the local emergency operations plan, the Kentucky Emergency Operations Plan, and the provisions of Section 33 of this Act;

(5) To notify the county judge/executive, mayor, or executive authority of other local governments and the Division of Emergency Management immediately of the occurrence, or threatened or impending occurrence, of any emergency or disaster, and recommend any emergency actions which should be executed;

(6) To be the chief advisor to, and the primary on-scene representative of, the county judge/executive, mayor, or executive authority of other local governments in the event of occurrence of any emergency, declared emergency, disaster, or catastrophe within the local jurisdiction;

(7) To respond and have full access to the scenes of an emergency, declared emergency, disaster, or catastrophe to immediately investigate, analyze, or assess the seriousness of all situations; to take or direct immediate actions to protect the public safety; to coordinate the establishment and operation of a local incident command or management system; to execute the local emergency operations plan, as appropriate; to activate the local emergency operations center or on-scene command post; to convene meetings, gather information, conduct briefings, and to notify the division of on-going response actions; and fully expedite and coordinate the disaster and emergency response of all local public and private agencies, or to have a staff assistant do so;

(8) To act as an official representative of the division in emergency situations when specifically requested by the director;

(9) To report directly to the county judge/executive, mayor, or executive authority of other local governments, act in an official policy-making capacity when carrying out the duties of local emergency management director, and exercise full signatory authority for execution of all contracts, agreements, or other official documents pertaining to the administration and operation of the local emergency management agency and program;

(10) To direct or supervise all paid or volunteer emergency management staff assistants or other local emergency management agency workers, and all operating units or personnel officially appointed and affiliated with the local disaster and emergency services organization pursuant to Section 35 of this Act;

(11) To prepare and submit regular or scheduled program activity reports to the area manager of the division and local chief executives;

(12) To execute bond, if appropriate, in the amount determined by the appointing authorities;

(13) Annually, by the first day of March, to prepare and submit a program budget request to the county judge/executive and mayor;

(14) Annually, by the fifteenth day of July, to prepare and submit to the division a locally-approved, fiscal year program paper and budget request;

(15) To perform all administrative, organizational, or operational tasks required by the provisions of this chapter, or administrative regulations, or program guidance pertaining thereto;

(16) To be a registered member of the Kentucky Emergency Management Association or other professional emergency management organization; and

(17) To carry out all other emergency management-related duties as required by KRS Chapters 39A to 39F, administrative regulations, or local orders or ordinances.

SECTION 32. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

(1) The local director of each local emergency management agency in the Commonwealth may develop or cause to be developed mutual aid arrangements with special districts and other public and private agencies within this Commonwealth for reciprocal disaster and emergency response aid and assistance in case of disaster or other emergency too great to be dealt with unassisted. The arrangements shall be consistent with the Kentucky Emergency Operations Plan, the local emergency operations plan, and the comprehensive emergency management program of the Commonwealth, and in time of emergency it shall be the duty of each local disaster and emergency services organizational unit, including each special district, and each public or private agency, to render assistance in accordance with the provisions of these mutual aid arrangements.

(2) The local director of each local emergency management agency in the Commonwealth may assist the division, acting on behalf of the Governor, in negotiation of reciprocal mutual aid agreements between the Commonwealth and other states, including foreign states or provinces, or their political subdivisions, and shall carry out the arrangements or any agreements relating to the local political subdivision.

SECTION 33. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

(1) Each local emergency management director shall establish and maintain a local disaster and emergency services organization in accordance with a city or county or city/county emergency operations plan required pursuant to KRS Chapters 39A to 39F. The local disaster and emergency services organization shall be comprised of the following members and participants:

- *(a) The county judge/executive and mayors, or the chief executive of other local governments;*
- *(b) Elected legislative officials of the county and cities;*
- *(c) The local emergency management director and all local emergency management agency staff members and workers, or emergency management agency-supervised operating units or personnel;*

(d) All regular or volunteer public safety or emergency services department heads or agency chiefs in the cities or county;

(e) All regular or volunteer public safety or emergency services department or agency members in the cities or county;

(f) All districts, corporations, public agencies, groups, or political subdivisions of the state and special districts within the county or the cities thereof, which are organized under the laws of the Commonwealth to provide an emergency response service or related function in the interest of public safety; and

(g) All private sector personnel, agencies, organizations, companies, businesses, or individuals and citizens who agree to provide their assets, resources, talents, services, or supplies in aid to the local disaster and emergency services organization of the cities or county in accordance with the approved local emergency operations plan of the city, county, urban-county government, or charter county government.

(2) The local disaster and emergency services organization shall have responsibility for the performance of all disaster and emergency response functions contemplated in Section 1, 2, or 3 of this Act and as listed or assigned in the city, county, or city/county emergency operations plan, except that the Division of Forestry of the Natural Resources and Environmental Protection Cabinet shall have primary responsibility for directing the implementation of all forest fire emergency responses consistent with KRS Chapter 149. Disaster and emergency response functions may be assigned within the local disaster and emergency services organization to existing agencies and organizations, public and private. It shall not be necessary for the local disaster and emergency services organization to create, provide, or maintain an additional or auxiliary capability for any existing function or service deemed adequate to local needs.

(3) The local disaster and emergency services organization shall be the primary disaster and emergency response force of city, county, urban-county government, or charter county government and an organizational component of the integrated emergency management system of the Commonwealth. The local emergency management director shall have primary responsibility for the coordination of all disaster and emergency response of the local disaster and emergency services organization for an emergency, declared emergency, disaster, or catastrophe.

SECTION 34. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

(1) The city or county or city/county emergency operations plan developed pursuant to the provisions of KRS Chapters 39A to 39F shall include adequate provisions or procedures to assess, mitigate, prepare for, respond to, and recover from all disaster or emergency incidents contemplated by Section 1, 2, or 3 of this Act and shall provide for all functions contemplated by these sections.

(2) The local emergency operations plan shall be submitted by the local director to the county judge/executive, mayor, or chief executive of other local governments immediately following each regular election for these offices, for approval and adoption by the local chief executives through issuance of an executive order pursuant to the provisions of KRS Chapters 39A to 39F.

(3) In the event of a conflict between a city emergency operations plan and a county emergency operations plan and decisions made thereunder:

(a) The decision made pursuant to the county plan shall prevail if the incident, its consequences, or the threat thereof, extend beyond the boundaries of the city;

(b) The decision made pursuant to the city plan shall prevail if the incident, its consequences, or the threat of the incident, do not extend beyond the boundaries of the city; and

(c) The same precedence shall govern plans of urban-counties and charter counties.

SECTION 35. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

Each city, county, urban-county government, or charter county government may:

(1) Through the county judge/executive of a county other than an urban-county government, mayor of an urban-county government, chief executive of other local governments, or mayor of a city, or their designees as provided by ordinance, declare in writing a state of emergency when required, and thereafter execute any emergency powers granted under this chapter to provide for adequate and appropriate response to any occurrence or situation or any impending event or situation resulting from any of the situations or events contemplated by Section 1, 2, or 3 of this Act;

(2) Appropriate and expend funds, make contracts, enact cost-recovery ordinances, obtain and distribute equipment, materials, and supplies for disaster and emergency response purposes; provide for the health and safety of persons and property, including emergency assistance to the victims of any disaster or emergency; review or approve local emergency operations plans; and enact orders or ordinances pertaining to local emergency management programs in accordance with the policies and plans prescribed by the federal and state emergency management agencies and the provisions of KRS Chapters 39A to 39F;

(3) Appoint, employ, remove, or provide, with or without compensation, staff assistants to the local emergency

management director, and clerical, administrative, technical or other local emergency management agency staff personnel, and local emergency management agency-supervised operating units officially affiliated with the local disaster and emergency services organization by city or county order or ordinance including rescue squads, auxiliary fire, police, and medical personnel, urban search and rescue teams, severe weather spotters teams, damage assessment teams, amateur radio or communications personnel, or other emergency response groups, teams, or personnel, and other disaster and emergency response workers;

(4) Establish a primary and one (1) or more secondary emergency operations centers or on-scene command posts to serve as official local government command posts during an emergency, declared emergency, disaster, or catastrophe;

(5) Subject to the order of the Governor, or the chief executive of the county, urban-county government, charter county government, or city, to assign and make available for duty, the employees, property, or equipment of the county or city relating to firefighting, engineering, rescue, health, medical and related services, police, transportation, construction, and similar items or services for disaster and emergency response purposes within or outside of the physical limits of the county, urban-county government, charter county government, or city;

(6) In the event of a national emergency or state of declared emergency or declared disaster or catastrophe, as provided in Section 9 of this Act, waive procedures and formalities otherwise required by the law pertaining to: the performance of public work; entering into contracts; the incurring of obligations; the employment of permanent and temporary workers; the utilization of volunteer workers; the rental of equipment; the purchase and distribution, with or without compensation, of supplies, materials, and facilities; the appropriation and expenditure of public funds; and the demolition and removal of damaged public and private structures; and

(7) Confer or authorize the conferring upon members of the auxiliary police the powers of peace officers, subject to the provisions of KRS 61.300, and any other restrictions imposed by the appointing authority.

SECTION 36. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

When the employees of any county, urban-county, charter county, or city are rendering outside aid pursuant to the authority contained in this chapter, the employees shall have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in the jurisdiction in which they are normally employed.

SECTION 37. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

(1) The city, county, urban-county government or charter county government, in which any equipment is used pursuant to this chapter shall be liable for any loss or damage thereto and shall pay any expense incurred in the operation and maintenance thereof. No claim for loss, damage, or expense shall be allowed unless, within sixty (60) days after it is sustained or incurred, an itemized written notice of the claim under oath is served by mail or otherwise upon the chief fiscal officer of the county, urban-county, charter county, or city where the equipment was used. The county, urban-county, charter county, or city which is aided pursuant to this chapter shall also reimburse the county, urban-county, charter county, or city furnishing the aid for the compensation paid to employees furnished under this chapter during the time of the rendition of the aid, and shall defray the actual traveling and maintenance expenses of the employees while they are rendering the aid. Reimbursement shall include any amounts paid or due to compensation due to personal injury or death while employees are engaged in rendering aid. The term "employee" as used in this section shall mean, and the provisions of the section shall apply with equal effect to, paid, volunteer, or auxiliary employees, and other local emergency management agency or disaster and emergency response workers.

(2) The rights, privileges, and obligations set out in this section shall also apply if aid is rendered outside the Commonwealth. Payment or reimbursement in this case shall be made by the state or political subdivision receiving the aid pursuant to a reciprocal mutual aid agreement or compact with another state or by the federal government.

SECTION 38. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

The chief executive or governing body of each political subdivision of the state may:

(1) Enter into a contract or lease with the state, or accept any loan, or employ personnel, and the political subdivision may equip, maintain, utilize, and operate any property and employ necessary personnel therefor in accordance with the purposes for which the contract is executed; and

(2) Do all things and perform all acts deemed necessary to effectuate the purpose for which the contract was entered into in accordance with the Kentucky Emergency Operations Plan.

SECTION 39. A NEW SECTION OF KRS CHAPTER 39B IS CREATED TO READ AS FOLLOWS:

Any person violating any provision of this chapter or any administrative regulation or order promulgated pursuant to this chapter for which another penalty is not specified shall be guilty of a Class A misdemeanor.

SECTION 40. KRS CHAPTER 39C IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

In order to develop and maintain effective local emergency management agencies, and comprehensive emergency management programs and related activities, it is declared to be the policy of the Commonwealth of Kentucky to encourage and assist the counties, cities, urban-county governments or charter county governments of the Commonwealth by authorizing, and there is hereby authorized, the expenditure of supplementary state funds for local emergency management agencies which are created, administered, operated, and maintained pursuant to KRS Chapters 39A to 39F, and are integral components of the integrated emergency management system of this Commonwealth.

SECTION 41. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

Supplementary state funds appropriated to the division shall be allocated by the division to local emergency management agencies on a reimbursement basis in amounts not to exceed fifty percent (50%) of the total local funds expended by the local agencies in any given year for the institution, administration, or support of the comprehensive emergency management programs of the city, county, urban-county government or charter county government.

SECTION 42. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

The purpose of the supplementary state fund established in Sections 40 and 41 of this Act is to:

(1) Assist local emergency management agencies established pursuant to KRS Chapters 39A to 39F to develop adequate comprehensive emergency management programs and disaster and emergency response capabilities;

(2) Maintain and improve these agencies, programs, and capabilities through enhanced training, planning, staffing, administration, operations, and equipment acquisition; and

(3) Benefit the Commonwealth as a whole, through creation of an effective and responsive statewide integrated emergency management system.

SECTION 43. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

(1) The Director of the Division of Emergency Management shall have overall responsibility for policy, guidance, administration, and proper utilization of the supplementary fund established in Sections 40 and 41 of this Act.

(2) The director shall serve as the principal liaison between the division and local officials participating in programs affected by this fund.

(3) The director shall appoint an advisory committee consisting of seven (7) members, including no more than four (4) employees of the staff of the division, to assist in making initial funding allocations each fiscal year and in making quarterly adjustments, based upon program and financial reviews. The members of the committee shall serve at the pleasure of the director, but for no more than four (4) years without reappointment, and shall serve without reimbursement, except when funded through the emergency management assistance programs. The decisions of the committees shall be advisory only and not binding upon the director.

(4) The director, with the advice of the advisory committee, shall make determinations related to fund allocations.

(5) Area managers of the division shall fully explain program opportunities and requirements to local elected officials and local directors, review budget and program submissions, and make recommendations to the director.

(6) Funds pursuant to Sections 40 and 41 of this Act shall be made available to not more than one (1) local emergency management agency in any county on a reimbursement basis up to fifty percent (50%) of the total local funds expended in any given year by the local emergency management agency created pursuant to KRS Chapters 39A to 39F.

SECTION 44. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

Local emergency management agencies created pursuant to Section 29 of this Act shall be eligible to apply for benefits from the fund created pursuant to Sections 40 and 41 of this chapter if they meet the following criteria:

(1) The local emergency management agency shall have a qualified, duly-appointed local director who is capable of fully executing the duties of the position pursuant to Section 31 of this Act. Unless the local director has already completed an introductory emergency management course or is determined by the director to be suitably qualified, during the first year of participation in the funding program, the local director, whether serving on a voluntary or paid basis, shall have successfully completed all correspondence courses specified by the division by administrative regulation. The local director shall also participate in an emergency management workshop when offered. Unless the local director has already completed an introductory emergency management course or is determined by the director to be suitably qualified, each local director shall also attend an introductory emergency management course when offered.

  (a) In each following year, each local director shall attend an emergency management workshop, when offered.

  (b) In subsequent years, a local director shall continue his or her education by annually completing advanced instruction offered by the division, including the training courses and the Emergency Management Development Program as required by administrative regulations promulgated by the division. The requirements of this section may be met by successfully completing related courses offered by federal

agencies and other organizations, as approved by the division.

(2) Each local emergency management agency employee, other than the local director, whose salary is reimbursed in part by this fund, shall attend one (1) emergency management workshop at least every other year, and shall complete other instruction offered by the division as required by administrative regulations promulgated by the division.

(3) The local director appointed pursuant to KRS Chapters 39A to 39F, shall develop a local emergency operations plan and appropriate annexes. This plan shall be subject to concurrence review by the director of the division. In subsequent years, the plan and all annexes shall annually be reviewed, updated, approved, and officially adopted in accordance with the provisions of KRS Chapters 39A to 39F.

(4) During the second and each subsequent year of participation in the program, the local director shall conduct an exercise to test the local emergency operations plan in accordance with exercise program requirements and guidelines of the Federal Emergency Management Agency or the division.

(5) Each local emergency management agency created pursuant to KRS Chapters 39A to 39F shall provide for an organized and designated emergency operating center in the local jurisdiction from which all operations of the local disaster and emergency services organization shall be coordinated. This center shall provide resources for communications, information management, and other operational capabilities necessary to ensure the coordination of all disaster and emergency response in the local jurisdiction. The local emergency operations center shall be a direction and control component of the integrated emergency management system of the Commonwealth.

(6) Each local emergency management agency shall develop, and submit annually to the division, a program paper detailing agency administrative data, current staff personnel listings, a specific work plan of program objectives scheduled for accomplishment during the next fiscal year, and a budget request. Forms and guidance materials for this report shall be provided by the division.

(7) Each employee of a local emergency management agency created pursuant to this chapter with the exception of the local director and each deputy, if the deputy functions in a policymaking capacity, whose salary is reimbursed in part or in total with these funds, shall meet the standards of the Kentucky merit system, or the standards of the federal Office of Personnel Management or its successor or local equivalent, when recognized by the director.

(8) In order for a local emergency management agency to participate in the funding program, one (1) of the following persons shall attend an annual emergency management workshop:

(a) The county judge/executive;

(b) The deputy county judge/executive;

(c) The mayor of an urban-county government or the largest city in the county, or the mayor of the city which is the county seat of the county, or the chief executive of other local government;

(d) The city manager;

(e) The local emergency management deputy director; or

(f) A member of the fiscal court or urban-county council of the county.

(9) The division shall determine by administrative regulation:

(a) Public officials and disaster and emergency services personnel who may be reimbursed for attendance at emergency management workshops or other activities; and

(b) Reimbursements for attending courses and workshops, which shall be limited as follows:

1. Reimbursement rates for meals and travel mileage shall not exceed those for state employees.

2. Reimbursement shall be made for attending the workshop or course nearest to the participant's residence. A participant may attend a workshop at a greater distance but will be reimbursed for meals and mileage equal to that of attending the nearest workshop or course. In cases of extreme hardship, the nearest course or workshop requirement may be waived, in writing, by the director.

(10) The division shall:

(a) Publicize all available state and federal emergency management agency training courses to mayors, county judges/executive, and local directors; and

(b) Assist local personnel listed in this section in gaining entrance to state and federal emergency management agency training courses.

(11) If, at any time, the director of the division determines that a local emergency management agency or a local director does not comply with the eligibility requirements of this section, the director shall notify that local director, and the appointing authorities, in writing, of the intent to deny financial assistance to the local emergency management agency. The local director shall have ten (10) working days to come into compliance or otherwise provide information to the director to justify eligibility for funding. If the director continues to determine that the local

emergency management agency or the local director does not meet eligibility requirements, the local emergency management agency shall be ineligible for funds and the director shall notify the local director and the appointing authorities, of the determination. A local director aggrieved by a decision of the director may appeal to the Franklin Circuit Court within twenty (20) days of the receipt of the director's decision. The court's review shall be from the record and shall not be de novo.

SECTION 45. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

(1) Local emergency management agencies requesting financial aid from the fund created pursuant to Sections 40 and 41 of this Act, shall submit, not later than July 15 of each year, a local "Annual Program Paper" application to the area manager of the division.

(2) The area manager shall review the application and accompanying documents and forward them to the director of the division along with the area manager's assessments and recommendations, not later than August 15 of each year.

(3) The director shall submit the request for financial aid to the advisory committee for its review and recommendations. The advisory committee shall review the application, accompanying documents, and the assessment and recommendation of the area manager and make a recommendation to the director with regard to the application and the request for funding.

(4) Requests for funding shall be evaluated by the following criteria:

(a) Meeting the eligibility criteria specified in Section 44 of this Act, unless some aspect thereof has been waived as provided in Section 48 of this Act.

(b) Meeting all the requirements specified by the division for developing, preparing, maintaining, and submitting the annual program paper.

(c) Local emergency operations plans submitted and a determination of their conformity to the Kentucky Emergency Operations Plan, and an assessment of their capability, state of currency, sign of official adoption, and general adequacy to provide for the coordination of disaster and emergency response operations.

(d) Past program performance of the local director in fully carrying out the duties of local director as specified in Section 31 of this Act, and overall program performance as it relates to completeness, adequacy, and timeliness in accomplishing program tasks, objectives, or goals.

(e) Historical spending records for this and similar programs.

(f) Local resources committed to the program on a per capita basis.

(5) If available funds do not meet the total funds requested by all local emergency management agencies, then funding allocations may be reduced after a reevaluation of the criteria set forth in subsection (4) of this section.

(6) The director of the Division of Emergency Management shall then review and evaluate each application, together with the recommendations thereon, and not later than September 15 of each year, designate and approve funds for eligible local emergency management agencies and notify the local director.

SECTION 46. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

(1) Within fifteen (15) days of the end of each month, the local emergency management agency shall submit a completed claim of reimbursement with supporting documentation to the area manager of the division. After review, the area manager shall forward the documentation for administrative review and a reimbursement check shall be returned to the jurisdiction. Reimbursement shall be at the predetermined rate.

(2) Requests to utilize these funds to purchase any item of emergency management-related administrative or office equipment having a total cost in excess of five hundred dollars ($500) shall be submitted to the director for approval or denial before the purchase. To obtain approval, the local emergency management agency shall submit a project application to the area manager, who shall review it and forward it to the director, together with the area manager's recommendations in reference thereto. If the application is approved by the director, the local emergency management agency shall be notified of the approval and, after making the purchase, may submit a reimbursement claim.

SECTION 47. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

(1) The performance of each local emergency management agency or local director receiving funding pursuant to Sections 40 and 41 of this Act shall be evaluated quarterly as to compliance with the provisions of KRS Chapters 39A to 39F, satisfactory program administration, and the achievement of scheduled program objectives by the local emergency management agency or local director. Based upon this evaluation:

(a) Programs which are judged deficient, or otherwise not in compliance with KRS Chapters 39A to 39F, or program guidance of the division, may have funds withheld and those funds which have been withheld may

be transferred to other local emergency management agencies.

(b) Programs which meet or exceed their minimum program objectives and have needs for additional funds for program improvements may be granted additional requested funds, or portions thereof, for use by the local emergency management agency in making the improvements, subject to the availability of funds.

(2) Within fifteen (15) days after the end of each quarter, the local emergency management director shall prepare and submit all documentation, records, or reports required by the division to substantiate and document the work activity of the local director and the local emergency management agency in performing official duties or work plan objectives during each quarter.

(3) Program progress and compliance shall be reviewed quarterly by the area manager of the geographical area in which the local emergency management agency is located. The area manager shall review training records, exercise reports, financial records and budget expenditure rates, all work plan documentation reports or materials submitted by the local director at the end of each quarter, program guidance materials, or other sources of information, and make an assessment as to whether the local emergency management agency or local director is in compliance with current program requirements or guidance, or is making satisfactory progress toward the full achievement of the objectives outlined in the work plan of the annual program paper. The area manager shall transmit an assessment report to the director of the division together with any recommendations thereon.

(4) The director shall then review the material submitted, together with the area manager's recommendations, and submit it to the advisory committee for its evaluation and recommendations with regard thereto.

(5) The advisory committee shall transmit to the director its determination of the local emergency management agency's state of compliance or progress, and that of the local director, and the committee's recommendations with regard thereto. The director shall review the report and all recommendations thereon. The director shall then make a final determination with regard to compliance and progress and, if a deficiency is found, the measures which shall be taken to assure compliance.

(6) Local emergency management agencies or local directors determined not to be making satisfactory progress toward the accomplishment or completion of work plan objectives as outlined in the annual program paper, or not performing in accordance with the written program guidance or the requirements of KRS Chapters 39A to 39F, shall be given thirty (30) days to correct the deficiencies in the manner outlined by the director.

(7) A local emergency management agency aggrieved by a decision of the director may appeal to the Franklin Circuit Court within twenty (20) days of the receipt of the director's decision. The court's review shall be from the record and shall not be de novo, unless the record is insufficient.

(8) If a decision has been made by the director to withhold funding from the local emergency management agency, that funding shall remain withheld during the pendency of any appeals of the decision.

(9) At the end of the thirty (30) day period further funding may be withdrawn by the director, if the deficiencies have not been corrected. The funds may then be reallocated to other local emergency management agencies.

(10) The director, during the review process outlined in this section, shall also review the expenditure rate of each local emergency management agency receiving funds. If it is determined that a local agency will not utilize all allocated funds, appropriate portions of the allocation may be withdrawn and reallocated to another local emergency management agency.

SECTION 48. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

Requests for the waiver of any requirement of Sections 44, 45, 46, and 47 of this Act or any criteria of KRS Chapter 39F may be submitted with appropriate justification to the director of the division. The director may grant waivers only upon the finding that the justification merits special action and failure to grant the waiver would jeopardize the continuation or development of a viable local emergency management agency and program. In every case, the director shall insure that the local agency and program continues to meet the basic intent of KRS Chapter 39B. Waivers shall apply on a one (1) time basis relating to a specific request and shall not be construed to establish precedents.

SECTION 49. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

The division shall administer the supplementary state funding program authorized in Sections 40 and 41 of this Act and the division shall, by administrative regulations, promulgate and apply eligibility requirements and standards of performance to be achieved by all local emergency management agencies. The division may promulgate other administrative regulations, and issue any program guidance, necessary to carry out the provisions of Sections 40 and 41 of this Act.

SECTION 50. A NEW SECTION OF KRS CHAPTER 39C IS CREATED TO READ AS FOLLOWS:

Local emergency management agencies, including local directors or their deputies, and other local emergency management agency staff personnel and workers, and local emergency management agency-supervised operating units or personnel officially affiliated with the local disaster and emergency services organizations pursuant to Section 35 of this Act, paid or volunteer, for the purposes of receiving workers' compensation benefits paid by the division, shall be covered by those *benefits when performing emergency assessment, mitigation, preparedness, response, or recovery functions, with the following limitations:*

(1) The local emergency management agencies, including local directors or staff personnel and workers, and local emergency management agency-supervised operating units or personnel, shall not be covered when performing fundraising functions, unless all proceeds of the function are to be dedicated to the administration or operation of the local emergency management agency or operating unit.

(2) No person shall be covered when performing hazardous materials emergency response operations defined in 29 C.F.R. 1910.120 which are above the first-responder operations level, on-scene incident commander level excluded, except as provided in subsection (3) of this section.

(3) A volunteer hazardous materials response team as defined in 29 C.F.R. 1910.120 which meets all provisions of 29 C.F.R. 1910.120(q), operates on a regional basis, and is supervised by a local emergency management agency may, by action of the director pursuant to administrative regulations, be provided Kentucky emergency management workers' compensation coverage. Such hazardous materials response teams shall take no actions involving environmental clean-up, removal, or transportation of hazardous substances or materials except as may be essential for initial emergency control or initial emergency stabilization when there is a clear and evident risk of harm to people.

(4) No person shall be covered unless enrolled on a workers' compensation enrollment form that is filed with the area manager of the division, except when the magnitude of an emergency, or a preparedness exercise activity, is so great that a local director must solicit additional workers. At these times, the local director may develop and maintain a list of workers, to include names, Social Security account numbers, missions assigned, and dates covered, and submit a copy of the list to the area manager within twenty-four (24) hours of the conclusion of the emergency, or the preparedness exercise activity.

SECTION 51. A NEW SECTION OF KRS CHAPTER 39D IS CREATED TO READ AS FOLLOWS:

Any person violating any provision of this chapter or any administrative regulation promulgated or order issued pursuant to this chapter for which another penalty is not specified shall be guilty of a Class A misdemeanor.

SECTION 52. KRS CHAPTER 39D IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

(1) When, during a state of emergency, it becomes imprudent, inexpedient, or impossible to conduct the affairs of state government at the state capital, the Governor shall, as often as the exigencies of the situation require, by proclamation, designate a temporary location for the seat of government at the place within this Commonwealth deemed advisable, and shall take action and issue orders necessary for an orderly transition of the affairs of state government to the temporary location. If practicable, the temporary location designated by the Governor shall conform to that provided for in the current Kentucky Emergency Operations Plan. The temporary location shall remain as the seat of government until the Governor establishes a new location under this section, or until the emergency is ended and the seat of government is returned to its normal location.

(2) While the seat of government remains at the temporary location, all official acts required by law to be performed at the seat of government by any officer, independent agency, division, or authority of this Commonwealth, including the convening and meeting of the General Assembly in regular or special session, shall be as valid and binding when performed at that temporary location as if performed at the normal location.

SECTION 53. A NEW SECTION OF KRS CHAPTER 39D IS CREATED TO READ AS FOLLOWS:

(1) When, during a state of emergency, it becomes imprudent, inexpedient, or impossible to conduct the affairs of local government at the regular or usual places, the governing body of each county, urban-county, charter county, and city of this Commonwealth may meet at any place within or without the territorial limits of that political subdivision, at the direction of the elected chief executive officer or his or her successor, and shall proceed to establish and designate by ordinance, resolution, or other manner, alternate or substitute places as the temporary locations of government where all, or any part, of the public business may be transacted and conducted during the emergency situation. The alternate or substitute places may be within or without the territorial limits of the county, urban-county, charter county, and city, and shall be within those of the state. If practicable, they shall be the places designated as the temporary locations of government in the current local emergency operations plan.

(2) While the public business is being conducted at a temporary location, the governing body and other officers of a county, urban-county, charter county, and city of this Commonwealth shall have and exercise, at that location, all of the executive, legislative, administrative, and judicial powers and functions conferred upon that body and officers under state law. The powers and functions, except judicial, may be exercised in the light of the exigencies of the emergency situation without regard to or compliance with time-consuming procedures and formalities prescribed by law and pertaining thereto. All acts of the body and officers shall be as valid and binding as if performed within the territorial limits of their county, urban-county, charter county and city.

(3) This section shall control notwithstanding any statutory charter or ordinance provision to the contrary.

SECTION 54. A NEW SECTION OF KRS CHAPTER 39D IS CREATED TO READ AS FOLLOWS:

The governing body of each county, urban-county government, charter county government, and city shall enact the ordinances and resolutions necessary to provide for the continuity of government throughout the duration of a state of emergency. The ordinances and resolutions shall provide a method by which temporary emergency appointments to public office are made, except as limited by express constitutional provisions, and shall define the scope of the powers and duties which may be exercised, and provide for termination of the appointment so made. This section shall control notwithstanding any statutory provision to the contrary.

SECTION 55. A NEW SECTION OF KRS CHAPTER 39D IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, unless the context clearly requires otherwise:

(a) "Emergency interim successor" means a person designated under this section, if an officer is unavailable, to exercise the powers and discharge the duties of that office until a successor is appointed or elected and qualified as provided by law, or until the lawful incumbent is able to resume the exercise of the powers and discharge the duties of the office.

(b) "Office" includes all state and local offices, the powers and duties of which are defined by law, except the office of Governor, and except those in the General Assembly and the judiciary. An "officer" is a person who holds an office.

(c) "Political subdivision" includes counties, urban-counties, charter counties, cities, special districts, authorities, and other public corporations and entities whether organized and existing under charter or general law.

(d) "Unavailable" means that during a state of emergency either:

1. A vacancy in office exists and there is no deputy authorized to exercise all of the powers and discharge the duties of the office; or

2. That the lawful incumbent of the office and any duly authorized deputy are absent or unable to exercise the powers and discharge the duties of the office.

(2) Subject to administrative regulations of the Governor, all state officers, shall, in addition to any deputy authorized to exercise all of the powers and discharge the duties of the office, designate by title emergency interim successors and specify their order of succession. The officer shall review and revise, as necessary, designations made pursuant to this section to ensure their current status. The officer shall designate a sufficient number of emergency interim successors so that there will be not fewer than three (3) nor more than seven (7) deputies or emergency interim successors or any combination thereof, at any time. If any state officer is unavailable following an emergency, and if a deputy, if any, is also unavailable, the powers of office shall be exercised and the duties of office shall be discharged by any designated emergency interim successors in the order specified. The emergency interim successors shall exercise the powers and discharge the duties only until such time as the Governor under the Constitution or authority other than this section, or other official authorized under the Constitution or this section to exercise the powers and discharge the duties of the office of Governor has, where a vacancy exists, appointed a successor to fill the vacancy, or until a successor is otherwise appointed, or elected and qualified as provided by law, or until an officer or any deputy or a preceding named emergency interim successor becomes available to exercise, or resume the exercise and discharge of, the powers and duties of the office.

(3) Each cabinet and each department of state government, and each agency of state government shall appoint not fewer than three (3) nor more than seven (7) emergency interim successors for each position specified in the Kentucky Emergency Operations Plan and the internal emergency operations procedures for that department or agency. Emergency interim successors in the order of the succession shall have the full power to exercise all powers of their department or agency and to commit its resources during a time of emergency or disaster if the person normally exercising the position becomes unavailable. If the preceding emergency successor becomes unavailable he or she shall resume all duties from the emergency interim successor, unless he or she chooses to permit the emergency interim successor to remain in the position until relieved.

(4) The local legislative bodies of cities, counties, urban-counties, and charter counties shall enact ordinances or orders governing the manner in which vacancies in offices and employment shall be filled, and for the prompt filling thereof during times of disaster and emergency, if the filling of these vacancies is not otherwise provided for by law. The legislative bodies shall enact ordinances providing for the appointment of not fewer than three (3) nor more than seven (7) emergency interim successors for each local office, department, and agency specified in the Kentucky Emergency Operations Plan and local emergency operations plans and annexes thereto. Emergency interim successors, in the order of their successions, shall have the full power to exercise all powers of the office, department, or agency and to commit its resources during a time of emergency or disaster if the person normally exercising the position is unavailable. If the preceding emergency successor becomes available, he or she shall

resume the duties being performed by the emergency interim successor, unless he or she chooses to permit the emergency interim successor to remain in the position until relieved. The administrative orders and ordinances shall not be inconsistent with this section.

(5) This section applies to officers of all special districts and political subdivisions not included in subsection (4) of this section. The officers, subject to such administrative regulations as the executive head of the political subdivision promulgates, shall designate by title, if feasible, or by named person, emergency interim successors and specify their order of succession. The officer shall review and revise, as necessary, designations made pursuant to this section to ensure their current status. The officer shall designate a sufficient number of persons so that there will be not fewer than three (3) nor more than seven (7) deputies or emergency interim successors or any combination thereof at any time. If any officer of any political subdivision or any deputy provided for pursuant to law is unavailable, the powers of the office shall be exercised and duties shall be discharged by the designated emergency interim successors in the order specified. The emergency interim successor shall exercise the powers and discharge the duties of the office to which designated until the time a vacancy which exists is filled in accordance with the Constitution or the KRS, or until the officer, a deputy, or a preceding emergency interim successor again becomes available to exercise the powers and discharge the duties of the office.

(6) No person shall be designated or serve as an emergency interim successor unless he or she is eligible under the Constitution and statutes to hold the office to which he or she is designated to succeed, but no statutory provision prohibiting local or state officials from holding another office shall be applicable to an emergency interim successor.

(7) Emergency interim successors shall take the oath required to exercise the powers and discharge the duties of the office to which they may succeed. No person, as a prerequisite to the exercise of the powers or discharge of the duties of an office to which he or she succeeds, shall be required to comply with any other provision of law relative to taking office.

(8) Officials authorized to act as Governor pursuant to this section, and emergency interim successors are empowered to exercise the powers and discharge the duties of an office only during the continuance of an emergency. The General Assembly, by joint resolution, may at any time terminate the authority of the emergency interim successors to exercise the powers and discharge the duties of office.

(9) Until the persons designated as emergency interim successors shall exercise the powers and discharge the duties of an office in accordance with this section, the persons shall serve in their designated capacities at the pleasure of the designating authority.

(10) Any dispute concerning a question of fact arising under this section with respect to an office in the executive division of the state government, except a dispute of fact relative to the office of Governor, shall be adjudicated by the Governor or other official authorized under the Constitution to exercise the powers and discharge the duties of the office of Governor, and the decision reached shall be final.

SECTION 56. A NEW SECTION OF KRS CHAPTER 39D IS CREATED TO READ AS FOLLOWS:

The state Archives and Records Commission shall establish a system for the preservation of essential state public records necessary for the continuity of governmental functions in the event of an emergency, disaster, or catastrophe. The commission shall:

(1) Determine what records are essential for operation during a state of emergency and thereafter through consultation with all state cabinets, departments, and independent agencies and the administrator of state archives services and records, establish the manner in which the records shall be preserved, and provide for their preservation;

(2) Require every state cabinet, department, and independent agency to establish and maintain a preservation program for essential state public records;

(3) Provide for security storage of essential state records;

(4) Furnish state cabinets, departments, and independent agencies with copies of the final plan for preservation of essential public records; and

(5) Advise all political subdivisions of the Commonwealth on preservation of essential public records.

SECTION 57. A NEW SECTION OF KRS CHAPTER 39D IS CREATED TO READ AS FOLLOWS:

Any person violating any provision of this chapter or any administrative regulation promulgated or order issued pursuant to this chapter for which another penalty is not specified shall be guilty of a Class A misdemeanor.

SECTION 58. KRS CHAPTER 39E IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

The Kentucky Emergency Response Commission is established to:

(1) Implement all provisions of Title III, Pub. L. No. 99-499, associated federal regulations, and subsequent related

legislation and regulations related to hazardous substances; develop policies related to the response of state and local governments to releases of hazardous substances; develop standards for planning for these events; develop reporting requirements for those who manufacture, use, transport, or store these substances; provide information to the public concerning hazardous substances in the community; develop training requirements; and develop requirements for local governments and covered facilities to exercise plans related to hazardous substance response; and

(2) Perform any other functions assigned by statute or by the chairman.

SECTION 59. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

As used in this chapter, unless the context requires otherwise:

(1) "Commission" means the Kentucky Emergency Response Commission and those persons appointed by the Governor to implement provisions of Title III, Pub. L. No. 99-499 and this chapter.

(2) "Local emergency planning committee," hereafter referred to as the "local committee," means those persons appointed by the commission to assist in the implementation of Title III, Pub. L. No. 99-499 and this chapter.

(3) "Release" means, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers and other closed receptacles, of any hazardous substance.

(4) "Reportable quantity" means an amount of hazardous substances released which requires notification to local and state warning points.

(5) "Hazardous substance" means a substance specified by Title III, Pub. L. No. 99-499, subsequent federal regulations, this chapter, and subsequent administrative regulations as requiring notification if released or if stored, manufactured, or used.

(6) "Warning point" means that location, operated by state or local government, and identified by the state commission or local committee, and which is continuously staffed, and which has the capability or responsibility to contact governmental emergency response organizations and, if capability exists, to warn the public of hazards which may affect them.

(7) "Emergency response organization" means a unit of local government or a unit authorized by local government which may be called to make a response because of a release of a hazardous substance, and whose responsibilities are included in plans developed under this chapter.

(8) "Facility" means all buildings, equipment structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person, or by any person which controls, is controlled by, or under common control with such person, and which manufactures, stores, or uses substances covered under this chapter. For purposes of Section 76 of this Act, the term includes motor vehicles, rolling stock, and aircraft.

SECTION 60. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

(1) The commission shall be composed of not more than twenty-five (25) members and shall be chaired by the director of the Division of Emergency Management of the Department of Military Affairs, who shall also be a member. Other members shall include, but not be limited to, representatives of the Natural Resources and Environmental Protection Cabinet, the office of the state fire marshal, the Kentucky State Police, the Office of the Attorney General, affected industry, local government, health services, environmental interests, and other persons who have technical expertise in the emergency response field as the Governor deems appropriate.

(2) Members of the commission shall be appointed by the Governor. All appointments shall be for a term of two (2) years. Members shall serve until their successors are appointed and qualified and shall be eligible for reappointment.

(3) The commission shall meet not less than semi-annually, or as convened by the chairman.

(4) If a member misses three (3) consecutive meetings of the full commission or three (3) meetings in two (2) consecutive years, the position shall be declared vacant by the commission. In these cases, the Governor shall make an appointment to fill the unexpired term.

(5) The presence of thirteen (13) members shall constitute a quorum and actions taken at these meetings shall be considered as actions of the full commission.

(6) Members of the commission shall not receive a salary for serving on the commission, but travel and per diem may be paid if funds are appropriated or otherwise made available for these purposes.

SECTION 61. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

The commission shall:

(1) Appoint local emergency planning committees and revise these committees as it deems appropriate. The committees shall include, as a minimum, representatives from each of the following groups:

(a) Elected local officials;

(b) Law enforcement;

(c) Emergency management;

(d) Fire service;

(e) First aid;

(f) Health service;

(g) Local environmental;

(h) Hospital;

(i) Transportation;

(j) Broadcast and print media;

(k) Community groups; and

(l) Owners and operators of facilities subject to this chapter;

(2) Adopt standards and procedures for the operations of local committees;

(3) Develop reporting requirements and procedures consistent with those of Title III, Pub. L. No. 99-499, for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances;

(4) Develop guidance and standards for plans related to hazardous substances;

(5) Approve, disapprove, and, where necessary, make recommendations to improve plans developed by local emergency planning committees;

(6) Recommend administrative regulations to the director for issuance by the Division of Emergency Management to implement provisions of this chapter, consistent with Title III, Pub. L. No. 99-499;

(7) Receive from any source and authorize the expenditure of funds;

(8) Develop policies relating to the training of committees and persons subject to respond to releases of hazardous substances;

(9) Develop policies relating to exercising and testing plans developed by local emergency planning committees;

(10) Specify a warning point to which all required emergency notifications shall be made;

(11) Develop a procedure by which facilities may report the presence and inventories of hazardous substances and by which members of the public may obtain these reports;

(12) Annually review all commission policies and procedures and update them as necessary; and

(13) Adopt policies for the conduct of the business and duties of the commission.

SECTION 62. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

(1) The commission shall institute a fee system to assist in the administration of its programs and activities at both state and local levels.

(2) (a) Any facility required to report under the provisions of this chapter shall annually submit to the commission the required fee of forty dollars ($40) no later than March 1. This paragraph shall not apply to facilities that pay a fee pursuant to paragraph (b) of this subsection.

(b) Any facility required to report under the provisions of this chapter and which meets any of the following standards shall annually submit to the commission the required fee of two hundred fifty dollars ($250) no later than March 1:

1. The facility has any of the extremely hazardous substances identified in 40 C.F.R. Part 355, as amended;

2. The facility has eleven (11) or more hazardous substances as defined in Section 59 of this Act; or

3. The facility has a total inventory of hazardous substances as defined in Section 59 of this Act of over four hundred ninety-nine thousand nine hundred ninety-nine (499,999) pounds.

(c) If the same owner or owners own two (2) or more facilities in a single county and all of the facilities are required to submit fees pursuant to paragraph (a) of this subsection, the fees due from the owner or owners shall not exceed a total of two hundred fifty dollars ($250) for all those facilities in that county.

(d) The provisions of this subsection shall not apply to a facility owned or operated by local, state, or federal government.

(3) The funds derived from the fee system shall be placed in a trust and agency account, which shall be known as the "Kentucky Emergency Response Commission Fee Account," and which shall not lapse. The funds in the account shall be expended only for the purpose specified in subsection (1) of this section.

(4) The commission shall promulgate administrative regulations to implement the provisions of this section, for issuance by the Division of Emergency Management.

SECTION 63. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

The commission may undertake other activities that are:

(1) Required by federal law or regulation;

(2) Authorized by federal law or regulation;

(3) Authorized by executive order of the Governor;

(4) Clearly adjunct to the duties specified in Section 61 of this Act;

(5) Necessary to approve or disapprove actions of the local committees;

(6) Necessary to effectively implement the requirements of Title III, Pub. L. No. 99-499; and

(7) Necessary to commence a civil action against the owner or operator of a facility for failure to comply with the provisions of Section 326, Title III, Pub. L. No. 99-499.

SECTION 64. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

(1) The "SARA Title III Programs Account" is hereby established as a trust and agency account in the State Treasury for the purpose of assisting in the administration and operation of programs authorized by this chapter.

(2) Funds from civil and other penalties, donations, and sources other than fees shall be placed in the account. The account shall not lapse.

SECTION 65. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

(1) The Division of Emergency Management shall provide administrative support to the commission within the limitation of staff resources. The division may employ staff and may acquire technical or professional assistance as determined to be necessary by the director of the division, and for whom federal, state, or other funds have been provided.

(2) Persons employed under this section shall report to the director of the division and shall implement policies and directives of the commission as specified by the director. Other employees of the division may also support the commission and assist in the implementation of hazardous substance planning, reporting, investigation, training, and exercising as directed by the director. In cases when the commission develops policies or directives which cannot reasonably be implemented by division staff, the director may defer implementation until sufficient resources exist. In cases when the director advises the commission, in writing, that the division cannot provide requested resources, the commission may seek assistance from other agencies of state government.

(3) In no case shall the director devote division resources to support the commission if that support would result in the withdrawal of federal or state funds from the division.

(4) The division shall, upon concurrence by the director, promulgate administrative regulations recommended by the commission and consistent with Title III, Pub. L. No. 99-499. The regulations shall include, but not be limited to:

  (a) Substances which require inventory reporting;

  (b) Quantities of each substance covered; and

  (c) Emergency notification procedures and requirements.

SECTION 66. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

Local emergency planning districts shall be consistent with county boundaries. The commission may authorize two (2) or more districts to combine, upon request of the committees of the affected districts. There shall be only one (1) emergency planning committee within a district.

SECTION 67. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

(1) Local emergency planning committees are created as part of the state commission.

(2) Local committee members shall be appointed by the commission, and shall be considered as agents of the state for all purposes, including purposes of liability protection.

SECTION 68. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

(1) Duties of the committees shall include:

  (a) Development of plans to prepare emergency response organizations within cities, counties, urban-county governments, and charter county governments to respond effectively to releases of hazardous substances;

(b) Identification of a twenty-four (24) hour warning point within the district to which persons responsible for releases of hazardous substances must report those releases;

(c) Establishment of a method, consistent with federal law, commission policies, and administrative regulations, by which manufacturers, users, or storers of hazardous substances may report the presence of those substances, and by which members of the public may obtain information about those substances;

(d) Appointment of a committee chairman, from among its members, for a term of two (2) years. Chairmen may be reappointed;

(e) Development and maintenance of plans consistent with administrative regulations promulgated by the commission; and

(f) Development of procedures for the annual review of emergency plans and procedures developed under this chapter.

(2) Local committees shall advise the commission of their actions by providing a copy of minutes to the commission within thirty (30) days of the date of the meeting. If the minutes are later changed before approval, a copy of the revised minutes shall be submitted to the commission within thirty (30) days of the approval.

(3) Local committees may request the chief of the fire department with jurisdiction over a facility which has, or may have, substances subject to Title III, Pub. L. No. 99-499, to make on-site inspections of the facilities and to report all findings to the chairman of the committee.

(4) Members of local committees shall serve for terms as specified by the commission, though not to exceed four (4) years except by reappointment. Committees may establish attendance standards for continued membership and shall advise the commission of any additions or deletions from the membership that are desired. These changes may be approved or disapproved by the commission.

(5) Committee meetings shall be subject to provisions of KRS 61.805 to 61.850 relating to public meetings and to KRS 61.870 to 61.884 relating to open records, provided that trade secrets, as determined by the federal Environmental Protection Agency, are processed in accordance with 42 U.S.C. 11042.

(6) The local committee may, after consultation with the commission chairman, seek civil remedies prescribed in Section 326, Pub. L. No. 99-499.

(7) The local committee may, with the advice and consent of the commission chairman, submit information to the county attorney for prosecution.

(8) Consultations pursuant to subsection (6) of this section shall be made prior to the giving of notice of intent to commence a civil action.

SECTION 69. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

Owners or operators of facilities which manufacture, use, or store extremely hazardous substances, as identified in 40 C.F.R. Part 355, and in quantities as identified in administrative regulations promulgated by the Division of Emergency Management shall advise the commission, local committee, and fire department in whose jurisdiction the facility resides, of the name of the substance and its quantity, within sixty (60) days of the date the facility first receives the substance or substances in excess of the quantities as identified in the administrative regulations, or if there is a revision of these regulations and the facility has present a substance or substances on the revised list in excess of the quantity established for those substances, within sixty (60) days.

SECTION 70. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

Owners or operators of facilities covered under Section 69 of this Act shall identify, within thirty (30) days of notifying the commission that the facility is subject to this chapter, the name of a facility representative who will work with the local committee in the development of emergency plans, and that person shall provide information necessary to the development of those plans.

SECTION 71. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

(1) City, county, urban-county governments, and charter county governments, school districts, special purpose district boards, or other municipal corporations or political subdivisions of the state or local government shall participate in the planning process conducted by local emergency planning committees. This participation shall include, as a minimum, providing information concerning government-owned or controlled emergency response assets, reviewing plans developed by the committee, and concurring that the final plan can be executed with existing resources.

(2) In local governments where local emergency management agencies receive state or federal funds, those agencies shall provide administrative and planning support to the committee as specified by the director of the division.

(3) If state or federal funds are appropriated specifically to support emergency response planning or other portions of Pub. L. No. 99-499, these funds may be allocated to local emergency management agencies and may be expended as specified by the director.

(4) Local governments may enact ordinances specifying standards which owners or operators of facilities shall meet to provide warning of releases to workers and to the public which may be affected by a release.

SECTION 72. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

(1) Plans developed under the guidance of the state commission shall be a part of the local emergency operations plan's hazardous materials annex. These plans shall be consistent with the requirements and criteria prescribed by the Kentucky Emergency Operations Plan's hazardous materials annex and shall emphasize a coordinated response by all local emergency response organizations.

(2) If, in the judgment of the commission, the local plan is inadequate, or is inconsistent with the Kentucky Emergency Operations Plan, the local plan shall be returned to the committee and the committee shall revise the plan until approved by the commission.

(3) Local committees shall annually review and update, where appropriate, each plan and submit revisions to the commission.

SECTION 73. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

After the state commission approves plans developed by each local emergency planning committee, emergency response organizations of each city, county, urban-county government, and charter county government shall respond in a manner consistent with those plans.

SECTION 74. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

Agencies of state government shall respond, within the confines of the Kentucky Emergency Operations Plan and agency policies, to releases of hazardous substances. Each response shall be consistent with the hazardous materials annex of the Kentucky Emergency Operations Plan. If an on-scene response is required by the Kentucky Emergency Operations Plan or by agency policy, state agencies shall cooperate with one another and with local emergency response organizations and with the party or parties responsible for that release.

SECTION 75. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

Any claims against the commission or committees or their members shall be filed with the State Board of Claims in accordance with KRS Chapter 44.

SECTION 76. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

When a release of a substance covered under Title III, Pub. L. No. 99-499 and administrative regulations promulgated under this chapter occurs in a reportable quantity, the owner or operator of the facility where the release occurs, or the owner or operator of the vehicle transporting the hazardous substance, shall notify the local and state warning points within times established by administrative regulation. These regulations shall also specify information to be provided upon initial report and in written follow-up reports.

SECTION 77. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

(1) The state commission shall, by administrative regulation promulgated by the Division of Emergency Management, establish warning and notification standards, which shall include, but not be limited to:

(a) The establishment of twenty-four (24) hour warning points;

(b) Public warning; and

(c) Notification of local emergency response organizations.

(2) Any notification made pursuant to this chapter shall not relieve the facility owner or operator or other responsible party of any notification required by other state or federal laws or regulations.

SECTION 78. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

The division shall, upon direction of the commission, promulgate administrative regulations requiring manufacturers, users, or storers of hazardous substances to report information concerning inventories and locations of those substances. These administrative regulations shall use, by reference, lists of extremely hazardous substances and forms issued by the United States Environmental Protection Agency or by the Kentucky Emergency Response Commission.

SECTION 79. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

Upon request of the commission or local committee, facilities covered by those administrative regulations required in Section 78 of this Act shall, within the time periods prescribed by federal law, provide additional information necessary for developing and implementing the emergency plan about each substance to include, but not be limited to, material safety data sheets.

SECTION 80. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

Reports to the commission or committee shall be available to the public upon request in accordance with the provisions of KRS 61.870 to 61.884 relating to open records, if this information is not protected from release to the general public as a trade secret under federal law. Reasonable fees, consistent with KRS 61.874, may be charged for reproduction of these *reports.*

SECTION 81. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

No section of this chapter shall be construed as repealing any other laws of the Commonwealth, but it shall be held and construed as ancillary and supplemental to those laws.

SECTION 82. A NEW SECTION OF KRS CHAPTER 39E IS CREATED TO READ AS FOLLOWS:

(1) Any person violating any provision of this chapter or any administrative regulation promulgated or order issued pursuant to this chapter for which another penalty is not specified shall be guilty of a Class A misdemeanor.

(2) (a) When a person violates Section 69, 70, 76, or 79 of this Act, the commission chairman shall proceed against that person under paragraph (b) of this subsection or subsection (3) of this section but not both.

(b) Any person violating Section 69, 70, or 79 of this Act shall, upon the first conviction thereof, be fined not less than two hundred and fifty dollars ($250) nor more than five hundred dollars ($500). If any offense is continued for more than one (1) day, each day upon which the offense occurs or is continued shall be considered and constitute a separate offense and a separate fine may be imposed. Any person violating Section 69, 70 or 79 of this Act shall, upon subsequent convictions, be fined not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000). If any offense is continued for more than one (1) day, each day upon which such offense occurs or is continued shall be considered and constitute a separate offense and a separate fine may be imposed. Any person violating Section 76 of this Act shall, upon the first conviction, be fined not less than one thousand dollars ($1,000) nor more than twenty-five hundred dollars ($2,500). If any offense is continued for more than one (1) day, each day upon which the offense occurs or is continued shall be considered and constitute a separate offense and a separate fine may be imposed. Any person violating Section 76 of this Act shall, upon subsequent conviction, be fined not less than twenty-five hundred dollars ($2,500) nor more than five thousand dollars ($5,000). If any offense is continued for more than one (1) day, each day upon which the offense occurs or is continued shall be considered and constitute a separate offense and a separate fine may be imposed.

(3) Any person violating any provision of this chapter shall be assessed a civil penalty of not less than two hundred and fifty dollars ($250) nor more than five hundred dollars ($500). If any violation is continued for more than one (1) day, each day upon which the violation occurs or is continued shall be considered and constitute a separate violation and a separate civil penalty may be imposed therefor.

SECTION 83. KRS CHAPTER 39F IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

The following definitions apply in this chapter unless the context otherwise requires:

(1) "General Rescue Squad" means a rescue squad which performs one (1) or more of the following functions as a stated mission of the organization:

(a) Light duty rescue;

(b) Extrication of persons from vehicles;

(c) Water rescue and recovery operations not utilizing divers;

(d) Search for lost, trapped, or missing persons not utilizing dogs;

(e) Low angle rescue and recovery operations;

(f) High angle rescue and recovery operations.

(2) "Reports and notification" means the reporting and notification of any search and rescue mission to the appropriate agency or person in the manner as specified by this chapter.

(3) "Rescue" means gaining access, rendering appropriate care, and transporting of a person or persons by whatever means, to a safe environment for appropriate care.

(4) "Rescue squad" means any organization which engages in the search for lost persons, rescue of persons, rescue of persons who are trapped or who are in need of rescue services, search for and recovery of drowned persons, or any other rescue related activity. "Rescue squad" shall not include the rescue of persons from a fire by a fire department, the extrication of persons from a vehicle or other activities which an emergency medical technician, emergency medical technician first responder, or paramedic is authorized to perform pursuant to applicable statutes and administrative regulations, if the activities are performed by a person for an ambulance service or in the role of a first responder. If these activities are performed other than as a first responder or in the role of an ambulance service and are involved in rescue operations, they come within the purview of activities of a rescue squad.

(5) "Search" means the process of looking for a person or persons whose location is not precisely known, and who may be in distress.

(6) "Search and rescue" ("SAR") means the process of looking for a lost, missing, or overdue person or persons who may be in distress, and rendering care with the use of appropriately trained and adequately equipped personnel.

(7) "Search and rescue mission" includes, but is not limited to, searching for a missing or lost person or persons, cave rescue, high angle or rough terrain rescue, urban search and rescue, dive rescue and recovery of drowning victims, inland water search, rescue, and recovery. "Search and rescue" may also include any mission permitted pursuant to this chapter. A "search and rescue mission" does not include mine rescue missions under the jurisdiction of the Department of Mines and Minerals pursuant to KRS Chapter 351.

(8) "Specialized Rescue Squad" means a rescue squad which performs one (1) or more of the following functions as the primary or sole mission of the organization:

- *(a) Cave rescue;*
- *(b) Search utilizing dogs for lost, trapped or missing persons;*
- *(c) Search for lost, trapped or missing persons, aircraft, or vehicles, utilizing aircraft, but does not apply to licensed air ambulances, active or reserve military organizations, the National Guard, or the Civil Air Patrol; and*
- *(d) Water rescue and recovery operations utilizing divers.*

(9) "Victim Recovery" means the search for and the removal to the jurisdiction of the coroner of the remains of a person known or believed to be dead. If the person is found alive, it includes rescue of the person.

SECTION 84. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) Rescue squads may be formed and duly authorized to perform in the public interest. Authorization to operate within a jurisdiction may be granted by the chief elected official of each urban-county government, charter county government, county, or city which the squad proposes to serve. Rescue squads shall have a formal affiliation with the local disaster and emergency services organization. The statement of affiliation shall be renewed annually.

(2) Except as provided in Section 86 of this Act, a rescue squad shall be composed of at least twelve (12) active members and shall maintain at least one (1) vehicle dedicated to rescue service. Squads may operate in conjunction with a fire division, or may operate as a separate unit.

(3) Each rescue squad shall develop and maintain bylaws and written procedures to specify, at a minimum, election or appointment, succession, and term of officers; financial accounting; property accountability; and rules of notification and response to emergencies.

(4) Rescue squads shall contribute to public safety and welfare by performing functions which may include but not be limited to: removal of victims trapped in vehicles or structures; search for lost or missing persons, except those sought for criminal acts; first aid; emergency evacuation; recovery of drowning victims; recovery of any corpse if not accessible by ambulance or hearse and if so authorized by the coroner; and traffic control at an accident scene when requested by law enforcement authorities. Rescue squads shall not engage in law enforcement activities other than traffic control.

(5) The division shall administer funds appropriated for rescue equipment and training and the division shall promulgate administrative regulations to be applied to all rescue squads that apply for financial assistance.

SECTION 85. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) A rescue squad which proposes to provide regional or statewide specialized rescue services may apply to the director for an alternative affiliation agreement and alternative vehicle and equipment requirements in lieu of those specified in Section 94 of this Act under the following terms and conditions:

- *(a) The rescue squad meets all of the requirements specified in Section 94 of this Act except for a local affiliation agreement, vehicle dedicated solely to rescue service, or possession of basic rescue equipment.*
- *(b) The director accepts, in writing, that the rescue squad will provide a needed rescue service either on a regional or statewide basis.*
- *(c) The rescue squad and the director execute an affiliation agreement containing the same information required in Section 94 of this Act for a local affiliation agreement.*
- *(d) The rescue squad maintains specialized rescue equipment appropriate to its mission as specified in the affiliation agreement or an annex thereto.*
- *(e) The requirement for a vehicle dedicated solely to rescue service may be waived, in writing, by the director upon determination that having a specific vehicle may be inappropriate to the mission of the rescue squad and that the rescue squad has adequate means of transportation enabling it to respond in an efficient manner.*
- *(f) The rescue squad, when requested to provide services, shall immediately notify and coordinate activities with*

the local director and with the local rescue squads serving the county in which the response is requested.

(2) Agreements specified in subsection (1) of this section shall be renewed annually.

(3) Rescue squads participating in the alternative program specified in this section shall be eligible to participate in rescue grant funding, state sponsored workers' compensation, training, and other programs of the division.

(4) Rescue squads operating under an agreement pursuant to this section may respond in any county covered by the agreement, or statewide if the agreement permits. Rescue squads covered under an agreement pursuant to this section may respond in counties not covered by the agreement only by request of the rescue squad or public officials in that county or upon request of the director or his designee.

SECTION 86. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) One or more persons with search dogs and handlers may constitute a specialized rescue squad using search dogs, under the terms and conditions as specified in writing by the director;

(2) Each handler of a dog shall have a vehicle available for the transportation of the dog and handler to the scene of a search;

(3) Each handler shall meet the training requirements of the statutes and administrative regulations relating to searching with dogs;

(4) The primary dog utilized in responding to the search shall be certified in accordance with the statutes and administrative regulations;

(5) Each handler shall have the equipment required by statute or administrative regulation for searching with dogs; and

(6) No single search dog handler shall engage in general rescue squad activity or specialized rescue squad activity unless he or she is a member of such an organization.

SECTION 87. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) A general rescue squad shall be organized pursuant to Sections 84 or 85 of this Act and shall engage in one or more of the activities listed in the definition of a general rescue squad. A general rescue squad may engage in any other activity, other than ones prohibited by law or administrative regulation, if the activity is specified in its mission statement.

(2) A general rescue squad shall not engage in a specialized rescue squad activity as a primary mission unless it meets the requirements of subsection (3) of this section. A general rescue squad may engage in a specialized rescue squad activity as an initial responding unit within its service area, however, upon responding to such an activity, the highest officer in command of the response shall cause the immediate notification of the appropriate specialized rescue squad, the local director, and the duty officer of the Division of Emergency Management.

(3) A general rescue squad may engage in a specialized rescue squad activity if:

(a) That activity is specified in its mission statement;

(b) The rescue squad has twelve (12) persons including a commanding officer from within its membership of the rescue squad whose mission statement is to engage in the specialized rescue squad activity;

(c) The persons assigned to the specialized rescue squad activity meet the training requirements specified by statute and by administrative regulation;

(d) The rescue squad has the equipment required by administrative regulation to engage in the specialized rescue squad activity listed in its mission statement; and

(e) The rescue squad has a vehicle for transporting the required equipment to the scene.

SECTION 88. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) A general rescue squad may engage in general and any specialized rescue squad activity utilizing one or more vehicles that hold all of the equipment required for both the general and specialized rescue squad activities specified in its mission statement.

(2) A specialized rescue squad may engage in one or more specialized rescue squad activities or general rescue squad activities utilizing one or more vehicles that hold all of the equipment required for the specialized, or general and specialized, rescue squad activities specified in its mission statement.

(3) The director may waive, in writing, the requirement, upon good cause shown, and upon written alternative plan submitted by a specialized rescue squad showing that adequate response equipment can be transported to the scene in an efficient manner without the necessity for a squad-owned vehicle.

SECTION 89. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) A specialized rescue squad shall engage in one or more of the activities listed in the definition of a specialized rescue squad. A specialized rescue squad may engage in any other activity, other than the ones prohibited by law or

administrative regulation, if the activity is specified in its mission statement.

(2) A specialized rescue squad shall not engage in a general rescue squad activity as a primary mission unless it meets the requirements of subsection (3) of this section. A specialized rescue squad may engage in a general rescue squad activity as an initial responding unit within its service area, however, upon responding to that activity, the highest officer in command of the response shall cause the immediate notification of the appropriate general rescue squad for assistance, the local director, and the duty officer of the Division of Emergency Management.

(3) A specialized rescue squad may engage in a general rescue squad activity if:

(a) That activity is specified in its mission statement;

(b) The rescue squad has twelve (12) persons including a commanding officer from within the membership of the specialized rescue squad whose mission statement is to engage in the general rescue squad activity;

(c) The persons assigned to the general rescue squad activity meet the training requirements specified by statute and administrative regulation;

(d) The rescue squad has the equipment required by administrative regulation to engage in general rescue squad activity as listed in its mission statement; and

(e) The rescue squad has a vehicle for transporting the required equipment to the scene.

SECTION 90. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

The director of the Division of Emergency Management shall appoint a state coordinator of search and rescue, who shall:

(1) Identify, inventory, and coordinate resources available for searches and rescues;

(2) Investigate and apply for grants and other financial assistance for searches and rescues;

(3) Maintain statistics regarding searches and rescues;

(4) Coordinate assistance during searches and rescues;

(5) Act as liaison with other states' operations involving searches and rescues;

(6) Provide assistance, upon request, during searches and rescues;

(7) Prepare a plan for searches and rescues;

(8) Prepare and distribute publications relating to searches and rescues;

(9) Establish, by administrative regulation, recommendations for organizations specializing in search and rescue, and certify organizations which meet those recommendations at the appropriate level;

(10) Maintain a list of all certified organizations and resources;

(11) Coordinate training in techniques of search and rescue; and

(12) Coordinate requests for federal assistance with the Air Force Rescue Coordination Center.

SECTION 91. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) The local search and rescue coordinator of each political subdivision, appointed in accordance with Section 102 of this Act, shall be responsible for coordinating and planning for local search and rescue activities. Operation of search and rescue activities shall be in accordance with the Kentucky Emergency Operations Plan, and the local emergency operations plan approved by the elected chief executives of each local political subdivision. The local search and rescue coordinator shall notify the duty officer of the Division of Emergency Management of all search and rescue missions. The local search and rescue coordinator shall work in a coordinating capacity directly supporting all search and rescue activities in that political subdivision, and in registering emergency search and rescue workers. The chief of the appropriate law enforcement agency of each political subdivision may, upon request of the local director or local search and rescue coordinator, restrict access to a specific search and rescue area to personnel authorized by the local director. Access shall be restricted only for the period of time necessary to accomplish the search and rescue mission. An unauthorized person shall not interfere with a search and rescue mission.

(2) When search and rescue activities result in the discovery of a deceased person or search and rescue workers assist in the recovery of human remains, the chief law enforcement officer of the political subdivision shall insure compliance with the provisions of KRS Chapter 72.

SECTION 92. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

The Rescue Aid Program, which is administered pursuant to this chapter and appropriations in the state budget, is designed to:

(1) Reduce and prevent the loss of life by creating a better equipped, trained, and coordinated rescue force throughout the Commonwealth;

(2) Upgrade the capabilities of local rescue squads by providing financial assistance to be used to purchase equipment and obtain training; and

(3) Encourage the development of rescue squads where none exist.

SECTION 93. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) The director of the division shall have overall responsibility for policy, guidance, administration, implementation, and proper utilization of the rescue aid fund.

(2) The director shall serve as principal liaison between the division and local officials participating in programs affected by the rescue aid fund, and shall ensure proper utilization of the rescue aid fund.

(3) The director shall appoint an advisory committee consisting of seven (7) members, including no more than four (4) employees of the staff of the division to assist in making determinations related to rescue grant fund allocations, compliance with fund requirements, releasing equipment to rescue squads, and withdrawal and reallocation of equipment or funds. The members of the committee shall serve at the pleasure of the director, but for no more than four (4) years without reappointment, and shall serve without reimbursement, except when funded through the Emergency Management Assistance Program. The decisions of the committee shall be advisory only and shall not be binding upon the director.

(4) The director, with the advice of the advisory committee, shall make determinations relating to rescue grant fund applications, releasing equipment to rescue squads, and withdrawal and reallocation of equipment or funds.

(5) Area managers of the division shall fully explain rescue grant opportunities and requirements to local elected officials, local emergency management directors, and local rescue squads; review rescue grant fund applications, documentation and program submissions; and make recommendations to the director.

(6) Local emergency management directors shall be responsible for submitting rescue grant fund applications and documentation of expenditures to the division, as required, and shall facilitate and ensure the coordination of local rescue programs to meet the needs of the communities served.

(7) The chief officer of the rescue squad shall initiate rescue grant fund applications, submit all applications or documentation to the local emergency management director, and ensure that all funds are expended for items or services as approved.

SECTION 94. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

In order to ensure that rescue squads seeking funding under the rescue grant program achieve and maintain compliance with the provisions of this chapter, the following requirements shall be met:

(1) Each rescue squad shall develop written bylaws to specify as a minimum:

(a) The mission of the rescue squad.

(b) The election or appointment, succession, and term of officers.

(c) Financial accounting and property accountability.

(d) Administrative procedures.

(e) Definition of active membership in the squad.

(2) Each rescue squad shall develop written standard operating procedures which specify as a minimum:

(a) Procedures and rules for notification and response to emergencies.

(b) Procedures for all operations and response activities of the squad in accordance with the mission statement.

(3) A current copy of the bylaws and a current copy of all standard operating procedures shall be sent by the squad to the division. Amendments to the bylaws and standard operating procedures shall be sent to the division within ten (10) working days of their adoption. The division shall maintain a file of rescue squad bylaws and standard operating procedures. These files shall be public records. Copies of the bylaws and standard operating procedures of the squad, updated as required in this subsection, shall also be sent concurrently to the local emergency management director.

(4) Each rescue squad shall have a vehicle dedicated solely to rescue service. The make, model, year, vehicle identification number, and license number of each vehicle used by the squad solely for rescue service shall be supplied to the local emergency management director and to the division. When a new vehicle is put in service, or a vehicle is withdrawn from service, both the local director and the division shall be notified within ten (10) working days.

(5) A minimum of twelve (12) persons shall be identified by name as active members of the rescue squad.

(6) The active membership list of the rescue squad shall be submitted quarterly to the division through the area manager with a copy of the same list submitted concurrently to the local emergency management director.

(7) The active membership list shall be continuously maintained in an accurate and current status by the rescue squad, and shall be available for inspection by state and local government officials, employees, and the public.

(8) Rescue squads shall maintain a formal training program appropriate to accomplish the mission of the rescue squad.

(a) The training program shall consist of not less than two (2) hours of formal training per month. Actual rescue missions shall not constitute training.

(b) To be eligible for continued funding, each squad shall report not less than one hundred sixty-eight (168) man-hours of training for its members annually. This training shall be reported on the incident and training reports submitted pursuant to this chapter.

(c) Training at a rescue school provided by an emergency management agency or other appropriate training may be utilized to meet the requirements of subsection (2)(b) of this section.

(9) Rescue squads shall be formally affiliated with the local disaster and emergency services organization through the following means:

(a) Execution of a city or county order or ordinance, the adoption of a written search and rescue plan pursuant to Section 101 of this Act, and the promulgation of a written statement of affiliation as the local charter of authorization signed by the county judge/executive or mayor, the local emergency management director, and the chief rescue officer outlining a specific working agreement. The statement of affiliation shall be subject to annual renewal. No statement of affiliation shall be subject to automatic renewal; it shall be an affirmative process. The document shall include, as a minimum, call out authority, chain of command, the responsibilities of each concerned party, terms and conditions of the local charter of authorization to operate in the jurisdiction, and procedures for revocation of the local charter, and shall be reviewed by the chief elected official of the government signing it and the local director. Both shall certify, if signing the document, that they have reviewed the mission statement of the rescue squad and the statement of affiliation and that they find that the rescue squad possesses:

1. Adequate numbers of trained personnel to perform the mission;

2. Proper and adequate equipment, including at least all of the required equipment specified by administrative regulations of the division, to perform the mission, and that the equipment is in proper working order;

3. A rescue vehicle, dedicated solely to rescue purposes, which is adequate to perform the mission of the squad, and is in proper working order; and

4. Adequate command and control personnel, training, and policies to ensure that the squad can quickly and efficiently respond and perform its mission when called upon.

(b) Incorporation, into the statement of affiliation, of a finding by the chief elected official and the local director that, following review of the mission statement of the rescue squad and the statement of affiliation, the rescue squad is performing a function not performed by other agencies of government or private agencies or organizations. If other organizations are performing functions which are listed on the mission statement of the rescue squad, then the statement shall contain reasons why duplication of existing services of other organizations by the rescue squad is necessary; and

(c) Incorporation of the responsibilities of the rescue squad into the rescue services annex of the local emergency operations plan or other appropriate annex.

(10) If either the chief elected official or the local director declines to sign the statement of affiliation provided for in subsection (9) of this section, the rescue squad shall be without local charter and shall return to the division all equipment purchased with state funds. This return of equipment shall take place within five (5) days of the refusal of either designee to sign the statement of affiliation. Neither the chief elected official nor the local director shall be required to state a reason why they sign or decline to sign a statement of affiliation.

(11) When a rescue squad is not independent, but is incorporated within other emergency service agencies or divisions, such as a fire department or fire division, the squad members shall be available for and capable of performing rescue services not incidental to their primary mission.

(12) Rescue squads shall maintain a full complement of minimum equipment appropriate to the type of rescue to be undertaken. Minimum equipment lists and other requirements for rescue squads shall be promulgated by the director by administrative regulation.

(13) Rescue squads shall not assess fees or charges for any rescue activity.

SECTION 95. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) A rescue grant fund project application shall be initiated by the chief rescue officer and forwarded to the local emergency management director. The local director shall review all applications for completeness and accuracy,

prioritize and consolidate the applications, and make recommendations thereon. In the absence of a local director, the county judge/executive shall fill this role.

(2) The local director shall forward all applications to the area manager of the division, who shall review them, make recommendations thereon, and forward documentation to the director.

(3) The director shall forward all applications to the advisory committee. The advisory committee shall meet during the months of April, August, and December on dates announced by the director, to assess applications and compliance and to make recommendations to the director with regard to allocations of funds, assessment of compliance, reallocations of funds, release of equipment, reallocation of equipment, and any other matters assigned by the director. The advisory committee shall:

(a) Hold only public meetings; and

(b) Maintain written minutes reflecting the actions of the advisory committee. All applications on file and all other matters pending shall be reviewed during each session and recommendations made thereon to the director.

(4) Requests for funding shall be evaluated by the following criteria:

(a) Meeting the minimum eligibility criteria of Section 84 or 94 and Section 85 of this Act, unless some aspect thereof has been waived as provided in Section 48 of this Act. In determining membership eligibility, no person may be counted as a member of more than one (1) rescue squad even though that person may be available to or a member of more than one (1) rescue squad. If possible, a squad of primary membership shall be determined and the person counted as a member of that squad. If this cannot be determined, the person shall not be counted as a member of any rescue squad;

(b) Unit and individual training;

(c) Number of rescue responses annually;

(d) Population served;

(e) Geographic area served;

(f) Number, type, and location of other rescue squads in the geographic area served;

(g) Equipment possessed by the squad; and

(h) The extent to which the rescue squad integrates its activities with the local emergency management program of the area served.

(5) The advisory committee shall forward the applications together with its recommendations thereon to the director for final decision and allocations of funds. The division's administrative officer shall ensure timely payment of the funds.

(6) The director shall maintain written reasons with regard to all funding decisions for a period of one (1) year from the time they are announced.

(7) The director shall provide applicants with written decisions with regard to their applications.

(8) Decisions and the reasons for any decisions regarding funding shall be made available to any person upon written request.

(9) The local emergency management director shall maintain file copies of all applications and decisions thereon for at least five (5) years.

SECTION 96. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) The rescue squad shall order or purchase with state or federal grant funds only the approved equipment, services, or training, and no other, within fifteen (15) days of the receipt of the grant funds and shall provide a copy of all paid invoices as well as proof of payment, (canceled check, cash paid receipt, or similar document), within ninety (90) days of the receipt of the grant funds. An extension of time periods may be granted for cause upon written application to the director. Requests for time extensions shall be submitted through the local emergency management director to the area manager, for transmittal to the director. The director may grant or deny extensions based upon need. Any funds not encumbered or expended during the grant period shall be returned to the division, unless authorized in writing by the director to make additional purchases with encumbered funds.

(2) All equipment purchased with rescue aid funds shall be selected from the minimum equipment list unless an exception is approved by the director. Optional items shall not be approved until all items on the required list have been acquired.

(3) The rescue squad shall be accountable to the Commonwealth of Kentucky for all equipment purchased in whole or in part with rescue aid funds, and shall ensure the storage or positioning of all equipment within the geographical boundaries of the Commonwealth at all times, except when being utilized on an out-of-state mission approved by the

division . All equipment with a purchase price of three hundred dollars ($300) or more shall be assigned a serial number provided by the division which shall be engraved on the equipment. After five (5) years from the date of purchase, all equipment costing less than three hundred dollars ($300) shall be released to the squad. Equipment costing in excess of three hundred dollars ($300) may be released to the squad after approval has been granted by the director. Squads requesting release of equipment shall define in writing the rationale and justification for the release.

(4) Permission to dispose of unserviceable, obsolete, or damaged items, which have not been released to the squad pursuant to subsection (3) of this section, purchased in whole or in part with rescue aid funds, may be granted by the director. Requests for this action shall be submitted through the local emergency management director to the area manager for transmittal to the director.

(5) When a rescue squad is disbanded, loses its local charter to operate, or otherwise becomes, in the determination of the director, incapable of performing its duties as provided in Section 94 of this Act, all equipment purchased in whole or in part with rescue aid funds, and which has not been released to the squad pursuant to subsection (3) of this section, shall revert to the division for reallocation. If local funds were used to pay for a portion of the equipment or the equipment has depreciated, the squad may return the equipment to the division or repay an amount determined appropriate by the director. The option of repayment shall exist only upon the disbanding, loss of local charter, or determination of inability of the squad to perform its duties.

(6) In making determinations with regard to equipment which a rescue squad possesses either for funding or accountability purposes, equipment personally owned by members of a rescue squad shall not be counted for any purpose. Personally owned equipment shall not be used to fulfill the requirements of the minimum equipment list for the squad.

(7) Equipment which has been purchased in whole or in part with rescue aid funds, and which has not been released to the squad pursuant to subsection (3) of this section, shall be subject to inspection upon twenty-four (24) hours notice, by the local emergency management director, an area manager, or any other employee of the division.

(8) An inspection shall be made when accountable items are reported damaged, in need of replacement, or where there is evidence of misuse. Inspections may also be made upon the request of the local director, an area manager, or the director.

(9) An annual inspection of equipment purchased in whole or in part with rescue aid funds, and which has not been released to the squad pursuant to subsection (3) of this section, may be conducted by the local director, or an area manager. The review shall be made to ensure accountability, or proper maintenance and utilization of the equipment.

(10) All funds provided pursuant to Sections 92 to 98 of this Act shall be subject to state audit and rescue squads shall cooperate fully to provide necessary documentation and other support required for the audit.

(11) A rescue squad aggrieved by a decision of the division to withdraw funds or equipment allocated to the rescue squad pursuant to subsection (5) of this section may appeal the decision in the manner provided in Section 47 of this Act.

SECTION 97. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) A report shall be made by the chief officer of the rescue squad to the local director and the area manager of the division within forty-eight (48) hours when:

(a) Accountable equipment purchased with rescue aid funds is lost, stolen, or damaged; or

(b) The squad is disbanded, loses its local charter to operate, or is otherwise rendered incapable of performing its duties as outlined in this chapter.

(2) Local emergency management directors shall maintain a cumulative list of equipment owned by each rescue squad participating in the rescue aid program, denoting those items purchased with rescue aid funds. An updated list shall be submitted to the area manager each time a rescue aid grant application is submitted.

(3) Rescue squads participating in the rescue aid program or who receive workers' compensation benefits through the division shall complete quarterly incident and training reports reflecting rescue squad activity or the lack thereof, as appropriate, and submit these reports to the local director and the area manager within ten (10) days from the end of the quarter. The area manager shall transmit the reports together with any comments thereon to the director within ten (10) days of receipt thereof.

SECTION 98. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) A rescue squad taxing district may be created by the fiscal court pursuant to KRS 65.182 or 65.188.

(2) The ad valorem tax that may be imposed for the maintenance and operation of the district shall not exceed ten cents ($0.10) for each one hundred dollars ($100) of the assessed valuation of all property in the district.

(3) Upon the creation of a district, the district so established shall be a taxing district within the meaning of Section 157

of the Constitution of Kentucky.

(4) The district ad valorem taxes shall be collected by the sheriff in the same manner as county ad valorem taxes. The sheriff shall be entitled to a fee of four percent (4%) of the amount of the tax collected for the district.

(5) The affairs of the district shall be controlled by a board of directors appointed by the county judge/executive, the mayor of an urban-county, or the chief executive of another local government with the approval of the legislative body of that jurisdiction.

(a) If the district consists of one (1) county, three (3) directors shall be appointed;

(b) If the district consists of two (2) counties, the county judge/executive of the county having the greater portion of the population of the district shall appoint two (2) directors and the county judge/executive of the other county shall appoint the third director;

(c) If the district consists of more than two (2) counties, the county judge/executive of the county having the greatest portion of the population of the district shall appoint two (2) directors and the county judge/executive of the remaining counties comprising the district shall each appoint one (1) director;

(d) The legislative body of each city of the first three (3) classes, or if there is no such class of city, the city of the highest class located within the district shall appoint one (1) additional director.

(6) The board of directors shall be appointed within thirty (30) days after the establishment of the district. Each board member shall reside within the county or city for which appointed. Directors shall be appointed for terms of two (2) years each, except that initially the appointing authority shall appoint a minority of the board members for one (1) year terms. Subsequent terms shall all be for two (2) years. Any vacancies shall be filled by the appointing authority for the unexpired term.

(7) A majority of the membership of the board shall constitute a quorum.

(8) A member of the board of directors may be removed from office as provided by KRS 65.007.

(9) The board of directors shall provide rescue service to inhabitants of the district and may:

(a) Purchase vehicles and all other necessary equipment and employ trained personnel who meet all federal and state requirements;

(b) Adopt rules and regulations necessary to effectively and efficiently provide rescue service for the district. Rules and regulations shall be consistent with the provisions of this chapter;

(c) Employ persons to administer the daily operations of the rescue service;

(d) Compensate employees of the district at a rate determined by the board;

(e) Apply for and receive available funds from the state and federal government for the purpose of maintaining or improving the rescue service of the district; and

(f) Acquire by bequest, gift, grant, or purchase any real or personal property necessary to provide rescue service.

(10) A district shall be eligible for grants pursuant to Section 95 of this Act and workers' compensation coverage pursuant to Section 99 of this Act.

(11) Tax revenues of a rescue squad taxing district shall be used only for rescue services as described in this chapter. Tax revenues of a rescue squad taxing district shall be distributed among all rescue squads in the district in proportion to the percentage of the district's population served by each squad.

SECTION 99. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

Rescue squad organizations or members of them or individuals associated with them for the purposes of receiving workers' compensation benefits paid by the division shall be covered by those benefits when performing emergency preparedness, response, or recovery functions, with the following limitations:

(1) Rescue squad organizations and individuals shall not be covered when performing fundraising functions, unless all proceeds of the function are to be dedicated to the administration or operation of the rescue squad organization.

(2) Rescue squad organizations and individuals shall not be covered when involved in any law enforcement activity, including security or evidence recovery, except for traffic control at an accident scene or the recovery of evidence by diving or dragging when the assistance is requested by law enforcement authorities.

(3) Rescue squad organizations and individuals shall not be covered when the primary purpose of the mission is the provision of emergency medical care or first aid. However, coverage shall be extended when:

(a) A rescue squad provides emergency medical transportation when inclement weather or rough terrain prevents a regular ambulance from providing transportation. Transportation may be provided only upon request of the appropriate emergency medical services agency. The distance of travel shall be restricted to the nearest appropriate medical facility or ambulance;

(b) Additional personnel or equipment are required to supplement existing emergency medical services which have been overtaxed at an incident which is subsequently declared as an emergency by any official authorized to make such a determination; or

(c) A rescue squad provides first aid, or emergency medical care is rendered as a necessary function during a rescue mission, and the primary purpose of the mission was the rescue and not the provision of emergency medical care.

(4) Rescue squad organizations or individuals shall not be covered when engaging in firefighting unless the firefighting was performed as a secondary function to protect persons involved in a rescue mission.

(5) Rescue squad organizations or individuals shall not be covered when engaging in hazardous materials response, containment, cleanup, or other operations related to hazardous materials, when operating at the hazardous materials technician or hazardous materials specialist level of operation as defined in 29 C.F.R. 1910.120.

(6) No person shall be covered unless enrolled on a workers' compensation enrollment form and filed with the area manager of the division, except when the magnitude of an emergency, or a training exercise, is so great that a local emergency management director must solicit additional workers. At these times, the local director may develop and maintain a list of workers, to include names, Social Security account numbers, missions assigned, and dates covered and submit a copy of the list to the area manager of the division within twenty-four (24) hours of the conclusion of the emergency or the training exercise.

SECTION 100. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) All 911 centers and dispatch centers, law enforcement agencies, law enforcement dispatchers, fire departments, rescue squads, emergency medical service agencies, and emergency management agencies shall report the information required to be reported by administrative regulation, for all reports of persons missing, lost, or overdue, if a search for the lost person has lasted for more than two (2) hours to:

(a) The local emergency management director; and

(b) The local search and rescue coordinator for the jurisdiction in which the person is reported missing.

(2) Any search for a missing minor, as that term is defined in KRS 2.015, shall be reported to the Kentucky State Police by the person or organization to whom the missing minor is reported. The making of this report does not relieve the person or organization from the duty to make other notifications and reports required in this section.

(3) Any search and rescue mission which has lasted four (4) hours without the subject being located, shall be immediately reported to the duty officer of the Division of Emergency Management by telephone or radio.

(4) The results of each lost, missing, or overdue person report or search mission required to be reported under subsections (1) to (3) of this section shall be reported to the division and the local director on forms provided by the division and containing the information required by administrative regulation. The report shall be filed within twenty (20) days after:

(a) The search and rescue mission is discontinued; or

(b) The victim has not been found and a decision is made to keep the case open or continue searching on a limited basis, whichever occurs earlier.

(5) Each agency required to notify a local emergency management director or the division of a report of a missing person, or a search mission pursuant to this section shall develop a written standard operating procedure for handling and reporting requests to search for missing, lost, or overdue persons. This standard operating procedure shall be a public record.

(6) The contents of reports, information to be conveyed upon notification, and other matters relating to the administration of this section and the securing of information required hereby shall be specified by the division by administrative regulations.

SECTION 101. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

(1) Each local search and rescue coordinator shall assist local rescue squads in developing a comprehensive written search and rescue plan which shall address as a minimum:

(a) Direction and control responsibilities or incident command system procedures;

(b) Notification and reporting procedures and requirements;

(c) Call-out procedures;

(d) Resource identification;

(e) Coordination of resources;

(f) Mutual aid agreements;

(g) Training requirements for search and rescue responders and managers;

(h) Coordination of all on-scene operations with other local, state, and federal agencies; and

(i) The provision of copies of topographical maps for search team members.

(2) The local search and rescue plan shall be incorporated into the rescue services annex of the local emergency operations plan and submitted for review and adoption as part of the local emergency operations plan.

(3) The local search and rescue plan shall be a public record and shall be updated not less than annually. A copy of the plan shall be filed with the division not less than ten (10) days after each update or amendment.

SECTION 102. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

Each local emergency management director shall assume the duties of, or appoint with the concurrence of the fiscal court, city governing body, urban-county council, or governing body of other local government, a local search and rescue coordinator who shall be responsible for the coordination of all search and rescue resources and operations during all search and rescue missions within the city or county. The position of local search and rescue coordinator may be a volunteer position. The local search and rescue coordinator, if appointed by the local emergency management director, shall serve a similar term not to exceed four (4) years, but may be reappointed for a similar term upon the expiration of a previous term. The local search and rescue coordinator may be removed for cause at any time by the local director, with the concurrence of the fiscal court, city governing body, urban-county council or governing body of other local government. The local search and rescue coordinator shall successfully complete training in search management, search techniques, and incident command required by the division by administrative regulation.

SECTION 103. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

The Division of Emergency Management may promulgate administrative regulations which address minimum training requirements and standards of response for individuals, agencies, and organizations who respond to the following search and rescue missions:

(1) Searching for missing, lost, or overdue person or persons;

(2) Cave rescue;

(3) Dive rescue and recovery of drowning victims;

(4) Inland water search, rescue, and recovery;

(5) Search dogs and handlers; testing and certification;

(6) Urban search and rescue; and

(7) High angle or rough terrain rescue and recovery.

SECTION 104. A NEW SECTION OF KRS CHAPTER 39F IS CREATED TO READ AS FOLLOWS:

Any person violating any provision of this chapter or any administrative regulation promulgated or order issued pursuant to this chapter for which another penalty is not specified shall be guilty of a Class A misdemeanor.

Section 105. KRS 186.1721 is amended to read as follows:

(1) Upon application to the county clerk of the county of his residence, any member of a local disaster and emergency services organization or volunteer rescue squad in the Commonwealth shall be issued a five (5) year license plate in the same form and character as license plates authorized by law to be used upon similar private vehicles registered in Kentucky, except that the license plates shall bear the inscription "Disaster and Emergency Services," a registration number and an appropriate standardized insignia. Each application shall be accompanied by proof of current service as furnished by the county judge/executive, mayor, or *local emergency management director*[~~disaster and emergency services coordinator~~], and the payment of a fee of twenty-five dollars ($25). Annually thereafter, upon application to the county clerk of the county of his residence, together with proof of current service, and payment of an eleven dollar fifty cent ($11.50) registration fee, the clerk shall issue a current year renewal decal to the applicant to be affixed to the disaster and emergency services license plate originally issued to the applicant.

(2) Upon the sale, transfer, or termination of lease of a vehicle licensed as authorized by subsection (1) of this section, the owner or lessee shall remove the disaster and emergency services license plate and return it and the certificate of registration to the county clerk. The county clerk shall issue a regular license plate and certificate of registration upon payment of an eleven dollar fifty cent ($11.50) state fee and a three dollar ($3) clerk's fee. When the plate has been presented to the clerk, he shall reissue it free from payment to the Transportation Cabinet for use on any other vehicle of the same class and category owned or leased by the same applicant to whom a disaster and emergency services license plate was originally issued.

(3) Upon termination of membership as a member of the disaster and emergency services organization or volunteer rescue squad, an applicant to whom a disaster and emergency services license plate was issued under this section shall, within thirty (30) days, return the plate to the county clerk of the county of his residence.

(4) For the services performed in issuing the disaster and emergency services license plate and in annually issuing a current year renewal decal to be affixed to the disaster and emergency services license plate, the county clerk shall receive from

each applicant a fee of three dollars ($3). A two dollar ($2) fee shall be charged for the reissuance of the license plate after the sale or transfer of the vehicle for which it was originally issued.

(5) Any applicant seeking a license plate according to this section for a vehicle provided to him pursuant to an occupation shall conform to the requirements set forth in KRS 186.050(14).

(6) Registration under this section shall expire December 31 of each year.

(7) The secretary of the Transportation Cabinet shall provide forms necessary to carry out the purpose of this section.

Section 106. KRS 189.910 is amended to read as follows:

(1) As used in KRS 189.920 to 189.950, "emergency vehicle" means any vehicle used for emergency purposes by a fire department; any vehicle used for emergency purposes by the State Police, a public police department, Department of Corrections, or sheriff's office; any vehicle used for emergency purposes by a rescue squad; any publicly owned vehicle used for emergency purposes by ***an emergency management***[~~a civil defense~~] agency; any vehicle used to respond to emergencies or to transport a patient with a critical medical condition if the vehicle is operated by a Cabinet for Human Resources licensed ambulance provider or medical first response provider; any vehicle commandeered by a police officer; or any motor vehicle used by a paid or volunteer fireman or paid or volunteer ambulance personnel ***or a paid or volunteer local emergency management director*** while responding to an emergency or to a location where an emergency vehicle is on emergency call.

(2) As used in KRS 189.920 to 189.950, "public safety vehicle" means public utility repair vehicle; wreckers; state, county, or municipal service vehicles and equipment; highway equipment which performs work that requires stopping and standing or moving at slow speeds within the traveled portions of highways; and vehicles which are escorting wide-load or slow-moving trailers or trucks.

Section 107. KRS 189.920 is amended to read as follows:

(1) All fire department, rescue squad, or publicly owned ***emergency management***[~~civil defense~~] agency emergency vehicles and all ambulances shall be equipped with one (1) or more flashing, rotating, or oscillating red lights, visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle, and a siren, whistle, or bell, capable of emitting a sound audible under normal conditions from a distance of not less than five hundred (500) feet. This equipment shall be in addition to any other equipment required by the motor vehicle laws.

(2) All state, county, or municipal police vehicles and all sheriffs' vehicles used as emergency vehicles shall be equipped with one (1) or more flashing, rotating, or oscillating blue lights, visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle, and a siren, whistle, or bell, capable of emitting a sound audible under normal conditions from a distance of not less than five hundred (500) feet. This equipment shall be in addition to any other equipment required by the motor vehicle laws.

(3) By ordinance, the governing body of any city or county may direct that the police or sheriffs' vehicles in that jurisdiction be equipped with a combination of red and blue flashing, rotating, or oscillating lights.

(4) All public safety vehicles shall be equipped with one (1) or more flashing, rotating, or oscillating yellow lights, visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle. Yellow flashing, rotating, or oscillating lights may also be used by vehicles operated by mail carriers while on duty, funeral escort vehicles, and church buses.

(5) All Department of Corrections vehicles used as emergency vehicles shall be equipped with one (1) or more flashing, rotating, or oscillating blue lights, visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle. The Department of Corrections vehicles shall not be equipped with or use a siren, whistle, or bell. The equipment prescribed by this subsection shall be in addition to any other equipment required by motor vehicle laws.

(6) Red flashing lights may be used by school buses.

(7) No emergency vehicle, public safety vehicle, or any other vehicle covered by KRS 189.910 to 189.950 shall use any light of any other color than those specified by KRS 189.910 to 189.950. Sirens, whistles, and bells may not be used by vehicles other than those specified by KRS 189.910 to 189.950, except that any vehicle may be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.

(8) Vehicles used as command posts at incidents may be equipped with and use when on scene, a green rotating, oscillating, or flashing light. This light shall be in addition to the lights and sirens required in this section.

Section 108. KRS 304.18-060 is amended to read as follows:

"Blanket health insurance" is that form of health insurance covering groups of persons as enumerated in one (1) of the following subsections under a policy or contract issued to:

(1) Any common carrier or to any operator, owner or lessee of a means of transportation, who or which shall be deemed the policyholder, covering a group of persons who may become passengers defined by reference to their travel status on ***the***[~~such~~] common carrier or ***the***[~~such~~] means of transportation.

(2) An employer, who shall be deemed the policyholder, covering any group of employees, dependents or guests, defined by reference to specified hazards incident to an activity or activities or operations of the policyholder.

(3) A college, school or other institution of learning***;***[~~,~~] a school district or districts***; a***[~~, or~~] school jurisdictional unit***;***[~~,~~] or to the head, principal***,*** or governing board of any such educational unit, who or which shall be deemed the policyholder, covering students, teachers***,*** or employees.

(4) A religious, charitable, recreational, educational or civic organization[~~,~~] or branch thereof, which shall be deemed the policyholder covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by such policyholder.

(5) A sports team, camp***,*** or sponsor thereof, which shall be deemed the policyholder, covering members, campers, employees, officials***,*** or supervisors.

(6) A volunteer fire department, first aid, ***emergency management agency***[~~civil defense~~] or other such volunteer organization, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by ***the***[~~such~~] policyholder.

(7) A newspaper or other publisher, which shall be deemed the policyholder, covering its carriers.

(8) An association, including a labor union, which has a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by ***the***[~~such~~] policyholder.

(9) Any other person or group covering any other risk or class of risks which, in the discretion of the commissioner, may be properly eligible for blanket health insurance. The discretion of the commissioner may be exercised on an individual risk basis or class of risks, or both.

Section 109. KRS 342.140 is amended to read as follows:

The average weekly wage of the injured employee at the time of the injury or last injurious exposure shall be determined as follows:

(1) If at the time of the injury which resulted in death or disability or the last date of injurious exposure preceding death or disability from an occupational disease:

(a) The wages were fixed by the week, the amount so fixed shall be the average weekly wage;

(b) The wages were fixed by the month, the average weekly wage shall be the monthly wage so fixed multiplied by twelve (12) and divided by fifty-two (52);

(c) The wages were fixed by the year, the average weekly wage shall be the yearly wage so fixed divided by fifty-two (52);

(d) The wages were fixed by the day, hour, or by the output of the employee, the average weekly wage shall be the wage most favorable to the employee computed by dividing by thirteen (13) the wages (not including overtime or premium pay) of said employee earned in the employ of the employer in the first, second, third, or fourth period of thirteen (13) consecutive calendar weeks in the fifty-two (52) weeks immediately preceding the injury.

(e) The employee had been in the employ of the employer less than thirteen (13) calendar weeks immediately preceding the injury, his average weekly wage shall be computed under paragraph (d), taking the wages (not including overtime or premium pay) for that purpose to be the amount he would have earned had he been so employed by the employer the full thirteen (13) calendar weeks immediately preceding the injury and had worked, when work was available to other employees in a similar occupation.

(f) The hourly wage has not been fixed or cannot be ascertained, the wage for the purpose of calculating compensation shall be taken to be the usual wage for similar services where the services are rendered by paid employees.

(2) In occupations which are exclusively seasonal and therefore cannot be carried on throughout the year, the average weekly wage shall be taken to be one-fiftieth (1/50) of the total wages which the employee has earned from all occupations during the twelve (12) calendar months immediately preceding the injury.

(3) In the case of volunteer firemen, police, and ***emergency management agency***[~~civil defense~~] members or trainees, the income benefits shall be based on the average weekly wage in their regular employment.

(4) If the employee was a minor, apprentice, or trainee when injured, and it is established that under normal conditions his wages should be expected to increase during the period of disability, that fact may be considered in computing his average weekly wage.

(5) When the employee is working under concurrent contracts with two (2) or more employers and the defendant employer has knowledge of the employment prior to the injury, his wages from all the employers shall be considered as if earned

from the employer liable for compensation.

(6) The term "wages" as used in this section and KRS 342.143 means, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, and fuel or similar advantage received from the employer, and gratuities received in the course of employment from others than the employer to the extent the gratuities are reported for income tax purposes.

(7) The commissioner shall, from time to time, based upon the best available information, determine by administrative regulation industries which ordinarily do not have a full working day for five (5) days in every week. In those industries, compensation shall be computed at the average weekly wage earned by the employee at the time of injury reckoning wages as earned while working full time. "At full time" as used in this subsection means a full working day for five (5) working days in every week regardless of whether the injured employee actually worked all or part of the time.

Section 110. KRS 342.640 is amended to read as follows:

The following shall constitute employees subject to the provisions of this chapter, except as exempted under KRS 342.650:

(1) Every person, including a minor, whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, express or implied, and all helpers and assistants of employees, whether paid by the employer or employee, if employed with the knowledge, actual or constructive, of the employer;

(2) Every executive officer of a corporation;

(3) Every person in the service of the state or any of its political subdivisions or agencies, or of any county, city of any class, school district, drainage district, tax district, public or quasipublic corporation, or other political entity, under any contract of hire, express or implied, and every official or officer of those entities, whether elected or appointed, while performing his official duties shall be considered an employee of the state. Every person who is a member of a volunteer ambulance service, fire, or police department shall be deemed, for the purposes of this chapter, to be in the employment of the political subdivision of the state where the department is organized. Every person who is a regularly-enrolled volunteer member or trainee of ***an emergency management agency***[~~the civil defense corps of this state~~], as established under KRS ***Chapters 39A to 39E***[~~Chapter 39~~], shall be deemed, for the purposes of this chapter, to be in the employment of this state. Every person who is a member of the Kentucky National Guard, while the person is on state active duty as defined in KRS 38.010(4), shall be deemed, for the purposes of this chapter, to be in the employment of this state;

(4) Every person performing service in the course of the trade, business, profession, or occupation of an employer at the time of the injury; and

(5) Subject to the provisions in subsection (4) of this section, every person regularly selling or distributing newspapers on the street or to customers at their homes or places of business. For the purposes of this chapter, the person shall be deemed an employee of an independent news agency for whom he is selling or distributing newspapers, or, in the absence of an independent agency, of each publisher whose newspapers he sells or distributes.

Section 111. KRS 432.570 is amended to read as follows:

(1) It shall be unlawful for any person except a member of a police department or police force or an official with written authorization from the head of a department which regularly maintains a police radio system authorized or licensed by the Federal Communications Commission, to have in his or her possession, or in an automobile or other vehicle, or to equip or install in or on any automobile or other vehicle, any mobile radio set or apparatus capable of either receiving or transmitting radio or other messages or signals within the wave length or channel now or which may hereafter be allocated by the Federal Communications Commission, or its successor, for the purpose of police radios, or which may in any way intercept or interfere with the transmission of radio messages by any police or other peace officers. It shall be unlawful for any car, automobile, or other vehicle other than one publicly owned and entitled to an official license plate issued by the state issuing a license for the car, to have, or be equipped with the sets or apparatus even though the car is owned by an officer. This section shall not apply to any automobile or vehicle owned or operated by a member of a sheriff's department authorized by the fiscal court to operate a radio communications system that is licensed by the Federal Communications Commission or other federal agency having the authority to license same. Nothing in this section shall preclude a probation and parole officer employed by the Department of Corrections from carrying on his person or in a private vehicle while conducting his official duties an authorized, state-issued portable radio apparatus capable of transmitting or receiving signals.

(2) Any person guilty of violating any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than fifty dollars ($50) and not exceeding five hundred dollars ($500), or imprisonment not exceeding twelve (12) months, or both so fined and imprisoned.

(3) It shall be the duty of any and all peace officers to seize and hold for evidence any and all equipment had or used in violation of the provisions of this section, and, upon conviction of the person having, equipping or using such equipment, it shall be the duty of the trial court to order such equipment or apparatus destroyed, forfeited, or escheated to the Commonwealth of Kentucky, and said property may be ordered destroyed, forfeited, or escheated as above provided without a conviction of the person charged with violating this section.

(4) Nothing contained in this section shall prohibit the possession of a radio by:

(a) An individual who is a retailer or wholesaler and in the ordinary course of his business offers such radios for sale or resale;

(b) A commercial or educational radio or television station, licensed by the Federal Communications Commission, at its place of business; or

(c) An individual who possesses such a radio, provided it is capable of receiving radio transmissions only and is not capable of sending or transmitting radio messages, at his place of residence; licensed commercial auto towing trucks; newspaper reporters and photographers; ~~[disaster and]~~emergency ***management agency***~~[services]~~ personnel authorized in writing by the~~[state]~~ director of ***the division of***~~[disaster and]~~ emergency ***management***~~[service]~~ (for state personnel) or chief executive of the city or county (for their respective personnel); a person holding a valid license issued by the Federal Communications Commission in the amateur radio service; peace officers authorized in writing by the head of their law enforcement agency, Commonwealth's attorneys and their assistants, county attorneys and their assistants, except that it shall be unlawful to use such radio to facilitate any criminal activity or to avoid apprehension by law enforcement officers. Violation of this section shall, in addition to any other penalty prescribed by law, result in a forfeiture to the local law enforcement agency of such radio.

(5) The secretary of the Finance and Administration Cabinet is hereby empowered by issuance of a secretary's order to exempt from the prohibitions and penalties of this section the possession and use of any and all radio communication equipment that he finds is necessary to be owned and used by members of the general public and other nonpolice persons for utilization in the N.O.A.A. weather radio system.

Section 112. KRS 65.060 is amended to read as follows:

As used in KRS 65.008, 65.009, 65.065 and 65.070, the term "district" shall mean and the provisions of KRS 65.008, 65.009, 65.065 and 65.070 shall apply to any board, commission, or special district created pursuant to the following statutes: ***Sections 84 and 98 of this Act***~~[KRS 39.700]~~, 65.160, 65.162, 65.210 to 65.300, 65.510 to 65.650; KRS 74.010 to 74.416; KRS 75.010 to 75.260; KRS 76.005 to 76.210, 76.241 to 76.273, 76.274 to 76.279, 76.295 to 76.420, 76.600 to 76.640; KRS 77.005 to 77.305; KRS 80.262 to 80.610; KRS 91A.350 to 91A.390; KRS 96A.010 to 96A.230; KRS 104.450 to 104.680; KRS 107.310 to 107.500; KRS 108.010 to 108.070, 108.080 to 108.180; KRS 109.056, 109.059, 109.115 to 109.190; KRS 147.610 to 147.705; KRS 147A.050 to 147A.120; KRS 154.50-301 to 154.50-346; KRS 164.605 to 164.675; KRS 173.450 to 173.650, 173.710 to 173.800; KRS 179.700 to 179.735; KRS 183.132 to 183.160; KRS 184.010 to 184.300; KRS 210.460 to 210.480; KRS 212.720 to 212.760; KRS 216.310 to 216.360; KRS 220.010 to 220.613; KRS 262.100 to 262.660, 262.700 to 262.990; KRS 266.010 to 266.990; KRS 267.010 to 267.990; KRS 268.010 to 268.990; or KRS 273.405 to 273.453.

Section 113. The following KRS sections are repealed:

39.400 Necessity for and purpose of provisions for disaster and emergency response.

39.401 Definitions.

39.407 Powers of adjutant general.

39.408 Executive orders.

39.409 Emergency powers of Governor, mayors, and county judges/executive.

39.410 Compensation for property taken for temporary use – Notice to owner of property where title is taken.

39.411 Board of Claims to fix compensation if amount is in dispute.

39.412 Appeal from award of Board of Claims.

39.413 Procedure for payment of compensation.

39.414 Local mutual aid arrangements -- Assistance in negotiation of reciprocal agreements with adjoining states or their political subdivisions.

39.415 Local government to establish organizations -- Functions -- Areawide organizations -- Director, term, qualifications, duties, salary.

39.416 Disaster and emergency response powers of counties, urban-county governments, and cities.

39.417 Powers of county, metropolitan government, and city employees.

39.418 Reimbursement for loss, damage or expense -- Notice of claim -- Reimbursement where aid rendered outside state.

39.419 Owners of real estate used for sheltering persons not civilly liable for death, injury, loss or damage.

39.423 Investigative powers of Governor – Subpoena.

39.424 Traffic control plans -- Executive orders.

39.425 Powers of Governor concerning lease or loan of state property and permitting state employees to engage in disaster and emergency response activities -- Permission for judicial and legislative employees.

39.426 Powers of political subdivision to contract with state for lease or loan of property.
39.427 Orders, rules and regulations.
39.429 Power of arrest for violation of orders, rules or regulations.
39.430 Authority to receive services, equipment, supplies, materials and funds from federal government.
39.431 Political activity forbidden.
39.432 Qualifications and oath of persons connected with disaster and emergency response organizations.
39.433 Exemption from liability.
39.450 Authority to execute Interstate Emergency Management and Disaster Compact.
39.460 Governor's actions under compact.
39.470 Policy for disaster and emergency services organizations.
39.480 Allocation of state funds.
39.481 Purpose of supplementary state fund.
39.482 State officers and their duties -- Funds to local units.
39.483 Criteria for funding local disaster and emergency services organizations.
39.484 Request for financial aid -- Review and evaluation criteria.
39.485 Reimbursement -- Claims and equipment purchase.
39.486 Performance evaluation -- Appeal process.
39.487 Requests for waiver of requirements.
39.490 Administration of supplementary state funding -- Power to make rules and regulations.
39.700 Rescue squads -- Rescue squad taxing districts.
39.710 Rescue Aid Program -- Purpose.
39.720 Rescue aid fund -- State officials' duties -- Local officials' duties.
39.730 Requirements for rescue grant funding -- Written standard operating procedures -- Bylaws -- Rescue vehicle -- Membership -- Training -- Affiliation -- Service fee prohibited.
39.740 Rescue and project funding -- Application and review process.
39.750 Purchase disposal and inspection of equipment -- Audit of funds.
39.760 Reports of lost, stolen or damaged equipment, or loss of capability to operate -- Quarterly incident and training reports -- Cumulative list of equipment.
39.770 Workers' compensation coverage -- Limitation on -- Enrollment.
39.780 Procedures for rescue squad taxing districts.
39.800 Kentucky Emergency Response Commission established -- General purposes.
39.805 Definitions.
39.810 Membership -- Meetings -- Reimbursement for meetings.
39.815 Duties of commission -- Appointment of local committees mandatory.
39.817 Fees -- Trust and agency account.
39.820 Permissive activities of commission.
39.825 Administrative support by Division of Disaster and Emergency Services -- Protection of federal funds -- Issuance of administrative regulations.
39.830 Local planning district boundaries.
39.835 Local emergency planning committees -- Relationship to state commission.
39.840 Duties of local emergency planning committees -- Terms of members -- Enforcement procedures.
39.845 Identification of covered facilities -- Reporting to public agencies.
39.850 Naming of facility representative -- Liaison duties.
39.855 Organizations required to participate in local planning process -- Adoption of local ordinances.
39.860 Plan development, approval and review.
39.865 Response to be consistent with plan.
39.870 State agency response.
39.875 Claims to be filed with Board of Claims.

39.880 Report of release of substance.
39.885 Establishment of warning and notification standards.
39.890 Report of inventories and locations of extremely hazardous substances.
39.895 Additional information may be required.
39.900 Reports available to public – Protection of trade secrets.
39.905 KRS 39.800 to 39.905 supplemental to other laws.
39.990 Penalties.

Section 114. For the purposes of KRS Chapter 39E, the existing members of the Kentucky Emergency Response Commission created by KRS 39.810 shall continue in office for the remainder of their existing terms as the membership of the Kentucky Emergency Response Commission established by Sections 58 to 60 of this Act.

Section 115. In lieu of the official seal of the Commonwealth of Kentucky, the division shall be authorized to design, display and affix the distinctive seal and markings of the Division of Emergency Management on any and all state vehicles owned, leased or operated by the division for official purposes and operated by personnel of the division.

HB 470, AN ACT relating to government operations.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 41.010 is amended to read as follows:

(1) As used in KRS 41.070, 41.110, 41.120, 41.130, 41.150, 41.160, 41.290, 41.300 or 41.990, unless the context requires otherwise, the terms "appropriation," "budget unit," "disbursements," "employee," "expenditures," "expenses," and "receipts" have the meaning given them by KRS 43.010 and 48.010.

(2) As used in this chapter***:***~~[,]~~

(a) ~~[the words]~~"Bank" and "depository" include any qualified financial intermediary and savings and loan associations chartered by the State of Kentucky or the United States government.

(b) "Writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

SECTION 2. A NEW SECTION OF KRS CHAPTER 42 IS CREATED TO READ AS FOLLOWS:

As used in this chapter, "writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

Section 3. KRS 43.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Auditor" means the Auditor of Public Accounts.

(2) "Budget unit" means a department or other unit of organization for which separate appropriations are made from those for any other organization unit.

(3) "State agency" means any state officer, department, board, commission, institution, division, or other person or functional group that is authorized to exercise or does exercise any executive or administrative jurisdiction, powers, duties, rights or obligations of the state government conferred or imposed by law or exercised, performed or discharged by legal authority in compliance with law.

(4) "Writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

SECTION 4. A NEW SECTION OF KRS CHAPTER 44 IS CREATED TO READ AS FOLLOWS:

As used in this chapter, "writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

SECTION 5. A NEW SECTION OF KRS CHAPTER 45 IS CREATED TO READ AS FOLLOWS:

As used in this chapter:

(1) "Document" means any physical embodiment of information or ideas, regardless of form or characteristic, including electronic versions thereof.

(2) "Warrant" means a printed or electronic authorization from the Finance and Administration Cabinet for the State

Treasurer to issue a check.

(3) "Writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

Section 6. KRS 45.149 is amended to read as follows:

(1) A budget unit of any branch of government may request that an audit be performed by the Auditor of Public Accounts. Such request shall be in writing and shall include a statement of the scope and nature of the proposed audit.

(2) No budget unit shall enter into any contract with a certified public accountant for an audit unless the Auditor of Public Accounts has declined in writing to perform the audit or has failed to respond within ***fifteen (15)***[~~thirty (30)~~] days of receipt of a written request for an audit. Any contract with a certified public accountant entered into as a result of the Auditor of Public Accounts declining to perform the audit shall specify the following:

(a) The certified public accountant shall forward a copy of the audit report and management letters to the Auditor of Public Accounts and to the Legislative Research Commission; and,

(b) The Auditor of Public Accounts shall have the right to review the certified public accountant's work papers.

Section 7. KRS 45.242 is amended to read as follows:

No head of a budget unit or assistant designated by him shall approve any advice of employment, purchase order, contract requisition for reservation of funds or letter of travel authorization ***request*** for travel outside of Kentucky that will involve an expenditure of any sum in excess of the unencumbered balance of the allotment to which the resulting expenditure will be chargeable.

Section 8. KRS 45.457 is amended to read as follows:

The ***State Treasurer***[~~Department of the Treasury~~] shall transmit to the purchasing agency ***or vendor*** a check for payment to a vendor within five (5) working days of receipt of a warrant for payment from the Finance and Administration Cabinet. The purchasing agency shall ***transmit the***[~~mail a~~] check for payment to a vendor within five (5) working days of receipt of the check from the ***State Treasurer***[~~Department of the Treasury~~].

Section 9. KRS 45A.030 is amended to read as follows:

The words defined in this section shall have the meanings set forth below whenever they appear in this code, unless the context in which they are used clearly requires a different meaning; or a different definition is prescribed for a particular section, group of sections or provision.

(1) "Business" ***means***[~~shall mean~~] any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity through which business is conducted.

(2) "Change order" ***means***[~~shall mean~~] a written order signed by the purchasing officer, directing the contractor to make changes which the changes clause of the contract authorizes the purchasing officer to order without the consent of the contractor.

(3) "Chief purchasing officer" ***means***[~~shall mean~~] the secretary of the Finance and Administration Cabinet, who shall be responsible for all procurement of the Commonwealth except as provided by KRS Chapters 175, 176, 177 and 180.

(4) "Construction" ***means***[~~shall mean~~] the process of building, altering, repairing, improving or demolishing any public structures or buildings, or other public improvements of any kind to any public real property. It does not include the routine maintenance of existing structures, buildings, or real property.

(5) "Contract" ***means***[~~shall mean~~] all types of state agreements, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item. It shall include awards; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; purchase orders; and insurance contracts except as provided in KRS 45A.022. It also includes supplemental agreements with respect to any of the foregoing.

(6) "Contract modification" ***means***[~~shall mean~~] any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract. It shall include bilateral actions, such as supplemental agreements, and unilateral actions, such as change orders, administrative changes, notices of termination, and notices of the exercise of a contract option.

(7) "Contractor" ***means***[~~shall mean~~] any person having a contract with a governmental body.

(8) "Data" ***means***[~~shall mean~~] recorded information, regardless of form or characteristic.

(9) "Designee" ***means***[~~shall mean~~] a duly authorized representative of a person holding a superior position.

(10) ***"Document" means any physical embodiment of information or ideas, regardless of form or characteristic, including electronic versions thereof.***

(11) "Employee" ***means***[~~shall mean~~] an individual drawing a salary from a governmental body, whether elected or not, and any nonsalaried individual performing personal services for any governmental body.

(12)[~~(11)~~] "Governmental body" ***means***[~~shall mean~~] any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment of the executive or legislative branch of the state government.

13)[~~(12)~~] "May" ***means***[~~shall mean~~] permissive.

(14) "Meeting" means all gatherings of every kind, including video teleconferences.

(15)[~~(13)~~] "Negotiation" ***means***[~~shall mean~~] contracting by either the method set forth in KRS 45A.085, 45A.090 or 45A.095.

(16)[~~(14)~~] "Person" ***means***[~~shall mean~~] any business, individual, organization or group of individuals.

(17)[~~(15)~~] "Procurement" ***means***[~~shall mean~~] the purchasing, buying, renting, leasing, or otherwise obtaining of any supplies, services, or construction. It shall also include all functions that pertain to the obtaining of any supply, service, or construction item, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(18)[~~(16)~~] "Purchase request" or "purchase requisition" ***means***[~~shall mean~~] that document whereby a using agency requests that a contract be obtained for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation of solicitees, suggested sources of supply, and information supplied for the making of any written determination and finding required by KRS 45A.025.

(19)[~~(17)~~] "Purchasing agency" ***means***[~~shall mean~~] any governmental body which is authorized by this code or its implementing regulations or by way of delegation from the chief purchasing officer to contract on its own behalf rather than through the central contracting authority of the chief purchasing officer.

(20)[~~(18)~~] "Purchasing officer" ***means***[~~shall mean~~] any person authorized by a governmental body in accordance with procedures prescribed by regulations, to enter into and administer contracts and make written determinations and findings with respect thereto. The term shall also include an authorized representative acting within the limits of authority.

(21)[~~(19)~~] "Services" ***means***[~~shall mean~~] the rendering, by a contractor, of its time and effort rather than the furnishing of a specific end product, other than reports which are merely incidental to the required performance of services.

(22)[~~(20)~~] "Shall" ***means***[~~shall mean~~] imperative.

(23)[~~(21)~~] "Supplemental agreement" ***means***[~~shall mean~~] any contract modification which is accomplished by the mutual action of the parties.

(24)[~~(22)~~] "Supplies" ***means***[~~shall mean~~] all property, including but not limited to leases of real property, printing and insurance, except land or a permanent interest in land.

(25)[~~(23)~~] "Using agency" ***means***[~~shall mean~~] any governmental body of the state which utilizes any supplies, services, or construction purchased under this code.

(26) "Video teleconference" means one (1) meeting, occurring in two (2) or more locations, where individuals can see and hear each other by means of video and audio equipment.

(27) "Writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

Section 10. KRS 45A.080 is amended to read as follows:

(1) Contracts exceeding the amount provided by KRS 45A.100 shall be awarded by competitive sealed bidding unless it is determined in writing that this method is not practicable. Factors to be considered in determining whether competitive sealed bidding is not practicable shall include[~~ whether~~]:

  (a) ***Whether*** specifications can be prepared that permit award on the basis of best value; and

  (b) The available sources, the time and place of performance, and other relevant circumstances as are appropriate for the use of competitive sealed bidding.

(2) The invitation for bids shall state that awards shall be made on the basis of best value.

(3) Adequate public notice of the invitation for bids shall be given a sufficient time prior to the date set forth for the opening of bids. The notice may include ***posting on the Internet or*** publication in a newspaper or newspapers of general circulation in the state as determined by the secretary of the Finance and Administration Cabinet[~~ for all price contracts and purchase contracts estimated to exceed twenty-five thousand dollars ($25,000)~~] not less than seven (7) days before the date set for the opening of the bids. The provisions of this subsection shall also apply to price contracts and purchase contracts of state institutions of higher education.

(4) Bids shall be opened publicly at the time and place designated in the invitation for bids. At the time the bids are opened, the purchasing agency shall announce the agency's engineer's estimate***, if applicable,*** and make it a part of the agency records pertaining to the letting of any contract for which bids were received. Each bid, together with the name of the bidder and the agency's engineer's estimate, shall be recorded and be open to public inspection. ***Electronic bid opening and posting of the required information for public viewing shall satisfy the requirements of this subsection.***

(5) The contract shall be awarded by written notice to the responsive and responsible bidder whose bid offers the best value.

(6) Correction or withdrawal of bids ***shall***[~~may~~] be allowed only to the extent permitted by regulations issued by the secretary.

Section 11. KRS 45A.115 is amended to read as follows:

The secretary of the Finance and Administration Cabinet may provide for prequalification of suppliers as responsible prospective contractors for particular types of supplies, services, and construction. The secretary of the Finance and Administration Cabinet shall not prequalify a supplier as a responsible prospective contractor until the supplier provides the secretary with his sworn statement made under penalty of perjury that he has not knowingly violated any provision of the campaign finance laws of the Commonwealth and that the award of a contract to the supplier will not violate any provision of the campaign finance laws of the Commonwealth. "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists. Solicitation[~~ mailing~~] lists of potential contractors of such supplies, services, and construction shall include but shall not be limited to such prequalified suppliers. Prequalification shall not foreclose a written determination:

(1) Between the time of the bid opening or receipt of offers and the making of an award, that a prequalified supplier is not responsible; or

(2) That a supplier who is not prequalified at the time of bid opening or receipt of offers is responsible.

Section 12. KRS 45A.345 is amended to read as follows:

As used in KRS 45A.343 to 45A.460, unless the context indicates otherwise:

(1) "Aggregate amount" ***means***[~~shall mean~~] the total dollar amount during a fiscal year of items of a like nature, function, and use the need for which can reasonably be determined at the beginning of the fiscal year. Items the need for which could not reasonably be established in advance or which were unavailable because of a failure of delivery need not be included in the aggregate amount.

(2) "Chief executive officer" ***means***[~~shall mean~~] the mayor, county judge/executive, superintendent of schools, or the principal administrative officer of a local public agency, or the person designated by the chief executive officer or legislative body of the local public agency to perform the procurement function.

(3) "Construction" ***means***[~~shall mean~~] the process of building, altering, repairing, or improving any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

(4) "Contract" ***means***[~~shall mean~~] all types of local public agency agreements, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item. It includes awards and notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; and purchase orders. It also includes supplemental agreements with respect to any of the foregoing. It does not include labor contracts with employees of local public agencies.

(5) ***"Document" means any physical embodiment of information or ideas, regardless of form or characteristic, including electronic versions thereof.***

(6) "Established catalogue price" ***means***[~~shall mean~~] the price included in the most current catalogue, price list, schedule, or other form that:

(a) Is regularly maintained by the manufacturer or vendor of an item; and

(b) Is either published or otherwise available for inspection by customers; and

(c) States prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for that item.

(7)[~~(6)~~] "Evaluated bid price" ***means***[~~shall mean~~] the dollar amount of a bid after bid price adjustments are made pursuant to objective measurable criteria, set forth in the invitation for bids, which affect the economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life, residual value, and time of delivery, performance, or completion.

(8)[~~(7)~~] "Invitation for bids" ***means***[~~shall mean~~] all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in KRS 45A.365.

(9)[~~(8)~~] "The legislative body or governing board" ***means***[~~shall mean~~] a council, commission, or other legislative body of a city or urban-county; a county fiscal court; board of education of a county or independent school district; board of directors of an area development district or special district; or board of any other local public agency.

(10)[~~(9)~~] "Local public agency" ***means***[~~shall mean~~] a city, county, urban-county, school district, special district, or an agency formed by a combination of such agencies under KRS Chapter 79, or any department, board, commission, authority, office, or other sub-unit of a political subdivision which shall include the offices of the county clerk, county sheriff, county attorney, coroner, and jailer.

(11)[~~(10)~~] "May" ***means***[~~shall mean~~] permissive. However, the words "no person may . . ." mean that no person is required, authorized, or permitted to do the act prescribed.

(12)[~~(11)~~] "Negotiation" ***means***[~~shall mean~~] contracting by either the method set forth in KRS 45A.370, 45A.375, or 45A.380.

(13)[~~(12)~~] "Noncompetitive negotiation" ***means***[~~shall mean~~] informal negotiation with one (1) or more vendor, contractor, or individual without advertisement or notice.

(14)[~~(13)~~] "Objective measurable criteria" ***means***[~~shall mean~~] sufficient information in the invitation to bid as to weight and method of evaluation so that the evaluation may be determined with reasonable mathematical certainty. Criteria which are otherwise subjective such as taste and appearance may be established when appropriate.

(15)[~~(14)~~] "Person" ***means***[~~shall mean~~] any business, individual, union, committee, club, or other organization or group of individuals.

(16)[~~(15)~~] "Procurement" ***means***[~~shall mean~~] the purchasing, buying, renting, leasing, or otherwise obtaining any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any public procurement, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(17)[~~(16)~~] "Request for proposals" ***means***[~~shall mean~~] all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in KRS 45A.370, 45A.375, 45A.380, or 45A.385.

(18)[~~(17)~~] "Responsible bidder or offeror" ***means***[~~shall mean~~] a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

(19)[~~(18)~~] "Responsive bidder" ***means***[~~shall mean~~] a person who has submitted a bid under KRS 45A.365 which conforms in all material respects to the invitation for bids, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract.

(20)[~~(19)~~] "Services" ***means***[~~shall mean~~] the rendering, by a contractor, of its time and effort rather than the furnishing of a specific end product other than reports which are merely incidental to the required performance of service. It does not include labor contracts with employees of local public agencies.

(21)[~~(20)~~] "Shall" ***means***[~~shall mean~~] imperative.

(22)[~~(21)~~] "Specifications" ***means***[~~shall mean~~] any description of a physical or functional characteristic of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

(23)[~~(22)~~] "Supplemental agreement" ***means***[~~shall mean~~] any contract modification which is accomplished by the mutual action of the parties.

(24)[~~(23)~~] "Supplies" ***means***[~~shall mean~~] all property, including but not limited to leases on real property, printing, and insurance, except land or a permanent interest in land.

(25)[~~(24)~~] "Energy efficiency measure" means a training program or facility alteration designed to reduce energy consumption or operating costs, and may include one (1) or more of the following:

(a) Insulation of the building structure or systems within the building;

(b) Storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption;

(c) Automated or computerized energy control systems;

(d) Heating, ventilating, or air conditioning system modifications or replacements;

(e) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made;

(f) Energy recovery systems;

(g) Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

(h) Energy conservation measures that provide long-term operating cost reductions; or

(i) Any life safety measures that provide long-term operating cost reductions.

(26)[~~(25)~~] "Guaranteed energy savings contract" means a contract for the evaluation and recommendation of energy conservation measures and for implementation of one (1) or more of those measures. The contract shall provide that all payments, except obligations on termination of the contract before its expiration, are to be made over time and the savings are guaranteed to the extent necessary to make payments for the systems.

(27)[~~(26)~~] "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy efficiency measures and is determined to be qualified by the local public agency.

Section 13. KRS 45A.365 is amended to read as follows:

(1) All contracts or purchases shall be awarded by competitive sealed bidding, except as otherwise provided by KRS 45A.370 to 45A.385.

(2) The invitation for bids shall state ***that***[~~whether~~] the award shall be made on the basis of the lowest bid price or the lowest evaluated bid price. If the latter is used, the objective measurable criteria to be utilized shall be set forth in the invitation for bids.

(3) ***Adequate***[~~The~~] public[~~ shall be given~~] notice of the invitation for bids ***shall be given prior to the date set forth for the opening of bids. The notice may include posting on the Internet or publication***[~~for advertisement~~] in ***a***[~~the~~] newspaper of ***general***[~~largest~~] circulation in the local jurisdiction[~~ at least once~~] not less than seven (7) days[~~ nor more than twenty-one (21) days~~] before the date set for the opening of the bids. The ***public notice***[~~advertisement~~] shall include the time and place the bids will be opened and the time and place where the specifications may be obtained.

(4) The bids shall be opened publicly at the time and place designated in the invitation for bids. Each bid, together with the name of the bidder, shall be recorded and be open to public inspection. ***Electronic bid opening and posting of the required information for public viewing shall satisfy the requirements of this subsection.***

(5) A contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price.

(6) The local public agency may allow the withdrawal of a bid where there is a patent error on the face of the bid document, or where the bidder presents sufficient evidence, substantiated by bid worksheets, that the bid was based upon an error in the formulation of the bid price.

Section 14. KRS 45A.370 is amended to read as follows:

(1) A local public agency may contract or purchase through competitive negotiation upon a written finding that:

(a) Specifications cannot be made sufficiently specific to permit award on the basis of either the lowest bid price or the lowest evaluated bid price, including, but not limited to, contracts for experimental or developmental research work, or highly complex equipment which requires technical discussions, and other nonstandard supplies, services, or construction; or

(b) Sealed bidding is inappropriate because the available sources of supply are limited, the time and place of performance cannot be determined in advance, the price is regulated by law, or a fixed price contract is not applicable; or

(c) The bid prices received through sealed bidding are unresponsive or unreasonable as to all or part of the requirements, or are identical or appear to have been the result of collusion; provided each responsible bidder is notified of the intention to negotiate and is given a reasonable opportunity to negotiate, and the negotiated price is lower than the lowest rejected bid by any responsible bidder.

(2) Proposals shall be solicited through ***public notice***[~~advertisement~~] pursuant to KRS 45A.365(3) or any other means which can be demonstrated to notify an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirement of the procurement. The request for proposals shall indicate the factors to be considered in the evaluation and the relative importance of each factor.

(3) Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined in writing to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted:

(a) With respect to prices, where such prices are fixed by law or regulation except that consideration shall be given to competitive terms and conditions; or

(b) Where time of delivery or performance will not permit discussions; or

(c) Where it can be clearly demonstrated and documented from the existence of adequate competition or accurate prior cost experience with that particular supply, service or construction item that acceptance of an initial offer without discussion would result in fair and reasonable prices and the request for proposal notifies all offerors of the possibility that award may be made on the basis of initial offers.

(4) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other

potential offerors shall be afforded an opportunity to take part in such discussions. A request for proposals based on revised specifications or quantities shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements and shall be awarded upon the basis of the lowest bid price or lowest evaluated bid price submitted by any responsive and responsible offeror. No discussion shall be conducted with offerors after submission of revised proposals except for a compelling reason as determined in writing by the local public agency. The request for proposals shall state that an award is to be made without discussion except as herein provided.

(5) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the local public agency based upon the evaluation factors set forth in the request for proposals.

Section 15. KRS 45A.675 is amended to read as follows:

(1) The cabinet shall designate as small or small minority business set aside state contracts of goods, equipment, construction or services requested to be purchased by or for any agency whenever there is a reasonable expectation that bids can be obtained from at least three (3) small or small minority businesses capable of furnishing the desired property or services at a fair and reasonable price. Such designation should be made prior to the ***public notice***[~~advertisement~~] for bids, and the ***notice***[~~advertisement~~] shall ***designate***[~~indicate~~] this invitation as a small or small minority business set aside.

(2) When an item has been designated as a small or small minority business set aside, invitations for bids shall be confined to small or small minority businesses and bids from other bidders may be rejected.

(3) The cabinet shall award contracts to the[~~ lowest and best~~] responsible bidder ***whose bid meets***[~~meeting~~] specifications ***and offers the best value to the Commonwealth***.

Section 16. KRS 45A.695 is amended to read as follows:

(1) No one shall begin work on a personal service contract made by any contracting body, except as provided in subsection (8) of this section, until after[~~ a copy of~~] the personal service contract is filed with the Legislative Research Commission. Each service contract shall have a cancellation clause not to exceed thirty (30) days notice to the contractee.

(2) Each[~~ copy of a~~] proposed personal service contract submitted to the Legislative Research Commission shall be accompanied by documentation of:

  (a) The need for the service;

  (b) The unavailability of state personnel or the nonfeasibility of utilizing state personnel to perform the service; and

  (c) In the case of an architectural or engineering services contract, the documents identified in KRS 45A.830(3).

(3) Adequate notice of the need for the services shall be given by the contracting body through a request for proposals. The request for proposals shall describe the services required, list the type of information and data required of each offeror, and state the relative importance of particular qualifications.

(4) The head of the contracting body or a designee of the officer may conduct discussions with any offeror who has submitted a proposal to determine the offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.

(5) Award shall be made to the offeror determined by the head of the contracting body, or a designee of the officer, to be the best qualified of all offerors based on the evaluation factors set forth in the request for proposals and the negotiation of fair and reasonable compensation. If compensation cannot be agreed upon with the best qualified offeror and if proposals were submitted by one (1) or more other offerors determined to be qualified, negotiations may be conducted with the other offeror or offerors in the order of their respective qualification ranking. In this case, the contract may be awarded to the next best ranked offeror for a fair and reasonable compensation. All determinations of the qualification rankings of offerors by the head of the contracting body or a designee of the officer based on evaluation factors set forth in the request for proposals shall be made in writing. Written documentation shall be maintained concerning the final results of negotiation with each vendor and reasoning as to why each vendor was chosen.

(6) The Legislative Research Commission shall ***document***[~~cause to be endorsed on the copies of~~] each personal service contract submitted the time and date of the filing and shall maintain a file of personal service contracts for public inspection, with suitable indexes.

(7) Payment on contracts submitted to the subcommittee shall not be made before completion of the review procedure provided for in KRS 45A.705 unless the secretary of the Finance and Administration Cabinet determines that the time involved with the normal review procedure would be detrimental to the state's ability to act or to procure services. Payment shall not be made until written notification and explanation of the reasons for this action are forwarded to the subcommittee along with the personal service contract for which emergency payment is deemed necessary.

(8) In the event of a governmental emergency, work may begin prior to filing[~~ a copy of~~] the personal service contract with the Legislative Research Commission ***provided***[~~providing~~] that the normal process will not accommodate the emergency.

(9) If an emergency exists and work is authorized to begin immediately,[~~ a copy of~~] a statement, approved by the secretary of the Finance and Administration Cabinet, setting forth in detail the nature of the emergency shall be filed with the[~~ copy~~

~~of the~~] personal service contract.

Section 17. KRS 45A.705 is amended to read as follows:

(1) There is hereby created a permanent subcommittee of the Legislative Research Commission to be known as the Personal Service Contract Review Subcommittee. The subcommittee shall be composed of seven (7) members which shall include members of the minority party as nearly proportioned to their membership in the General Assembly as mathematically possible. The Legislative Research Commission shall appoint the members of the subcommittee from the membership of the General Assembly for terms of two (2) years, and the members so appointed shall elect one (1) of their number to serve as chairman. Any vacancy which may occur in the membership of the subcommittee shall be filled by the Legislative Research Commission at its next regularly scheduled meeting after the occurrence of the vacancy.

(2) The subcommittee shall meet monthly at such time and place as the chairman may determine. The members of the subcommittee shall be compensated for attending meetings, as provided in KRS 7.090(3).

(3) Any professional, clerical, or other employees required by the subcommittee shall be provided in accordance with the provisions of KRS 7.090(4) and (5).

(4) All[~~ copies of~~] proposed personal service contracts received by the Legislative Research Commission shall be submitted to the subcommittee to:

(a) Examine the stated need for the contract service;

(b) Examine whether the service could or should be performed by state personnel; and

(c) Examine the cost and duration of the contract. If the subcommittee believes that the contract service, other than an emergency contract approved by the Governor, is not needed, the service could and should be performed by state personnel, the cost is excessive, or the duration is excessive, the subcommittee shall attach a written notation of the reasons for its disapproval or objection to the personal service contract and shall return the personal service contract to the secretary of the Finance and Administration Cabinet. The subcommittee shall give notice of such disapproval or objection to the director of the Legislative Research Commission. The subcommittee shall act on a personal service contract submitted to the Legislative Research Commission within forty-five (45) days of the submission of the personal service contract.

(5) Upon receipt of the subcommittee's disapproval or objection to a personal service contract, the secretary of the Finance and Administration Cabinet shall determine whether a personal service contract:

(a) Shall be revised to comply with the objections of the subcommittee;

(b) Shall be cancelled if disapproved by the subcommittee; or

(c) Shall remain effective as originally approved by the Finance and Administration Cabinet.

(6) The secretary of the Finance and Administration Cabinet shall notify the subcommittee of the action taken on personal service contracts referred to the Finance and Administration Cabinet by the subcommittee within thirty (30) days from the date the contracts were reviewed by the subcommittee.

(7) The subcommittee shall report monthly to the Legislative Research Commission all actions taken on personal service contracts by the secretary of the Finance and Administration Cabinet and the subcommittee.

Section 18. KRS 45A.740 is amended to read as follows:

(1) When a project requiring architectural or engineering services is proposed by a local public agency, except as provided by subsections (2) and (3) of this section, the agency shall:

(a) ***Transmit***[~~Mail~~] a notice requesting a statement of interest in the proposed project from all firms that have a current qualifications statement on file;

(b) ***Give adequate public notice of***[~~Advertise~~] the proposed project, ***which may include posting on the Internet or***[~~in a~~] newspaper ***advertisement***[~~that meets the requirements of KRS 424.120~~], requesting firms to submit qualification statements and statements of interest in[~~ for~~] the proposed project; or

(c) Contact an appropriate professional organization for a list of firms capable of providing the necessary services.

(2) If the regulations of a federal department or agency require a procurement process that is different from the process in KRS 45A.730 to 45A.750 in order that financial aid can be granted, then the local government agency may exempt itself from the provisions of KRS 45A.730 to 45A.750.

(3) When a local public agency has formed a working relationship with one (1) or more firms based on work previously contracted between them, then the local public agency may enter directly into negotiations according to KRS 45A.750. If no contract is successfully negotiated, then the local public agency shall comply with this section, KRS 45A.745, and KRS 45A.750.

Section 19. KRS 45A.825 is amended to read as follows:

(1) (a) A firm shall not be considered for providing architectural or engineering services to the Finance and Administration Cabinet or engineering or related services to the Transportation Cabinet unless the relevant

procuring agency has prequalified the firm prior to[~~ advertised~~] notice of a request for proposals to which that firm intends to respond.

(b) A firm's prequalification shall remain in effect for twelve (12) months from the date of prequalification.

(2) (a) The procuring agency shall consult with the user agency or user division before arriving at a request for proposals.

(b) The request for proposals:

1. Shall include as an evaluation factor whether the work tasks are to be performed in Kentucky or outside Kentucky;

2. Shall indicate the relative weight of evaluation factors; and

3. Shall establish a timetable for:

a. The selection committee's first meeting held pursuant to subsection (6) of this section; and

b. The selection committee's activities conducted pursuant to subsection (7)(b) of this section or subsection (8)(b), (d), and (e) of this section, as appropriate.

(c) [~~Through advertisement, and any other available means, ~~]The procuring agency shall provide ***adequate public*** notice of a request for proposals and notice of the materials that the procuring agency will provide to a firm to assist that firm in responding to a request for proposals. Those materials shall include, but not be limited to, the request for proposals and the project evaluation sheet to be used by the relevant selection committee. The ***notice***[~~advertisement~~] shall also set a deadline for filing responses to a request for proposals with the procuring agency. It shall be the intent of this subsection that engineering and architectural firms in all regions of the Commonwealth are given an equal opportunity to be selected.

(3) A firm shall respond to a request for proposals by submitting[~~,~~] before the deadline[~~, a one (1) page letter of interest as well as~~] a completed form, devised by the procuring agency, which states the firm's experience and its qualifications for the project as described in the request for proposals. A firm which fails to meet the deadline shall be barred from the procurement process.

(4) The employees of a procuring agency and the members of the selection committee shall keep all responses to a request for proposals confidential until the procuring agency has awarded a contract.

(5) The secretary of the procuring agency shall designate a procuring agency employee to determine which firms have prequalified pursuant to subsection (1) of this section and have filed, in a timely fashion, responses to a request for proposals. He shall create a list of the firms which have done so and certify the list.

(6) The procuring agency shall organize the selection committee's first meeting. At that meeting, each selection committee member shall sign a statement of confidentiality. Also, at that meeting, the selection committee shall:

(a) Elect from among the voting members of the committee a chairman and a vice chairman who shall hold their positions for the duration of the selection committee's participation in the project;

(b) Be provided with:

1. The certified list created pursuant to subsection (5) of this section;

2. The firms' responses to the request for proposals;

3. The request for proposals;

4. The[~~ advertised~~] notice of request for proposals; and

5. The project evaluation sheets; and

(c) Discuss the future conduct of its affairs.

(7) (a) When the Department of Transportation procures any engineering or related services, or when the Finance and Administration Cabinet procures architectural services for an estimated fee of less than fifty thousand dollars ($50,000) or engineering services for an estimated fee of less than one hundred thousand dollars ($100,000), this subsection and subsection (9) of this section shall govern the procurement process.

(b) The selection committee shall meet in executive session to:

1. Evaluate the materials with which it has been provided;

2. Select the three (3) most qualified firms and rank them in order of preference, based upon the weighted evaluation factors established in the request for proposals; and

3. Notify the procuring agency of the ranking.

(c) The procuring agency shall ***notify***[~~send a letter to~~] each firm which responded to the request for proposals, informing the firm of:

1. The three (3) finalists;

2. Their ranking; and

3. The rest of the procedure that will be followed in the awarding of the contract.

(d) The procuring agency shall then begin negotiations with the top-ranked firm pursuant to subsection (9) of this section.

(8) (a) When the Finance and Administration Cabinet is procuring architectural services for an estimated fee of fifty thousand dollars ($50,000) or more or engineering services for an estimated fee of one hundred thousand dollars ($100,000) or more, this subsection and subsection (9) of this section shall govern the procurement process.

(b) The selection committee shall meet in executive session to:

1. Evaluate the materials with which it has been provided;

2. Select, but not rank, the three (3) most qualified firms, based upon the weighted evaluation factors established in the request for proposals; and

3. Notify the procuring agency of the three (3) finalists.

(c) The procuring agency shall ***notify***[~~send a letter to~~] each firm which responded to the request for proposals, informing the firm of:

1. The three (3) finalists; and

2. The rest of the procedure that will be followed in the awarding of the contract.

(d) The selection committee shall interview the three (3) finalists, preferably on the same day. The finalists shall be interviewed one (1) at a time, and each interview shall be attended only by representatives of the finalist and members of the selection committee. Members of the selection committee shall keep confidential the substance of an interview until the procuring agency has awarded a contract.

(e) The selection committee shall meet in executive session to:

1. Rank the three (3) finalists based upon the weighted evaluation factors established in the request for proposals; and

2. Forward the ranking to the procuring agency.

(f) The procuring agency shall ***notify***[~~send a letter to~~] each finalist, informing the finalist of:

1. His ranking; and

2. The rest of the procedure that will be followed in the awarding of the contract.

(g) The procuring agency shall then begin negotiations with the top-ranked firm pursuant to subsection (9) of this section.

(9) The secretary of the procuring agency shall designate a procuring agency employee as the procuring officer in charge of negotiating a contract with the top-ranked firm, as determined by the selection committee, at compensation which the procuring officer determines in writing to be fair and reasonable to the Commonwealth. In making this decision, the employee shall take into account the estimated value of the services to be rendered, and the scope, complexity, and professional nature thereof. Should the procuring officer be unable to negotiate a satisfactory contract with the top-ranked firm, at a price that he considers fair and reasonable to the Commonwealth, he shall formally terminate negotiations with the firm. The procuring officer shall then undertake negotiations with the second-ranked firm. Failing accord with the second-ranked firm, the purchasing officer shall formally terminate negotiations. The purchasing officer shall then undertake negotiations with the third-ranked firm. Should the purchasing officer be unable to negotiate a satisfactory contract with any of the selected firms, he shall formally terminate negotiations, and the procurement procedure shall start again from the beginning pursuant to KRS 45A.810.

(10) Once a procuring officer has negotiated a contract, the procuring agency shall ***notify***[~~send a letter to~~] the other finalists, informing them of:

(a) Which firm has successfully negotiated a contract; and

(b) The rest of the procedure that will be followed in the awarding of the contract.

(11) Notwithstanding the provisions of KRS 45A.045, when the Transportation Cabinet is the procuring agency, the negotiated contract shall take effect without the approval of the secretary of the Finance and Administration Cabinet.

Section 20. KRS 45A.830 is amended to read as follows:

(1) After the procuring officer has negotiated an architectural or engineering services contract for the Finance and Administration Cabinet or an engineering or related services contract for the Transportation Cabinet, but before the contract is submitted to the Personal Service Contract Review Subcommittee, the procuring officer shall supply a copy of the proposed contract to each member of the selection committee involved in the procurement process ***for that contract***.

(2) The secretary of the procuring agency, the procuring officer, and each voting member of the selection committee shall sign separate certificates, devised by the procuring agency, which shall provide the signatory with the option of certifying

that, to the best of his knowledge, he is either aware or unaware of circumstances which may constitute a violation of this chapter which has arisen in the procurement process. Any employee of the Auditor of Public Accounts, who was appointed to serve as a nonvoting member of the selection committee and who attended any committee proceeding, shall participate in the preparation of a report for filing with the Personal Service Contract Review Subcommittee certifying that the applicable procedural provisions of subsections (4), (6), (7), and (8) of KRS 45A.825 were, or were not, met. Before filing the report, the employee or employees who participated in its preparation shall sign it.

(3) The procuring agency shall file with the Personal Service Contract Review Subcommittee ***upon request***:

(a) The certificates;

(b) The selection committee's ranking of firms; and

(c) A statement affirming that responding firms in all regions of the Commonwealth were given equal consideration for selection.

Section 21. KRS 48.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Account" is a technical accounting term meaning a formal record in which related transactions and events, (i.e., expenditures, receipts, encumbrances, and inter-account charges or credits) which occur during a specific period of time, are summarized and accumulated.

(2) "Activities" means those actions or services performed by a budget unit which depict in a quantitative manner the fulfillment of lawful purposes.

(3) Appropriation-related terms are defined for procedures prescribed by this chapter as follows:

(a) "Appropriation" means an authorization by the General Assembly to expend, from public funds, a sum of money not in excess of the sum specified, for the purposes specified in the authorization and under the procedure prescribed in this chapter;

(b) "Appropriation provision" means a section of any enactment by the General Assembly which is not provided for by this chapter and which authorizes the expenditure of public funds other than by a general appropriation bill;

(c) "General appropriation bill" means an enactment by the General Assembly that authorizes the expenditure of public funds in an executive, judicial, or legislative branch budget bill as provided for by this chapter.

(4) "Budget" means the complete financial plan for each fiscal year contained in a branch budget bill provided for by this chapter.

(5) "Branch budget bill" means an enactment by the General Assembly which provides appropriations and establishes fiscal policies and conditions for the biennial financial plan of each branch of government.

(6) "Branch budget recommendation" means the recommendations to the General Assembly of the Governor for the executive branch and for fiscal matters related to the function of the government of the Commonwealth, the Chief Justice for the judicial branch, and the Legislative Research Commission for the legislative branch, accompanied by an estimate of the receipts and expenditures for each branch and accompanying explanations provided for by this chapter for the next two (2) fiscal years.

(7) "Budget unit request" means a detailed statement of the financial requirements of a budget unit by principal budget class, and an estimate of its receipts and expenditures for the next two (2) fiscal years, with the accompanying explanations provided for by this chapter.

(8) "Budget unit" or "appropriation unit" means any subdivision of any branch of government, however designated in any branch budget bill.

(9) "Capital outlay" means the exchange of values involved in acquiring lands, buildings, equipment or other permanent properties, or in their construction, development, or permanent improvement.

(10) "Disbursement" means cash actually paid out for any purpose.

(11) "Employee" means the lawful incumbent of a position.

(12) "Expenditure" means cash actually paid out or an exchange of value for any purpose.

(13) "Fund" means an independent fiscal and accounting entity with a self-balancing set of accounts recording cash or other resources or both together with all related liabilities, obligations, reserves, and equities which are segregated for the purpose of carrying on specific activities in accordance with legal restrictions or other limitations, to include:

(a) "General Fund." This fund shall consist of all moneys, not otherwise restricted, available for the general operations of state government.

(b) "Bond Debt Related Fund." This fund shall consist of all outstanding bonded debt liability and related funds of state government, including all revenue bonds issued by or approved by the State Property and Buildings Commission. Accounts necessary to assure integrity of trust indentures shall be maintained. Funds appropriated for debt service shall be allotted to these accounts and any excess of appropriation over net requirements for principal, interest, and reserves for any issue shall lapse to the surplus account of the general fund if general funds are a part of the appropriation for that budget unit.

(c) "Capital Construction Fund." This fund shall consist of moneys appropriated under the provision of KRS 45.750 to 45.800 for capital construction projects, except road construction projects, for all budget units of state government.

(d) "Federal Fund." This fund shall include all receipts from the federal government for any purpose.

(e) "Fiduciary Fund." This fund shall consist of moneys held by a budget unit in a trustee capacity.

(f) "Restricted Fund." This fund shall consist of budget unit receipts restricted as to purpose by statute.

(g) "Road Fund." This fund shall consist of money derived from excise or license taxation relating to gasoline and other motor fuels, and moneys derived from fees, excise or license taxation relating to registration, operation or use of vehicles for use on public highways. A separate record of each source of receipt within this fund group shall be maintained.

(14) "Principal budget class" includes the following:

(a) "Capital outlay" means the exchange of values involved in acquiring lands, buildings, or other permanent properties, or in their construction, development, or permanent improvement estimated to cost less than four hundred thousand dollars ($400,000), and items of equipment or other capital items estimated to cost less than one hundred thousand dollars ($100,000).

(b) "Debt service" means the amount of money required to pay the interest, principal, and required contributions to accumulate moneys for future retirement of lawfully incurred debt.

(c) "Grants, loans, or benefits" means expenditures for any grant, aid, loan, or relief payment to individuals, organizations, or jurisdictions not otherwise classified pursuant to this chapter.

(d) "Operating expenses" means expenditures directly attributable to the operation of state government not otherwise classified pursuant to this chapter.

(e) "Personnel costs" means the salaries, wages, benefits (including but not limited to, employer share of FICA, retirement contributions, insurance, unemployment insurance, workers' compensation), and increments of all officers and employees, and payment to persons awarded personal service contracts.

(15) "Receipts" includes the following:

(a) "Nonrevenue receipts" means values accruing that either decrease an asset or create a liability.

(b) "Operating receipts" means cash received by a budget unit for services rendered, or from the sale of materials, goods, or supplies created by the budget unit or of items held for resale.

(c) "Revenue receipts" means values accruing as a result of taxation or revenues, or both, and without resultant increase in liabilities or decrease in assets, whether such values are represented by cash actually received or by amounts due and payable, or partly by each.

(16) "Writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

Section 22. KRS 56.440 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Commission" means the State Property and Buildings Commission;

(2) "Real estate" includes lands together with improvements thereon and appurtenances thereto;

(3) "Building" includes any structure or improvement upon real estate of a permanent nature and additionally includes any sites, structures, equipment, machinery, or devices for the purpose of establishing, developing, or furthering television or related services in aid of education or in aid of any other proper public functions, whether or not the same would otherwise be legally defined as buildings; but only (except for industrial development projects) if used or to be used by the Commonwealth of Kentucky or one (1) of its departments or agencies (not including independent municipal corporations or political subdivisions);

(4) "Building project" includes the acquisition of any real estate and the acquisition, construction, reconstruction, and structural maintenance of buildings, the installation of utility services, including roads and sewers, and the purchase and installation of equipment, facilities, and furnishings of a permanent nature for buildings; the purchase and installation initially of movable equipment, furnishings, and appurtenances necessary to make a building operable; and for television or related purposes as referred to in subsection (3) of this section, for use by the state government or one (1) of its departments or agencies, not including any independent municipal corporation or political subdivision, or any other capital outlay program authorized by any branch budget bill or other legislation;

(5) "Industrial development project" means and includes the acquisition of any real estate and the construction, acquisition,

and installation thereon and with respect thereto of improvements and facilities necessary and useful for the improvement of such real estate for conveyance to or lease to industrial entities to be used for manufacturing, processing, or assembling purposes, including surveys, site tests and inspections, subsurface site work, excavation, removal of structures, roadways, cemeteries, and other surface obstructions, filling, grading and provision of drainage, storm water detention, installation of utilities such as water, sewer, sewage treatment, gas, electricity, communication, and other similar facilities, off-site construction of utility extensions to the boundaries of such real estate, construction and installation of buildings, including buildings to be used for worker training and education, rail facilities, roads, sidewalks, curbs and other improvements to such real estate necessary to its manufacturing, processing, or assembling use by industrial entities; provided that an industrial entity must have agreed with the commission, prior to the financing of an industrial development project, to develop, in conjunction with such industrial development project, manufacturing, processing, or assembling facilities satisfactory to the commission;

(6) "Industrial entity" means any corporation, partnership, person, or other legal entity, whether domestic or foreign, which will itself or through its subsidiaries and affiliates construct and develop a manufacturing, processing, or assembling facility on the site of an industrial development project financed pursuant to this chapter;

(7) "Incremental taxes" means, for any fiscal year of the Commonwealth, that amount of money which is equal to all tax revenues received by the Commonwealth, as taxing entity, during such fiscal year in respect of an industrial development project and improvements and equipment thereon and the products thereof, and activities carried out by the occupants and users of such industrial development project, minus an amount equal to all tax revenues received by the Commonwealth, as taxing entity, in respect of the site of the industrial development project and the same type of taxable properties and activities during the fiscal year immediately preceding the fiscal year during which construction of the improvements undertaken by an industrial entity as a result of the financing of such industrial development project commenced. Incremental taxes shall include such tax revenues as state corporate income taxes, state income taxes paid by employees of manufacturing, processing, and assembling facilities developed on the site of an industrial development project, state property taxes, state corporation license taxes, and state sales and use taxes, but shall not include any taxes levied specifically for educational purposes;

(8) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.005, or any board, commission, institution, or division exercising any function of the state but which is not an independent municipal corporation or political subdivision;

(9) "Cabinet" means the Finance and Administration Cabinet;

(10) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); anthophyllite; tremolite; and actinolite;

(11) "Asbestos-containing material" means any material which contains more than one percent (1%) asbestos by weight; and

(12) "Friable material" means any material applied onto ceilings, walls, structural members, piping, ductwork, or any other part of the building structure which, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure.

(13) "Meeting" means all gatherings of every kind, including video teleconferences.

(14) "Video teleconference" means one (1) meeting, occurring in two (2) or more locations, where individuals can see and hear each other by means of video and audio equipment.

(15) "Writing" or "written" shall mean letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

Section 23. KRS 56.463 is amended to read as follows:

The cabinet shall have the power and duty:

(1) To determine the comparative needs and demands of the various state agencies for acquiring real estate and for building projects;

(2) To purchase or otherwise acquire all real property determined to be needed for state use and upon the approval of the secretary of the Finance and Administration Cabinet as to the determination of need and as to the action of purchase or other acquisition, except as provided in KRS Chapters 175, 176, 177, and 180. All such acquisitions of real property or interests therein shall be made in accordance with KRS 45A.045;

(3) To sell or otherwise dispose of all property, including any interest in real property, of the state that is not needed or has become unsuitable for public use or would be more suitable consistent with the public interest for some other use as determined by the secretary of the Finance and Administration Cabinet. All such sales or other disposition shall be made in accordance with KRS 45A.045;

(4) (a) To control the use of any real property owned or otherwise held by the Commonwealth, or any state agency, and to determine for what periods of time and for what purposes any state agency may use the same, including the agency for whose use it was initially acquired or improved, and to determine what appropriate uses shall be made of such real property during periods that the cabinet finds the same is not required for the purposes of any

particular state agency. The cabinet shall allocate to the General Assembly and the Legislative Research Commission the amount of space within the New State Capitol Annex, currently assigned to the legislative branch in the basement and on the first floor totalling forty-nine thousand six hundred thirty-eight (49,638) square feet; approximately twenty-four thousand four hundred fifty-two (24,452) square feet on the second floor from an imaginary line running north and south down the center of the center wing hallway of the building and all space to the east of this line, excluding mechanical areas, public entrances, and restrooms; approximately twenty-three thousand nine hundred forty (23,940) square feet on the third floor from an imaginary line running north and south down the center of the center wing hallway of the building and all space to the east of this line, excluding mechanical areas, public entrances, and restrooms; approximately twenty-two thousand fifty-six (22,056) square feet on the fourth floor from an imaginary line running north and south down the center of the center wing hallway of the building and all space to the east of this line, excluding mechanical areas, public entrances, and restrooms. The occupancy of the Capitol Annex by the legislative branch shall be phased in with the Capitol Annex renovation project and shall be completed no later than November 30, 1991. All space assigned to the legislative branch and plans, uses, furnishings, and equipment therefor are subject to the specific approval of the Legislative Research Commission;

(b) Forty percent (40%) of the additional floor space provided by this section for use by the legislative branch shall be assigned for the use of the Senate. Sixty percent (60%) of the additional floor space provided by this section for use by the legislative branch shall be assigned for the use of the House of Representatives; and

(c) To determine the housing and furnishings needs of the various state agencies located in Frankfort and to establish and put into effect a permanent program for housing them. Subject to paragraph (a) of this subsection, the cabinet is also authorized and directed to allocate office space and furnishings in existing public buildings located in Frankfort, exclusive of the third and fourth floors of the New State Capitol, according to the needs of the various agencies and when necessary to provide additional office space and furnishings in Frankfort under any building program the cabinet deems most advisable and economical for the state. The permanent housing program shall include provisions for housing the General Assembly and its related agencies, including the Legislative Research Commission, and its subcommittees, the executive offices, the Supreme Court and the clerk of the Supreme Court, the Department of Law and the law library, in the New State Capitol, provided the General Assembly and the Legislative Research Commission shall have complete control and exclusive use of the third and fourth floors of the New State Capitol and shall have exclusive use of the space in the New State Capitol Annex allocated to them under paragraph (a) of this subsection. If there be any additional space in the Capitol, it shall be assigned to agencies whose activities are most closely related to the agencies directed to be located permanently in the Capitol;

(5) To acquire, by condemnation in the manner provided in the Eminent Domain Act of Kentucky, any real estate necessary for use by the state or by any state agency, when the cabinet is unable to agree with the owner thereof on a price for such real estate;

(6) To lease any real property, or any interest in such real property, owned by the state or any agency thereof, in accordance with KRS 45A.045;

(7) To provide for and adopt plans and specifications as may be necessary, to ***provide adequate public notice***[~~advertise~~] for and receive bids for any expenditures proposed to be made, to award contracts for the purpose authorized, to supervise construction and make changes and revisions in plans and specifications or in construction as may become necessary, and generally to do any and all other things as may become necessary or expedient in order to effectively fulfill and carry out the purposes of this chapter, including the right to employ clerks, engineers, statisticians, architects, or other persons required to be employed in order to fulfill the functions of the Commonwealth relating to state property and buildings provided in KRS 56.450 to 56.550; and

(8) To adopt rules and ***promulgate administrative*** regulations as may be necessary to govern the acquisition, control, and disposition of the real property to which this section is applicable.

Section 24. KRS 56.491 is amended to read as follows:

(1) No state agency shall have power or authority to make plans and specifications, ***provide public notice of invitations***[~~advertise~~] for bids, let contracts, or incur any financing commitments, either in the way of a charge against public funds or in the way of negotiations for issuance of revenue bonds, for any capital construction projects involving the improvement of lands or the construction, alteration, reconstruction, or major repair of any building or other structure, or sewage disposal or water supply system, requiring the expenditure of more than one hundred and twenty-five thousand dollars ($125,000) without first securing the approval of the Finance and Administration Cabinet.

(2) The state agency seeking the approval shall submit to the Finance and Administration Cabinet a general description of the proposed project, with the detailed information the cabinet may require. Review of construction plans for conformance with the Uniform State Building Code shall be conducted by the Department of Housing, Buildings and Construction. The Finance and Administration Cabinet shall not approve any project requiring its approval in any instance if it finds that: the project is not needed; the proposed method of financing is not sound; the project will exceed

the amount of the funds available therefor; the work contemplated will be insufficient to accomplish the purpose of the project; or after providing for the ordinary recurring expenses of government and debt service and for payments under existing allotments for extraordinary expenses and capital outlay, cash will not be available in the State Treasury to promptly pay for the work during the biennium, or except as provided in subsection (5) of this section, that the work is to be done by employees of the agency.

(3) The finding of the Finance and Administration Cabinet shall be final, except in cases where the issuance and sale of bonds is proposed, in which cases the cabinet shall submit its findings to the commission for final approval, modification, or disapproval.

(4) Any capital construction project, the total cost of completion of which the Finance and Administration Cabinet determines will exceed one hundred and twenty-five thousand dollars ($125,000), shall be contracted for on a competitive bid basis, and the execution of the contracts shall be approved and authorized by the cabinet. When a capital construction project has been approved as provided in this section, in whole or in part, the cabinet shall prepare the plans and specifications, ***provide public notice of invitations***~~[advertise]~~ for bids, award the contracts, supervise the construction, and handle the financial negotiations on behalf of the requesting state agency; or with prior written approval, the cabinet may authorize a state agency to do so with delegated authority of the cabinet.

(5) A capital construction project, the total cost of completion of which the Finance and Administration Cabinet determines will not exceed one hundred and twenty-five thousand dollars ($125,000), may be performed by the employees of the requesting agency or by individuals hired specifically for the project who shall be exempt from the requirements of KRS Chapter 18A, if the project is approved and authorized by the cabinet. Necessary materials and supplies shall be procured in accordance with the standard purchasing procedures and policies of the cabinet as defined in KRS Chapter 45A.

(6) This section shall not apply to capital outlays to the Department of Highways for roads and bridges.

(7) This section shall not apply to capital outlays by the Justice Cabinet for repair, maintenance, improvement, or expansion of present correctional facilities on which projects inmates are used. Any capital construction project to be performed by the Justice Cabinet shall be approved and authorized by the Finance and Administration Cabinet.

Section 25. KRS 56.514 is amended to read as follows:

The following provisions shall be applicable to commission financing to carry out the purposes of this chapter:

(1) As used in this section, the following terms shall have the following meanings:

(a) "Commercial paper revenue bonds" means revenue bond anticipation notes which by their terms mature not more than two hundred seventy (270) days from the date of issuance thereof and are to be refunded by the issuance of commercial paper revenue bonds or by refunding revenue bonds; provided, however, that all commercial paper revenue bonds must possess the characteristics set forth and described in subsection (3)(d) of this section;

(b) "Refunding revenue bonds" means revenue bonds issued by the commission to refund outstanding issues of revenue bonds, commercial paper revenue bonds and variable rate revenue bonds; and

(c) "Variable rate revenue bonds" means revenue bonds the rate of interest on which fluctuates either automatically by reference to predetermined formulas and indices or pursuant to the standards set forth in subsection (3)(e) of this section.

(2) The commission may issue and sell revenue or other authorized bonds, including variable rate and commercial paper bonds, to pay all or any part of the expense or cost of or incidental to an industrial development project, or a building project in denominations and amounts, as it deems to be for the best interest of the Commonwealth.

(3) (a) Revenue bonds issued to pay the costs of industrial development projects or building projects may bear interest at any rate or rates, either fixed or variable in accordance with such method as shall be determined by the commission, shall be payable either annually or at shorter intervals, may be of such terms and maturities, may bear such conversion privileges, may be executed by the manual or facsimile signatures of such officers of the commission, and shall be executed in such manner and at such time or times, or from time to time, and be payable at such times not exceeding forty (40) years from the date thereof, or, if commercial paper, from the date of initial issuance thereof, and at such place or places as the commission determines;

(b) Such revenue bonds may provide that they or any of them may be called for redemption prior to maturity under conditions determined by the commission before issuing the bonds;

(c) Such revenue bonds may, at any time on or after the earliest redemption date provided therefor at the time of their issuance, be refunded by the commission, in such amount as the commission may deem necessary to refund the principal of the revenue bonds to be refunded, together with any unpaid interest thereon, to create any necessary debt service reserve fund, and to pay any premiums, expenses and commissions required to be paid in connection therewith;

(d) At the time of the initial issuance of commercial paper revenue bonds to pay the costs of industrial development projects or building projects, the commission may designate individual officials of any state agency as agents for purposes of approving the principal amount, the interest rate, the discount, if any, and the maturity date of revenue bonds being issued later to refund the maturing commercial paper revenue bonds; provided, however, that at the time of the initial issuance of any such commercial paper revenue bonds, the commission shall set the maximum principal amount, the maximum interest rate, and the maximum discount, if any, of the refunding revenue bonds plus the final maturity date of the last issue of such refunding revenue bonds; and provided further that the commission shall retain the right to revoke any such agent's authority at any time and for any reason whatsoever. Individual issues of commercial paper revenue bonds, issued as part of a continuing financing program, may be refunded by the approvals of such agents of the commission;

(e) At the time of issuance of variable rate revenue bonds to pay the costs of industrial development projects or building projects, the commission may designate individuals or institutions which in the sole judgment of the commission have financial market expertise to serve as agent for the commission for establishing and changing from time to time while such variable rate revenue bonds remain outstanding the rate of interest to be borne by and the price to be paid for such revenue bonds; provided, however, that the rate-setting procedures and authority of each such agent shall be set forth in writing, and may include a formula or an index or indices based upon market factors, and shall be established by the commission at the time of issuance of such revenue bonds; and provided further that at the time of the issuance of such revenue bonds, the commission shall establish the maximum interest rate to be borne by the revenue bonds; and provided further that the commission shall retain the right to remove or replace any such agent at any time and for any reason whatsoever;

(f) Any revenue bonds issued and outstanding hereunder to pay the costs of industrial development projects or building projects and the interest due on such revenue bonds shall, prior to the maturity or redemption date thereof, be deemed to have been paid to the same extent as if they had actually been paid in cash and retired, if:

1. In the event any of such revenue bonds are to be redeemed on any date prior to their maturity, the commission shall have given a trustee appointed for the holders of such revenue bonds in connection with their issuance, in form satisfactory to such trustee and in conformity with the requirements of the resolution authorizing their issuance irrevocable instructions to give notice of redemption of such revenue bonds to the holders thereof by written notice which is satisfactory to such trustee;

2. There shall have been deposited with the trustee either money in an amount which shall be sufficient, or direct obligations of or obligations guaranteed by the United States of America, or other obligations specified by the commission, the principal of and the interest on which, when due, will provide money which, together with the money, if any, deposited with the trustee at the same time, shall be sufficient to pay when due the principal and the interest due and to become due on such revenue bonds on and prior to redemption date or maturity date thereof, as the case may be; and

3. In the event that such revenue bonds are not to be redeemed within the next succeeding sixty (60) days, the commission shall have given the trustee in form satisfactory to it irrevocable instructions to give, as soon as practicable, in a manner satisfactory to it, a notice to the holders of such revenue bonds that the deposit required by subparagraph 2. of this paragraph has been made with the trustee, that such revenue bonds are deemed to have been paid in accordance with the provisions hereof and stating such maturity or redemption date upon which money is to be available for the payment of the principal of and interest on such revenue bonds;

(g) It is hereby declared and determined that the issuance of any and all refunding bonds as provided herein will be for a public purpose if the commission so declares in the proceedings authorizing same; and

(h) If any officer whose signature or countersignature appears on revenue bonds issued to pay the costs of industrial development projects or building projects ceases to be such officer before delivery of the bonds, his signature or countersignature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until delivery. Any such revenue bonds issued to pay the costs of industrial development projects or building projects shall be sold upon such terms as the commission deems best, either at public or private sale, and for such price, as the commission may determine. In the event the revenue bonds are sold at private, negotiated sale, the commission shall publish in accordance with the requirements of KRS Chapter 424 a notice of the intent of the commission to negotiate the sale of such revenue bonds within thirty (30) days of such proposed sale, which notice shall include the identification and description of such revenue bonds, an estimate of the week during which the negotiated sale is expected to occur and the identity of the state officer or agency and the fiscal advisor or managing underwriter from whom further information regarding the revenue bonds may be obtained. Revenue bonds, notes or other obligations issued by the commission under this chapter, the income thereon, and the transfer thereof, including any profit made on the sale thereof, shall at all times be exempt from taxation or assessment of any type by the Commonwealth, its agencies and departments, and by all political subdivisions within the state. Nothing contained in this section shall preclude or prevent the authorization and issuance by the commission from time to time of revenue bonds, notes or other obligations, the receipt of interest on which may be subject to federal income taxation.

(4) The payment of revenue bonds issued to pay the cost of an industrial development project or building project, together

with the interest thereon, may be secured by a pledge of and a first lien on all of the receipts and revenue derived, or to be derived, from the rental, financing or operation of the industrial development projects or building projects involved, including rentals and financing payments made by the Finance and Administration Cabinet from appropriated funds on a biennial basis, pursuant to lease agreements or financing agreements between the Finance and Administration Cabinet and the commission. Neither the payment of any revenue bond, nor the interest thereon, issued under the authority of this section shall constitute an indebtedness of the Commonwealth of Kentucky, nor shall any revenue bond or interest thereon be payable out of any fund except funds derived from rentals, financing payments or other revenues derived from the operation of the industrial development projects or building projects or from revenues as are available for the purpose by law.

(5) ***If***[~~In the event~~] revenue bonds are sold at public, competitive sale, ***the***[~~such~~] revenue bonds issued by the commission under the provisions of this section shall be sold after ***notice adequate to inform the public of the sale. Notice may include posting on the Internet or*** newspaper advertising[~~ conforming to the requirements of KRS Chapter 424~~].

(6) ***If***[~~In the event~~] revenue bonds are sold at public, competitive sale, competitive bids for the sale of ***the***[~~such~~] revenue bonds shall be opened and read publicly by the secretary of the Finance and Administration Cabinet or ***the secretary's***[~~his~~] representative at a designated place, day and hour, all of which shall be announced in the ***notice***[~~advertising~~] made relative thereto.

(7) All money from the sale of revenue bonds issued pursuant to this section shall be deposited in the State Treasury and shall be credited to a special account to be designated as directed by the Finance and Administration Cabinet, and no part thereof shall be withdrawn from the State Treasury except for the purposes authorized by this chapter, together with the cost incidental to the issuing and selling of the revenue bonds and other expenses directly related thereto. The commission may provide in any trust indenture securing revenue bonds for additional terms and conditions thereof, or for other restrictions not in conflict with this chapter.

Section 26. KRS 56.520 is amended to read as follows:

(1) The commission may issue and sell revenue or other authorized bonds, in carrying out the provisions of this chapter, in denominations and amounts, as is deemed to be for the best interest of the Commonwealth, for any of the following purposes:

  (a) To acquire real estate for state governmental use;

  (b) To pay all or any part of the expense or cost of or incidental to a building project for state governmental use;

  (c) To defray the cost of plans, specifications, blueprints, architectural fees, and other expenses authorized to be incurred for state governmental use.

(2) The payment of bonds issued, together with the interest thereon, may be secured by a pledge and a first lien on all of the receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Neither the payment of any bond, nor the interest thereon issued under the authority of KRS Chapter 56, shall constitute an indebtedness of the Commonwealth of Kentucky, nor shall any bond or interest thereon be payable out of any fund except funds derived from rentals or other revenues derived from the operation of the properties or from revenues as are available for the purpose by law.

(3) All competitive bids for the sale of revenue bonds shall be opened and read publicly by the secretary of the Finance and Administration Cabinet or ***the secretary's***[~~his~~] representative at a designated place, day, and hour, all of which shall be ***indicated***[~~announced~~] in the ***notice***[~~advertising~~] made relative thereto.

(4) ***If***[~~In the event~~] the commission issues and sells bonds for a building project as authorized by KRS Chapter 56, insurance, including fire and windstorm, casualty, catastrophe, use and occupancy, and such other insurance as the commission may deem advisable, shall be carried in connection with the building project, and it may so obligate and bind itself in a trust indenture securing the payment of the bonds. Any insurance shall be paid for out of funds available for the project.

(5) As provided in KRS 42.500, the commission may invest proceeds from the sale of its revenue or other authorized bonds as follows:

  (a) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States;

  (b) Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the United States Postal Services;

  (c) Obligations for the Commonwealth of Kentucky;

  (d) Bonds and notes of any state or local government or public authority;

  (e) Savings certificates issued by any federal savings and loan association if any principal amount of the certificate in excess of the amount insured by the federal government, or any agency thereof, is fully collateralized;

(f) Prime quality commercial paper bearing the highest rating of at least one (1) nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation;

(g) Bills of exchange or time drafts drawn on and accepted by a commercial bank and eligible for use as collateral by member banks in borrowing from a federal reserve bank, if the accepting bank or its holding company is either incorporated in the Commonwealth of Kentucky or has outstanding publicly held obligations bearing the highest rating of at least one (1) nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligations;

(h) Participating share in a mutual fund for local government investment;

(i) A commingled investment pool established and administered under KRS 66.480;

(j) Evidences of ownership of or fractional undivided interests in future interest and principal payments on either direct obligations of the United States government or obligations the principal of and the interest on which are guaranteed by the United States, which obligations are held by a bank or trust company organized and existing under the laws of the United States or any state in the capacity of custodian;

(k) Repurchase agreements with respect to either direct obligations of the United States or obligations the principal of and the interest on which are guaranteed by the United States or entered into with a broker or dealer, as defined by the Securities Exchange Act of 1934, which is a dealer recognized as a primary dealer by a federal reserve bank, or any commercial bank, trust company, or national banking association, the deposits of which are insured by the Federal Deposit Insurance Corporation or any successor thereof if:

1. Such obligations that are subject to the repurchase agreement are delivered in physical or in book entry form to the local government or public authority, or any financial institution serving either as trustee for the local government or public authority or as fiscal agent for the local government or public authority or are supported by a safekeeping receipt issued by a depository satisfactory to the local government or public authority. The repurchase agreement shall provide that the value of the underlying obligations shall be maintained at a current market value, calculated at least daily, of not less than one hundred percent (100%) of the repurchase price. The financial institution serving either as trustee or as fiscal agent for the local government or public authority holding the obligations subject to the repurchase agreement or the depository issuing the safekeeping receipt shall not be the provider of the repurchase agreement;

2. A valid and perfected first security interest in the obligations which are the subject of the repurchase agreement has been granted to the local government or public authority or its assignee or book entry procedure, conforming to the extent practicable with federal regulations and satisfactory to the local government or public authority, have been established for the benefit of the local government or public authority or its assignee;

3. The securities are free and clear of any adverse third party claims; and

4. The repurchase agreement is in a form satisfactory to the local government or public authority; and

(l) Guaranteed investment contracts with a bank or insurance company, if the bank or insurance company bears one (1) of the two (2) highest ratings of at least one (1) nationally recognized rating service and does not bear a rating below one (1) of the two (2) highest ratings by any nationally recognized rating service.

Section 27. KRS 56.803 is amended to read as follows:

(1) When an agency determines that it will need office or other space, the agency shall submit a request for the acquisition of the additional space to the Department for Facilities Management in the Finance and Administration Cabinet. Except in the case of an emergency as described at KRS 56.805(3), an agency shall submit its space request in writing to the department at least ninety (90) calendar days before the space requested will be required by the agency. In the case of an emergency, an agency shall communicate its space needs to the department pursuant to KRS 56.805(3) as soon as an agency knows that it will need the space. If the commissioner of the Department for Facilities Management determines that insufficient space has been allocated to the agency making the request and that it is appropriate to lease additional space for the agency making the request, ***the commissioner***[~~he~~] shall acquire the space required by lease as provided by KRS 56.800 to 56.823 and KRS 43.050, 48.111, and 48.190.

(2) The Department for Facilities Management shall review each agency space request to determine whether space suitable to meet the agency's reasonable needs may be available in a state-owned or occupied building. If it is determined that there is suitable space available in a state-owned or occupied building, the commissioner shall notify the agency[~~ by letter~~]. A copy of the ***notice***[~~letter~~] shall be kept on file.

(3) If it is determined that there is no suitable space available in a state-owned or occupied building, the department shall comply with the procedures set forth in this section in the leasing of space, except as otherwise provided in KRS 56.800 to 56.823 and KRS 43.050, 48.111, and 48.190.

(4) The department shall draw up general requirement specifications for the space required. These general requirement

specifications shall not be changed except, at the discretion of the commissioner, when the lease process is initiated again pursuant to paragraph (c) of subsection (15) of this section or pursuant to paragraph (b) of subsection (16) of this section. The general requirement specifications shall be kept on file.

(5) ***(a)*** In soliciting the interest of lessors who have property to let in a county where space is sought, the department shall ***give adequate public notice to reasonably inform persons having property to let within the county of the type of space required, the general location of the property, and the number of square feet needed. The notice may include posting on the Internet or***[~~comply with procedures established in this subsection.~~

~~(a) The department shall place~~] newspaper advertisements. Each ***notice***[~~advertisement~~] shall contain general information concerning the agency requirements for the space sought[~~ to reasonably inform persons having property to let within the county of the type of space wanted, the general location of the property, and the number of square feet needed,~~] and shall state the last time, date, and place that written responses shall be received. When it is anticipated that a lease may be negotiated containing deviations or variations from the terms and conditions of the state standard lease form prescribed by the Division of Real Properties, within the department, any deviations or variations shall be ***stated***[~~noted~~] in the ***notice***[~~advertisement~~].

(b)[~~ If a daily newspaper is published, and of general circulation, in the county where the space is sought, an advertisement shall be published two (2) times in that newspaper.~~

~~(c) If there is not a daily newspaper published, and of general circulation, in the county where the space is sought, an advertisement shall be published one (1) time in a weekly newspaper published, and of general circulation, in the county where the space is sought and two (2) times in a daily newspaper not published, but of general circulation, in the county where space is sought.~~

~~(d) If neither a daily newspaper nor a weekly newspaper is published, and of general circulation, in the county where the space is sought, an advertisement shall be published two (2) times in a daily newspaper not published, but of general circulation, in the county where the space is sought, and a copy of the advertisement shall be posted in a conspicuous place in the county courthouse.~~

~~(e) If the Commonwealth intends to lease space in any county when the estimated annual rental charge will exceed one hundred thousand dollars ($100,000), the requirements established in paragraphs (a), (b), (c), and (d) of this subsection shall be followed. In addition, advertisements shall be published two (2) times in at least two (2) daily newspapers having broad circulation within the Commonwealth, to be designated by the secretary of the Finance and Administration Cabinet.~~

~~(f) When an advertisement is published in a daily newspaper, the advertisement shall appear on any consecutive Monday and Tuesday.~~

~~(g)~~] The Department for Facilities Management may use any means available to notify landlords that ***a notice has been given***[~~advertisements have been placed~~].

(6) [~~To respond to a newspaper advertisement, ~~]A property owner, or his representative, shall respond in writing on or before the time and date designated in the ***notice***[~~advertisement~~] and shall state in the writing the type and location of the property, the name and address of the property owner, and the date of availability of the property. The department shall deal only with individuals who have submitted written responses on or before the time and date designated in the ***notice***[~~advertisement~~].

(7) All written responses ***received***[~~submitted~~] on or before the time and date designated shall be opened ***or downloaded*** at the same time, publicly read ***or posted***, and kept on file by the department.

(8) Within five (5) days of the opening of written responses[~~ submitted on or before the time and date designated~~], the department shall ***transmit***[~~mail~~] general requirement specifications to each person who submitted a written response on or before the time and date designated. The same general requirement specifications shall be ***transmitted***[~~mailed~~] to each person.

(9) After the general requirement specifications have been ***transmitted***[~~mailed~~], except as provided in paragraph (a) of subsection (13) of this section, the commissioner, and department employees under his supervision, may negotiate with persons who submitted written responses on or before the time and date designated. If in the course of negotiations, a person proposes terms and conditions of lease different from those contained in the state standard lease form which are determined to be in the Commonwealth's best interest to accept, but no mention of the acceptability thereof has been made in the ***notice given***[~~advertisement placed~~] pursuant to subsection (5) of this section, all other persons who submitted written responses on or before the time and date designated shall be ***notified***[~~advised by letter~~] of the terms and conditions and shall be allowed to incorporate the terms and conditions in written proposals when submitted pursuant to subsection (12) of this section. A copy of each ***notice***[~~of these letters~~] shall be kept on file.

(10) [~~After the general requirement specifications have been mailed, ~~]The department shall inspect each space proposed to be leased to determine its suitability to the reasonable needs of the agency for whose use the property is sought. The owner of the property, or ***the owner's***[~~his~~] representative, shall provide access to the property for ***the***[~~such~~] inspection. A report

of the findings about each property inspected shall be submitted on a site evaluation form to the commissioner of the department. Completed site evaluation forms shall be kept on file.

(11) After the commissioner has reviewed the completed site evaluation forms, ***the commissioner***[~~he~~] shall ***inform***[~~send to~~] each owner of property, or his representative, ***of the steps necessary***[~~a letter informing the person of what would have to be done~~] to bring the property up to general and specific requirement specifications. The ***commissioner***[~~commissioner's letter~~] shall also invite each person to submit a written proposal on a form created by the Department for Facilities Management. A copy of the form shall be ***provided to each bidder***[~~enclosed with each letter~~]. A written proposal shall constitute a best and final offer. The department shall not consider a written proposal unless it is submitted on a department form on or before the time and date designated[~~ in the letter. A copy of each letter shall be kept on file~~].

(12) All written proposals submitted on or before the time and date designated shall be opened at the same time, publicly identified by the name of the property owner and the location of the property, and kept on file.

(13) Except pursuant to paragraph (b) of subsection (15) of this section, when the requirements of paragraph (a) of this subsection shall not apply, from the time that written proposals are opened until the awarding of a lease, the department:

(a) Shall not negotiate or agree to changes in the terms of written proposals except to correct technical errors;

(b) Shall log in all contacts between department employees and any person with an interest in the awarding of a lease. The log shall state the time, date, place, and a summary of the substance of each contact. Each log entry shall be signed by the department employee who was contacted. After the lease is awarded, the log shall be kept as a department record.

(14) (a) The commissioner shall assess the proposals, taking into account factors including, but not limited to: consultation with the head of the agency for whose use the space is sought; the location and accessibility of the property to the public; its condition and state of repair; its conformity with the requirements of occupational health and safety regulations; its conformity with applicable state fire, health, safety and sanitation requirements; the proposed rental rates; utility and janitorial costs; agency moving costs; and whether the property proposed is in substantial conformity with the[~~ advertised requirements and~~] general and specific requirement specifications.

(b) The commissioner shall give preference to properties in areas which have received, within the previous five (5) year period, state community development funds for revitalization if properties are offered at a competitive rate and meet the provisions of paragraph (a) of this subsection.

(15) The commissioner, relying exclusively on his assessment made pursuant to subsection (14) of this section, shall:

(a) Choose the best proposal in the interest of the Commonwealth;

(b) Be permitted to negotiate with a potential lessor if he was the only responsive and responsible potential lessor who submitted a proposal; or

(c) Except as provided in paragraph (b) of this subsection, reject all proposals when none is in the Commonwealth's best interest to accept as assessed according to the factors stated in subsection (14) of this section and may, at his discretion, initiate the lease process again.

(16) (a) The commissioner shall award or decline to award a lease to the potential lessor who submitted the best proposal pursuant to paragraph (a) of subsection (15) of this section or who negotiated with the commissioner pursuant to paragraph (b) of subsection (15) of this section. However, the commissioner shall not award a lease to a potential lessor who negotiated with the commissioner pursuant to paragraph (b) of subsection (15) of this section if that potential lessor's proposal after negotiations was not in the Commonwealth's best interest to accept as assessed according to the factors stated in subsection (14) of this section, and the commissioner shall not award a lease to a person other than a potential lessor prescribed in this paragraph.

(b) If the commissioner declines to award a lease, he may, at his discretion, initiate the lease process again.

(17) The commissioner shall put in writing the justifications for his decisions made pursuant to subsections (15) and (16) of this section. This writing shall be kept on file.

(18) The department shall ***notify***[~~send to~~] each person who submitted a written response on or before the time and date designated in the ***public notice***[~~advertisement~~] pursuant to subsection (6) of this section, but who was not awarded the lease, ***of***[~~a letter stating~~] the selected property to be leased, and that the person has a right to examine the leasing records relevant to the lease that was awarded. If the Capital Projects and Bond Oversight Committee, pursuant to KRS 56.823(2), will review the awarding of a lease, each ***notice***[~~letter~~] shall state that fact. A copy of each ***notice***[~~of these letters~~] shall be kept on file.

Section 28. KRS 56.805 is amended to read as follows:

(1) Notwithstanding the provisions of KRS 56.803(4) to (18), this section shall govern the leasing of space in a building owned by the federal government, by a political subdivision or municipal corporation of the Commonwealth, or if the space is required as the result of a bona fide emergency.

(2) When the commissioner of the Department for Facilities Management determines that it is in the Commonwealth's best

interest for him to negotiate a lease in a building owned by the federal government or by a political subdivision or municipal corporation of the Commonwealth, he shall do so. The commissioner shall state in writing his justifications for the determination, and the writing shall be kept on file.

(3) A bona fide emergency shall be deemed to exist only in cases where the head of an agency already occupying leased premises certifies in writing to the Secretary of the Finance and Administration Cabinet that:

(a) The leased premises have been damaged or destroyed by fire, windstorm, or other casualty; or

(b) The leased premises are found to be in violation of regulations of the Kentucky Occupational Safety and Health Review Commission, and the violations cannot be remedied within thirty (30) days after the issuance of a citation to the lessor of the premises; or

(c) The leased premises are found to be unsafe or unfit for occupancy due to any condition constituting a violation or infraction of fire or health laws and regulations and cannot be made safe within a reasonable time; or

(d) 1. The necessity for leased premises arises from the enactment or adoption of federal legislation or regulations or state legislation, the effective date of which mandates commencement of programs to be housed in leased space before there is time for space to be acquired by ***public notice***[~~advertisement~~]; and

2. The agency's functions will be impaired or have to be discontinued unless other quarters to house the agency's operations are immediately located and occupied by the agency; or

(e) An emergency, other than one described in paragraph (a), (b), (c), or (d) of this subsection, exists, and the Governor has given his express written authorization of an emergency lease. The certificate shall state the details of the emergency, and the head of the agency shall include the Governor's written authorization along with the certificate sent to the Secretary of Finance and Administration Cabinet.

(4) Upon receipt by the Finance and Administration Cabinet of the certificate, written pursuant to paragraph (a), (b), (c), or (d) of subsection (3) of this section, or the certificate and the Governor's authorization written pursuant to paragraph (e) of subsection (3) of this section, the Department for Facilities Management shall take the action to locate and negotiate for the lease of space meeting the certifying agency's reasonable needs. As appropriate, the department shall keep the certificate or the certificate and the Governor's written authorization on file.

Section 29. KRS 56.814 is amended to read as follows:

(1) No officer or employee of any state agency shall engage in any act or make any representation or commitment to any person relative to the lease of any real property by the state without specific written authorization from and approval by the Finance and Administration Cabinet and neither the state nor the department shall be bound by the act, representation, or commitment unless so authorized and approved.

(2) No officer or employee of any state agency shall disclose to any person or firm who might reasonably be expected to submit a proposal, any approved plans by the department for the lease of real property for which ***public notice***[~~advertisement~~] is required under KRS 56.800 to 56.823 and KRS 43.050, 48.111, and 48.190 prior to the ***public notice***[~~advertisement~~]. Discussions of approved leasing plans may be held after ***public notice***[~~advertisement~~] with persons interested in submitting a proposal pertaining to the space requirements.

Section 30. KRS 56.8169 is amended to read as follows:

(1) In conducting the built-to-suit process, the commissioner of the Department for Facilities Management, after consultation with the agency or agencies for whose use the space is sought, shall arrive at a request for proposals.

(2) The request for proposals shall indicate the relative importance of evaluation factors.

(3) A request for proposals may be amended at any time prior to the deadline for the submission of proposals.

(4) In soliciting the interest of firms to carry out a built-to-suit, the department shall comply with the procedures established in this subsection.

(a) The department shall[~~ place newspaper advertisements. The advertisements shall~~] provide ***adequate public*** notice of a request for proposals and notice of the materials that the department will provide to a firm to assist that firm in responding to a request for proposals. Those materials shall include, but not be limited to, the request for proposals and the proposal evaluation sheet to be used by the selection committee. The ***notice***[~~advertisement~~] shall also set a time and date for a written response to the ***notice***[~~advertisement~~].

(b)[~~ If a daily newspaper is published, and of general circulation in the county where the space is sought, an advertisement shall be published two (2) times in that newspaper.~~

~~(c) If there is not a daily newspaper published, and of general circulation, in the county where the space is sought, an advertisement shall be published one (1) time in a weekly newspaper published, and of general circulation, in the county where the space is sought, and two (2) times in a daily newspaper not published, but of general circulation, in the county where the space is sought.~~

~~(d) If neither a daily newspaper nor a weekly newspaper is published, and of general circulation, in the county where the space is sought, an advertisement shall be published two (2) times in a daily newspaper not published, but of~~

~~general circulation, in the county where the space is sought, and a copy of the advertisement shall be posted in a conspicuous place in the county courthouse.~~

~~(e) In addition to the requirements of paragraphs (b) to (d) of this subsection, advertisements shall be published two (2) times in at least two (2) daily newspapers having broad circulation within the Commonwealth, to be designated by the commissioner of the Department for Facilities Management.~~

~~(f) When an advertisement is published in a daily newspaper, the advertisement shall appear on any consecutive Monday and Tuesday.~~

~~(g)~~] The Department for Facilities Management may use any means available to notify firms that ***a notice has been given***[~~advertisements have been placed~~].

(5) To respond to a ***notice***[~~newspaper advertisement~~], a firm, or its representative, shall respond on or before the time and date designated in the ***notice***[~~advertisement~~]. ***The***[~~Its~~] response shall ***be in a***[~~take the~~] form ***determined by the department and***[~~of a one (1) page letter of interest which~~] shall provide ***the firm's***[~~its~~] name and address.

(6) All written responses submitted on or before the time and date designated shall be opened ***or downloaded*** at the same time, publicly read ***or posted***, and kept on file by the department. A firm which fails to meet the deadline shall be barred from the procurement process.

(7) The department shall ***transmit***[~~mail~~] to all firms that responded in time[~~ to the advertisement~~] a request for proposals.

(8) After the request for proposals have been ***transmitted***[~~mailed~~], but before written proposals are submitted, the commissioner, and his staff, may hold any meetings, discussions, or negotiations that they deem appropriate with the firms.

(9) (a) The commissioner shall ***invite***[~~send a letter to each of the firms, inviting~~] each firm to submit a written proposal, on a form created by the department, on or before the time and date set forth in the ***invitation***[~~letter~~]. A form shall be ***provided to each firm***[~~enclosed with each letter~~].

(b) A firm that does not submit a written proposal, on a form created by this department, on or before the deadline shall be barred from the procurement process.

(c) Employees of the department and the members of the selection committee shall keep the written proposals confidential until the lease is awarded.

(10) The commissioner shall designate a department employee to determine which firms have filed, in a timely fashion, both a response to the ***public noticed***[~~newspaper advertisement~~] and a written proposal on a form created by the department. ***The designated employee***[~~He~~] shall create a list of the firms which have done so and certify the list.

(11) The department shall organize the selection committee's first meeting. At that meeting, the selection committee shall:

(a) Elect from its members a chairman and a vice chairman who shall hold their positions for the duration of the selection process;

(b) Be provided with:

1. The certified list of firms;
2. The firms' written proposals submitted in response to a request for proposals;
3. The request for proposals;
4. The[~~ advertised~~] notice of request for proposals;
5. The proposal evaluation sheets; and
6. A ***notice***[~~letter~~] from the commissioner informing the committee that the selection process is governed by KRS 56.800 to 56.823 and 56.990; and

(c) Discuss the future conduct of its affairs.

(12) The selection committee shall meet in executive session to:

(a) Evaluate the materials with which it has been provided;

(b) Select, but not rank, the three (3) most qualified firms, based upon the evaluation factors set forth in the request for proposals; and

(c) Notify the department of the three (3) finalists.

(13) The department shall ***notify***[~~send a letter to~~] each firm which responded to the request for proposals, informing the firm of:

(a) The three (3) finalists; and

(b) The rest of the procedure that will be followed in the awarding of the built-to-suit lease.

(14) The selection committee shall interview the three (3) finalists, preferably on the same day. The finalists shall be interviewed one (1) at a time, and each interview shall be attended only by representatives of the finalist and members of

the selection committee. Members of the selection committee shall keep confidential the substance of an interview.

(15) The selection committee shall meet in executive session to:

(a) Rank the three (3) finalists based on the weighted evaluation factors in the request for proposals; and

(b) Forward the ranking to the department.

(16) (a) The commissioner shall:

1. Award the built-to-suit lease to the top ranked finalist; or

2. Request best-and-final offers.

(b) The commissioner shall request best-and-final offers only of the three (3) finalists. ***The commissioner's***[~~His~~] written request shall include his reason for requesting best-and-final offers, and shall state a time and date by which all best-and-final offers will have to be received. A firm that does not submit a best-and-final offer by the deadline shall not be awarded the built-to-suit lease.

(c) Employees of the department and the members of the selection committee shall keep the best-and-final offers confidential until the lease is awarded.

(d) The selection committee shall meet in executive session to assess all the materials with which it was provided pursuant to subsection (11)(b) of this section, as well as the request for best-and-final offers and best-and-final offers. The committee shall rank the best-and-final offers of the three (3) finalists based on the weighted evaluation factors in the request for proposals. If the committee determines that the top ranked best-and-final offer is adequate, the committee shall forward the name of the firm that submitted the top ranked best-and-final offer to the department. If the committee determines that the top ranked firm's best-and-final offer is inadequate, the process shall end.

(e) The commissioner shall award the built-to-suit lease to the firm chosen by the selection committee.

(17) After the best firm has been selected, the department shall ***notify***[~~send a letter to~~] the finalists, informing them of:

(a) Which firm has been selected for the proposed lease; and

(b) The rest of the procedure that will be followed in the awarding of the lease.

Section 31. KRS 58.605 is amended to read as follows:

(1) Subject to the reporting and approval requirements in KRS 58.610, any governmental agency may issue energy conservation revenue bonds to pay for the cost of energy conservation projects for the purpose of reducing the cost of energy to buildings owned or operated by the governmental agency by making energy-saving improvements to these buildings.

(2) Upon the receipt of a qualified energy audit, including a cost-benefit analysis which establishes the expected annual energy cost savings which will result from an energy conservation project, a governmental agency, or an agency acting on its behalf, may issue energy conservation revenue bonds to finance the energy conservation project, with the following limitations:

(a) The term of the bonds shall not exceed ten (10) years from the date of issuance, or the anticipated useful life of the energy conservation project as determined by generally accepted accounting principles, whichever is less;

(b) The annual debt service payments on the energy conservation revenue bonds shall not exceed eighty percent (80%) of the projected annual energy cost savings resulting from the energy conservation project; and

(c) The principal amount of the energy conservation revenue bonds issued to finance an energy conservation project shall in no case exceed ten percent (10%) of the estimated replacement cost of the building in which the energy conservation project is installed.

(3) Energy conservation revenue bonds shall be issued in accordance with the provisions of KRS 58.010 to 58.140 and shall be sold at a[~~ publicly advertised,~~] competitive sale ***preceded by adequate public notice*** and shall bear interest at an interest rate or rates determined by the governmental agency at the time of the sale.

The Committee Substitute to **HB 470** is as follows:

AN ACT relating to government operations.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 41.010 is amended to read as follows:

(1) As used in KRS 41.070, 41.110, 41.120, 41.130, 41.150, 41.160, 41.290, 41.300 or 41.990, unless the context requires otherwise, the terms "appropriation," "budget unit," "disbursements," "employee," "expenditures," "expenses," and "receipts" have the meaning given them by KRS 43.010 and 48.010.

(2) As used in this chapter***:***[~~,~~]

(a) [~~the words~~]"Bank" and "depository" include any qualified financial intermediary and savings and loan associations chartered by the State of Kentucky or the United States government.

(b) "Writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

SECTION 2. A NEW SECTION OF KRS CHAPTER 42 IS CREATED TO READ AS FOLLOWS:

As used in this chapter, "writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

Section 3. KRS 43.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Auditor" means the Auditor of Public Accounts.

(2) "Budget unit" means a department or other unit of organization for which separate appropriations are made from those for any other organization unit.

(3) "State agency" means any state officer, department, board, commission, institution, division, or other person or functional group that is authorized to exercise or does exercise any executive or administrative jurisdiction, powers, duties, rights or obligations of the state government conferred or imposed by law or exercised, performed or discharged by legal authority in compliance with law.

(4) "Writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

SECTION 4. A NEW SECTION OF KRS CHAPTER 44 IS CREATED TO READ AS FOLLOWS:

As used in this chapter, "writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

SECTION 5. A NEW SECTION OF KRS CHAPTER 45 IS CREATED TO READ AS FOLLOWS:

As used in this chapter:

(1) "Document" means any physical embodiment of information or ideas, regardless of form or characteristic, including electronic versions thereof.

(2) "Warrant" means a printed or electronic authorization from the Finance and Administration Cabinet for the State Treasurer to issue a check.

(3) "Writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

Section 6. KRS 45.149 is amended to read as follows:

(1) A budget unit of any branch of government may request that an audit be performed by the Auditor of Public Accounts. Such request shall be in writing and shall include a statement of the scope and nature of the proposed audit.

(2) No budget unit shall enter into any contract with a certified public accountant for an audit unless the Auditor of Public Accounts has declined in writing to perform the audit or has failed to respond within ***fifteen (15)***[~~thirty (30)~~] days of receipt of a written request for an audit. Any contract with a certified public accountant entered into as a result of the Auditor of Public Accounts declining to perform the audit shall specify the following:

  (a) The certified public accountant shall forward a copy of the audit report and management letters to the Auditor of Public Accounts and to the Legislative Research Commission; and,

  (b) The Auditor of Public Accounts shall have the right to review the certified public accountant's work papers.

Section 7. KRS 45.242 is amended to read as follows:

No head of a budget unit or assistant designated by him shall approve any advice of employment, purchase order, contract requisition for reservation of funds or letter of travel authorization ***request*** for travel outside of Kentucky that will involve an expenditure of any sum in excess of the unencumbered balance of the allotment to which the resulting expenditure will be chargeable.

Section 8. KRS 45.457 is amended to read as follows:

The ***State Treasurer***[~~Department of the Treasury~~] shall transmit to the purchasing agency ***or vendor*** a check for payment to a vendor within five (5) working days of receipt of a warrant for payment from the Finance and Administration Cabinet. The purchasing agency shall ***transmit the***[~~mail a~~] check for payment to a vendor within five (5) working days of receipt of the check from the ***State Treasurer***[~~Department of the Treasury~~].

Section 9. KRS 45A.030 is amended to read as follows:

The words defined in this section shall have the meanings set forth below whenever they appear in this code, unless the context in which they are used clearly requires a different meaning; or a different definition is prescribed for a particular section, group of sections or provision.

(1) "Business" ***means***[~~shall mean~~] any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity through which business is conducted.

(2) "Change order" ***means***[~~shall mean~~] a written order signed by the purchasing officer, directing the contractor to make changes which the changes clause of the contract authorizes the purchasing officer to order without the consent of the contractor.

(3) "Chief purchasing officer" ***means***[~~shall mean~~] the secretary of the Finance and Administration Cabinet, who shall be responsible for all procurement of the Commonwealth except as provided by KRS Chapters 175, 176, 177 and 180.

(4) "Construction" ***means***[~~shall mean~~] the process of building, altering, repairing, improving or demolishing any public structures or buildings, or other public improvements of any kind to any public real property. It does not include the routine maintenance of existing structures, buildings, or real property.

(5) "Contract" ***means***[~~shall mean~~] all types of state agreements, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item. It shall include awards; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; purchase orders; and insurance contracts except as provided in KRS 45A.022. It also includes supplemental agreements with respect to any of the foregoing.

(6) "Contract modification" ***means***[~~shall mean~~] any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract. It shall include bilateral actions, such as supplemental agreements, and unilateral actions, such as change orders, administrative changes, notices of termination, and notices of the exercise of a contract option.

(7) "Contractor" ***means***[~~shall mean~~] any person having a contract with a governmental body.

(8) "Data" ***means***[~~shall mean~~] recorded information, regardless of form or characteristic.

(9) "Designee" ***means***[~~shall mean~~] a duly authorized representative of a person holding a superior position.

(10) ***"Document" means any physical embodiment of information or ideas, regardless of form or characteristic, including electronic versions thereof.***

(11) "Employee" ***means***[~~shall mean~~] an individual drawing a salary from a governmental body, whether elected or not, and any nonsalaried individual performing personal services for any governmental body.

(12)[~~(11)~~] "Governmental body" ***means***[~~shall mean~~] any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment of the executive or legislative branch of the state government.

(13)[~~(12)~~] "May" ***means***[~~shall mean~~] permissive.

(14) "Meeting" means all gatherings of every kind, including video teleconferences.

(15)[~~(13)~~] "Negotiation" ***means***[~~shall mean~~] contracting by either the method set forth in KRS 45A.085, 45A.090 or 45A.095.

(16)[~~(14)~~] "Person" ***means***[~~shall mean~~] any business, individual, organization or group of individuals.

(17)[~~(15)~~] "Procurement" ***means***[~~shall mean~~] the purchasing, buying, renting, leasing, or otherwise obtaining of any supplies, services, or construction. It shall also include all functions that pertain to the obtaining of any supply, service, or construction item, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(18)[~~(16)~~] "Purchase request" or "purchase requisition" ***means***[~~shall mean~~] that document whereby a using agency requests that a contract be obtained for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation of solicitees, suggested sources of supply, and information supplied for the making of any written determination and finding required by KRS 45A.025.

(19)[~~(17)~~] "Purchasing agency" ***means***[~~shall mean~~] any governmental body which is authorized by this code or its implementing regulations or by way of delegation from the chief purchasing officer to contract on its own behalf rather than through the central contracting authority of the chief purchasing officer.

(20)[~~(18)~~] "Purchasing officer" ***means***[~~shall mean~~] any person authorized by a governmental body in accordance with procedures prescribed by regulations, to enter into and administer contracts and make written determinations and findings with respect thereto. The term shall also include an authorized representative acting within the limits of authority.

(21)[~~(19)~~] "Services" ***means***[~~shall mean~~] the rendering, by a contractor, of its time and effort rather than the furnishing of a specific end product, other than reports which are merely incidental to the required performance of services.

(22)[~~(20)~~] "Shall" ***means***[~~shall mean~~] imperative.

(23)[~~(21)~~] "Supplemental agreement" ***means***[~~shall mean~~] any contract modification which is accomplished by the mutual action of the parties.

(24)[~~(22)~~] "Supplies" ***means***[~~shall mean~~] all property, including but not limited to leases of real property, printing and insurance, except land or a permanent interest in land.

(25)[~~(23)~~] "Using agency" ***means***[~~shall mean~~] any governmental body of the state which utilizes any supplies, services, or construction purchased under this code.

(26) "Video teleconference" means one (1) meeting, occurring in two (2) or more locations, where individuals can see and hear each other by means of video and audio equipment.

(27) "Writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

Section 10. KRS 45A.080 is amended to read as follows:

(1) Contracts exceeding the amount provided by KRS 45A.100 shall be awarded by competitive sealed bidding unless it is determined in writing that this method is not practicable. Factors to be considered in determining whether competitive sealed bidding is not practicable shall include[~~ whether~~]:

(a) ***Whether*** specifications can be prepared that permit award on the basis of best value; and

(b) The available sources, the time and place of performance, and other relevant circumstances as are appropriate for the use of competitive sealed bidding.

(2) The invitation for bids shall state that awards shall be made on the basis of best value.

(3) Adequate public notice of the invitation for bids shall be given a sufficient time prior to the date set forth for the opening of bids. The notice may include ***posting on the Internet or*** publication in a newspaper or newspapers of general circulation in the state as determined by the secretary of the Finance and Administration Cabinet[~~ for all price contracts and purchase contracts estimated to exceed twenty-five thousand dollars ($25,000)~~] not less than seven (7) days before the date set for the opening of the bids. The provisions of this subsection shall also apply to price contracts and purchase contracts of state institutions of higher education.

(4) Bids shall be opened publicly at the time and place designated in the invitation for bids. At the time the bids are opened, the purchasing agency shall announce the agency's engineer's estimate***, if applicable,*** and make it a part of the agency records pertaining to the letting of any contract for which bids were received. Each bid, together with the name of the bidder and the agency's engineer's estimate, shall be recorded and be open to public inspection. ***Electronic bid opening and posting of the required information for public viewing shall satisfy the requirements of this subsection.***

(5) The contract shall be awarded by written notice to the responsive and responsible bidder whose bid offers the best value.

(6) Correction or withdrawal of bids ***shall***[~~may~~] be allowed only to the extent permitted by regulations issued by the secretary.

Section 11. KRS 45A.115 is amended to read as follows:

The secretary of the Finance and Administration Cabinet may provide for prequalification of suppliers as responsible prospective contractors for particular types of supplies, services, and construction. The secretary of the Finance and Administration Cabinet shall not prequalify a supplier as a responsible prospective contractor until the supplier provides the secretary with his sworn statement made under penalty of perjury that he has not knowingly violated any provision of the campaign finance laws of the Commonwealth and that the award of a contract to the supplier will not violate any provision of the campaign finance laws of the Commonwealth. "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists. Solicitation[~~ mailing~~] lists of potential contractors of such supplies, services, and construction shall include but shall not be limited to such prequalified suppliers. Prequalification shall not foreclose a written determination:

(1) Between the time of the bid opening or receipt of offers and the making of an award, that a prequalified supplier is not responsible; or

(2) That a supplier who is not prequalified at the time of bid opening or receipt of offers is responsible.

Section 12. KRS 45A.345 is amended to read as follows:

As used in KRS 45A.343 to 45A.460, unless the context indicates otherwise:

(1) "Aggregate amount" ***means***[~~shall mean~~] the total dollar amount during a fiscal year of items of a like nature, function, and use the need for which can reasonably be determined at the beginning of the fiscal year. Items the need for which could not reasonably be established in advance or which were unavailable because of a failure of delivery need not be included in the aggregate amount.

(2) "Chief executive officer" ***means***[~~shall mean~~] the mayor, county judge/executive, superintendent of schools, or the principal administrative officer of a local public agency, or the person designated by the chief executive officer or legislative body of the local public agency to perform the procurement function.

(3) "Construction" ***means***[~~shall mean~~] the process of building, altering, repairing, or improving any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

(4) "Contract" ***means***[~~shall mean~~] all types of local public agency agreements, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item. It includes awards and notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; and purchase orders. It also includes supplemental agreements with respect to any of the foregoing. It does not include labor contracts with employees of local public agencies.

(5) ***"Document" means any physical embodiment of information or ideas, regardless of form or characteristic, including electronic versions thereof.***

(6) "Established catalogue price" ***means***[~~shall mean~~] the price included in the most current catalogue, price list, schedule, or other form that:

(a) Is regularly maintained by the manufacturer or vendor of an item; and

(b) Is either published or otherwise available for inspection by customers; and

(c) States prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for that item.

(7)[~~(6)~~] "Evaluated bid price" ***means***[~~shall mean~~] the dollar amount of a bid after bid price adjustments are made pursuant to objective measurable criteria, set forth in the invitation for bids, which affect the economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life, residual value, and time of delivery, performance, or completion.

(8)[~~(7)~~] "Invitation for bids" ***means***[~~shall mean~~] all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in KRS 45A.365.

(9)[~~(8)~~] "The legislative body or governing board" ***means***[~~shall mean~~] a council, commission, or other legislative body of a city or urban-county; a county fiscal court; board of education of a county or independent school district; board of directors of an area development district or special district; or board of any other local public agency.

(10)[~~(9)~~] "Local public agency" ***means***[~~shall mean~~] a city, county, urban-county, school district, special district, or an agency formed by a combination of such agencies under KRS Chapter 79, or any department, board, commission, authority, office, or other sub-unit of a political subdivision which shall include the offices of the county clerk, county sheriff, county attorney, coroner, and jailer.

(11)[~~(10)~~] "May" ***means***[~~shall mean~~] permissive. However, the words "no person may . . ." mean that no person is required, authorized, or permitted to do the act prescribed.

(12)[~~(11)~~] "Negotiation" ***means***[~~shall mean~~] contracting by either the method set forth in KRS 45A.370, 45A.375, or 45A.380.

(13)[~~(12)~~] "Noncompetitive negotiation" ***means***[~~shall mean~~] informal negotiation with one (1) or more vendor, contractor, or individual without advertisement or notice.

(14)[~~(13)~~] "Objective measurable criteria" ***means***[~~shall mean~~] sufficient information in the invitation to bid as to weight and method of evaluation so that the evaluation may be determined with reasonable mathematical certainty. Criteria which are otherwise subjective such as taste and appearance may be established when appropriate.

(15)[~~(14)~~] "Person" ***means***[~~shall mean~~] any business, individual, union, committee, club, or other organization or group of individuals.

(16)[~~(15)~~] "Procurement" ***means***[~~shall mean~~] the purchasing, buying, renting, leasing, or otherwise obtaining any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any public procurement, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(17)[~~(16)~~] "Request for proposals" ***means***[~~shall mean~~] all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in KRS 45A.370, 45A.375, 45A.380, or 45A.385.

(18)[~~(17)~~] "Responsible bidder or offeror" ***means***[~~shall mean~~] a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

(19)[~~(18)~~] "Responsive bidder" ***means***[~~shall mean~~] a person who has submitted a bid under KRS 45A.365 which conforms in all material respects to the invitation for bids, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract.

(20)[~~(19)~~] "Services" ***means***[~~shall mean~~] the rendering, by a contractor, of its time and effort rather than the furnishing of a specific end product other than reports which are merely incidental to the required performance of service. It does not include labor contracts with employees of local public agencies.

(21)[~~(20)~~] "Shall" ***means***[~~shall mean~~] imperative.

(22)[~~(21)~~] "Specifications" ***means***[~~shall mean~~] any description of a physical or functional characteristic of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

(23)[~~(22)~~] "Supplemental agreement" ***means***[~~shall mean~~] any contract modification which is accomplished by the mutual action of the parties.

(24)[~~(23)~~] "Supplies" ***means***[~~shall mean~~] all property, including but not limited to leases on real property, printing, and insurance, except land or a permanent interest in land.

(25)[~~(24)~~] "Energy efficiency measure" means a training program or facility alteration designed to reduce energy consumption or operating costs, and may include one (1) or more of the following:

(a) Insulation of the building structure or systems within the building;

(b) Storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption;

(c) Automated or computerized energy control systems;

(d) Heating, ventilating, or air conditioning system modifications or replacements;

(e) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made;

(f) Energy recovery systems;

(g) Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

(h) Energy conservation measures that provide long-term operating cost reductions; or

(i) Any life safety measures that provide long-term operating cost reductions.

(26)[~~(25)~~] "Guaranteed energy savings contract" means a contract for the evaluation and recommendation of energy conservation measures and for implementation of one (1) or more of those measures. The contract shall provide that all payments, except obligations on termination of the contract before its expiration, are to be made over time and the savings are guaranteed to the extent necessary to make payments for the systems.

(27)[~~(26)~~] "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy efficiency measures and is determined to be qualified by the local public agency.

Section 13. KRS 45A.365 is amended to read as follows:

(1) All contracts or purchases shall be awarded by competitive sealed bidding, except as otherwise provided by KRS 45A.370 to 45A.385.

(2) The invitation for bids shall state ***that***[~~whether~~] the award shall be made on the basis of the lowest bid price or the lowest evaluated bid price. If the latter is used, the objective measurable criteria to be utilized shall be set forth in the invitation for bids.

(3) ***Adequate***[~~The~~] public[~~ shall be given~~] notice of the invitation for bids ***shall be given prior to the date set forth for the opening of bids. The notice may include posting on the Internet or publication***[~~for advertisement~~] in ***a***[~~the~~] newspaper of ***general***[~~largest~~] circulation in the local jurisdiction[~~ at least once~~] not less than seven (7) days[~~ nor more than twenty-one (21) days~~] before the date set for the opening of the bids. The ***public notice***[~~advertisement~~] shall include the time and place the bids will be opened and the time and place where the specifications may be obtained.

(4) The bids shall be opened publicly at the time and place designated in the invitation for bids. Each bid, together with the name of the bidder, shall be recorded and be open to public inspection. ***Electronic bid opening and posting of the required information for public viewing shall satisfy the requirements of this subsection.***

(5) A contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price.

(6) The local public agency may allow the withdrawal of a bid where there is a patent error on the face of the bid document, or where the bidder presents sufficient evidence, substantiated by bid worksheets, that the bid was based upon an error in the formulation of the bid price.

Section 14. KRS 45A.370 is amended to read as follows:

(1) A local public agency may contract or purchase through competitive negotiation upon a written finding that:

(a) Specifications cannot be made sufficiently specific to permit award on the basis of either the lowest bid price or the lowest evaluated bid price, including, but not limited to, contracts for experimental or developmental research work, or highly complex equipment which requires technical discussions, and other nonstandard supplies, services, or construction; or

(b) Sealed bidding is inappropriate because the available sources of supply are limited, the time and place of performance cannot be determined in advance, the price is regulated by law, or a fixed price contract is not applicable; or

(c) The bid prices received through sealed bidding are unresponsive or unreasonable as to all or part of the requirements, or are identical or appear to have been the result of collusion; provided each responsible bidder is notified of the intention to negotiate and is given a reasonable opportunity to negotiate, and the negotiated price is lower than the lowest rejected bid by any responsible bidder.

(2) Proposals shall be solicited through ***public notice***[~~advertisement~~] pursuant to KRS 45A.365(3) or any other means which can be demonstrated to notify an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirement of the procurement. The request for proposals shall indicate the factors to be considered in the evaluation and the relative importance of each factor.

(3) Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined in writing to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted:

(a) With respect to prices, where such prices are fixed by law or regulation except that consideration shall be given to competitive terms and conditions; or

(b) Where time of delivery or performance will not permit discussions; or

(c) Where it can be clearly demonstrated and documented from the existence of adequate competition or accurate prior cost experience with that particular supply, service or construction item that acceptance of an initial offer without discussion would result in fair and reasonable prices and the request for proposal notifies all offerors of the possibility that award may be made on the basis of initial offers.

(4) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions. A request for proposals based on revised specifications or quantities shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements and shall be awarded upon the basis of the lowest bid price or lowest evaluated bid price submitted by any responsive and responsible offeror. No discussion shall be conducted with offerors after submission of revised proposals except for a compelling reason as determined in writing by the local public agency. The request for proposals shall state that an award is to be made without discussion except as herein provided.

(5) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the local public agency based upon the evaluation factors set forth in the request for proposals.

Section 15. KRS 45A.675 is amended to read as follows:

(1) The cabinet shall designate as small or small minority business set aside state contracts of goods, equipment, construction or services requested to be purchased by or for any agency whenever there is a reasonable expectation that bids can be obtained from at least three (3) small or small minority businesses capable of furnishing the desired property or services at a fair and reasonable price. Such designation should be made prior to the ***public notice***[~~advertisement~~] for bids, and the ***notice***[~~advertisement~~] shall ***designate***[~~indicate~~] this invitation as a small or small minority business set aside.

(2) When an item has been designated as a small or small minority business set aside, invitations for bids shall be confined to small or small minority businesses and bids from other bidders may be rejected.

(3) The cabinet shall award contracts to the[~~ lowest and best~~] responsible bidder ***whose bid meets***[~~meeting~~] specifications ***and offers the best value to the Commonwealth***.

Section 16. KRS 45A.695 is amended to read as follows:

(1) No one shall begin work on a personal service contract made by any contracting body, except as provided in subsection (8) of this section, until after[~~ a copy of~~] the personal service contract is filed with the Legislative Research Commission. Each service contract shall have a cancellation clause not to exceed thirty (30) days notice to the contractee.

(2) Each[~~ copy of a~~] proposed personal service contract submitted to the Legislative Research Commission shall be

accompanied by documentation of:

(a) The need for the service;

(b) The unavailability of state personnel or the nonfeasibility of utilizing state personnel to perform the service; and

(c) In the case of an architectural or engineering services contract, the documents identified in KRS 45A.830(3).

(3) Adequate notice of the need for the services shall be given by the contracting body through a request for proposals. The request for proposals shall describe the services required, list the type of information and data required of each offeror, and state the relative importance of particular qualifications.

(4) The head of the contracting body or a designee of the officer may conduct discussions with any offeror who has submitted a proposal to determine the offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.

(5) Award shall be made to the offeror determined by the head of the contracting body, or a designee of the officer, to be the best qualified of all offerors based on the evaluation factors set forth in the request for proposals and the negotiation of fair and reasonable compensation. If compensation cannot be agreed upon with the best qualified offeror and if proposals were submitted by one (1) or more other offerors determined to be qualified, negotiations may be conducted with the other offeror or offerors in the order of their respective qualification ranking. In this case, the contract may be awarded to the next best ranked offeror for a fair and reasonable compensation. All determinations of the qualification rankings of offerors by the head of the contracting body or a designee of the officer based on evaluation factors set forth in the request for proposals shall be made in writing. Written documentation shall be maintained concerning the final results of negotiation with each vendor and reasoning as to why each vendor was chosen.

(6) The Legislative Research Commission shall ***document***[~~cause to be endorsed on the copies of~~] each personal service contract submitted the time and date of the filing and shall maintain a file of personal service contracts for public inspection, with suitable indexes.

(7) Payment on contracts submitted to the subcommittee shall not be made before completion of the review procedure provided for in KRS 45A.705 unless the secretary of the Finance and Administration Cabinet determines that the time involved with the normal review procedure would be detrimental to the state's ability to act or to procure services. Payment shall not be made until written notification and explanation of the reasons for this action are forwarded to the subcommittee along with the personal service contract for which emergency payment is deemed necessary.

(8) In the event of a governmental emergency, work may begin prior to filing[~~ a copy of~~] the personal service contract with the Legislative Research Commission ***provided***[~~providing~~] that the normal process will not accommodate the emergency.

(9) If an emergency exists and work is authorized to begin immediately,[~~ a copy of~~] a statement, approved by the secretary of the Finance and Administration Cabinet, setting forth in detail the nature of the emergency shall be filed with the[~~ copy of the~~] personal service contract.

Section 17. KRS 45A.705 is amended to read as follows:

(1) There is hereby created a permanent subcommittee of the Legislative Research Commission to be known as the Personal Service Contract Review Subcommittee. The subcommittee shall be composed of seven (7) members which shall include members of the minority party as nearly proportioned to their membership in the General Assembly as mathematically possible. The Legislative Research Commission shall appoint the members of the subcommittee from the membership of the General Assembly for terms of two (2) years, and the members so appointed shall elect one (1) of their number to serve as chairman. Any vacancy which may occur in the membership of the subcommittee shall be filled by the Legislative Research Commission at its next regularly scheduled meeting after the occurrence of the vacancy.

(2) The subcommittee shall meet monthly at such time and place as the chairman may determine. The members of the subcommittee shall be compensated for attending meetings, as provided in KRS 7.090(3).

(3) Any professional, clerical, or other employees required by the subcommittee shall be provided in accordance with the provisions of KRS 7.090(4) and (5).

(4) All[~~ copies of~~] proposed personal service contracts received by the Legislative Research Commission shall be submitted to the subcommittee to:

(a) Examine the stated need for the contract service;

(b) Examine whether the service could or should be performed by state personnel; and

(c) Examine the cost and duration of the contract. If the subcommittee believes that the contract service, other than an emergency contract approved by the Governor, is not needed, the service could and should be performed by state personnel, the cost is excessive, or the duration is excessive, the subcommittee shall attach a written notation of the reasons for its disapproval or objection to the personal service contract and shall return the personal service contract to the secretary of the Finance and Administration Cabinet. The subcommittee shall give notice of such disapproval or objection to the director of the Legislative Research Commission. The subcommittee shall act on a personal service contract submitted to the Legislative Research Commission within forty-five (45) days of the submission of the personal service contract.

(5) Upon receipt of the subcommittee's disapproval or objection to a personal service contract, the secretary of the Finance and Administration Cabinet shall determine whether a personal service contract:

(a) Shall be revised to comply with the objections of the subcommittee;

(b) Shall be cancelled if disapproved by the subcommittee; or

(c) Shall remain effective as originally approved by the Finance and Administration Cabinet.

(6) The secretary of the Finance and Administration Cabinet shall notify the subcommittee of the action taken on personal service contracts referred to the Finance and Administration Cabinet by the subcommittee within thirty (30) days from the date the contracts were reviewed by the subcommittee.

(7) The subcommittee shall report monthly to the Legislative Research Commission all actions taken on personal service contracts by the secretary of the Finance and Administration Cabinet and the subcommittee.

Section 18. KRS 45A.740 is amended to read as follows:

(1) When a project requiring architectural or engineering services is proposed by a local public agency, except as provided by subsections (2) and (3) of this section, the agency shall:

(a) ***Transmit***[~~Mail~~] a notice requesting a statement of interest in the proposed project from all firms that have a current qualifications statement on file;

(b) ***Give adequate public notice of***[~~Advertise~~] the proposed project, ***which may include posting on the Internet or***[~~in a~~] newspaper ***advertisement***[~~that meets the requirements of KRS 424.120~~], requesting firms to submit qualification statements and statements of interest in[~~ for~~] the proposed project; or

(c) Contact an appropriate professional organization for a list of firms capable of providing the necessary services.

(2) If the regulations of a federal department or agency require a procurement process that is different from the process in KRS 45A.730 to 45A.750 in order that financial aid can be granted, then the local government agency may exempt itself from the provisions of KRS 45A.730 to 45A.750.

(3) When a local public agency has formed a working relationship with one (1) or more firms based on work previously contracted between them, then the local public agency may enter directly into negotiations according to KRS 45A.750. If no contract is successfully negotiated, then the local public agency shall comply with this section, KRS 45A.745, and KRS 45A.750.

Section 19. KRS 45A.825 is amended to read as follows:

(1) (a) A firm shall not be considered for providing architectural or engineering services to the Finance and Administration Cabinet or engineering or related services to the Transportation Cabinet unless the relevant procuring agency has prequalified the firm prior to[~~ advertised~~] notice of a request for proposals to which that firm intends to respond.

(b) A firm's prequalification shall remain in effect for twelve (12) months from the date of prequalification.

(2) (a) The procuring agency shall consult with the user agency or user division before arriving at a request for proposals.

(b) The request for proposals:

1. Shall include as an evaluation factor whether the work tasks are to be performed in Kentucky or outside Kentucky;

2. Shall indicate the relative weight of evaluation factors; and

3. Shall establish a timetable for:

a. The selection committee's first meeting held pursuant to subsection (6) of this section; and

b. The selection committee's activities conducted pursuant to subsection (7)(b) of this section or subsection (8)(b), (d), and (e) of this section, as appropriate.

(c) [~~Through advertisement, and any other available means, ~~]The procuring agency shall provide ***adequate public*** notice of a request for proposals and notice of the materials that the procuring agency will provide to a firm to assist that firm in responding to a request for proposals. Those materials shall include, but not be limited to, the request for proposals and the project evaluation sheet to be used by the relevant selection committee. The ***notice***[~~advertisement~~] shall also set a deadline for filing responses to a request for proposals with the procuring agency. It shall be the intent of this subsection that engineering and architectural firms in all regions of the Commonwealth are given an equal opportunity to be selected.

(3) A firm shall respond to a request for proposals by submitting[~~,~~] before the deadline[~~, a one (1) page letter of interest as well as~~] a completed form, devised by the procuring agency, which states the firm's experience and its qualifications for the project as described in the request for proposals. A firm which fails to meet the deadline shall be barred from the

procurement process.

(4) The employees of a procuring agency and the members of the selection committee shall keep all responses to a request for proposals confidential until the procuring agency has awarded a contract.

(5) The secretary of the procuring agency shall designate a procuring agency employee to determine which firms have prequalified pursuant to subsection (1) of this section and have filed, in a timely fashion, responses to a request for proposals. He shall create a list of the firms which have done so and certify the list.

(6) The procuring agency shall organize the selection committee's first meeting. At that meeting, each selection committee member shall sign a statement of confidentiality. Also, at that meeting, the selection committee shall:

(a) Elect from among the voting members of the committee a chairman and a vice chairman who shall hold their positions for the duration of the selection committee's participation in the project;

(b) Be provided with:

1. The certified list created pursuant to subsection (5) of this section;

2. The firms' responses to the request for proposals;

3. The request for proposals;

4. The~~[advertised]~~ notice of request for proposals; and

5. The project evaluation sheets; and

(c) Discuss the future conduct of its affairs.

(7) (a) When the Department of Transportation procures any engineering or related services, or when the Finance and Administration Cabinet procures architectural services for an estimated fee of less than fifty thousand dollars ($50,000) or engineering services for an estimated fee of less than one hundred thousand dollars ($100,000), this subsection and subsection (9) of this section shall govern the procurement process.

(b) The selection committee shall meet in executive session to:

1. Evaluate the materials with which it has been provided;

2. Select the three (3) most qualified firms and rank them in order of preference, based upon the weighted evaluation factors established in the request for proposals; and

3. Notify the procuring agency of the ranking.

(c) The procuring agency shall ***notify***~~[send a letter to]~~ each firm which responded to the request for proposals, informing the firm of:

1. The three (3) finalists;

2. Their ranking; and

3. The rest of the procedure that will be followed in the awarding of the contract.

(d) The procuring agency shall then begin negotiations with the top-ranked firm pursuant to subsection (9) of this section.

(8) (a) When the Finance and Administration Cabinet is procuring architectural services for an estimated fee of fifty thousand dollars ($50,000) or more or engineering services for an estimated fee of one hundred thousand dollars ($100,000) or more, this subsection and subsection (9) of this section shall govern the procurement process.

(b) The selection committee shall meet in executive session to:

1. Evaluate the materials with which it has been provided;

2. Select, but not rank, the three (3) most qualified firms, based upon the weighted evaluation factors established in the request for proposals; and

3. Notify the procuring agency of the three (3) finalists.

(c) The procuring agency shall ***notify***~~[send a letter to]~~ each firm which responded to the request for proposals, informing the firm of:

1. The three (3) finalists; and

2. The rest of the procedure that will be followed in the awarding of the contract.

(d) The selection committee shall interview the three (3) finalists, preferably on the same day. The finalists shall be interviewed one (1) at a time, and each interview shall be attended only by representatives of the finalist and members of the selection committee. Members of the selection committee shall keep confidential the substance of an interview until the procuring agency has awarded a contract.

(e) The selection committee shall meet in executive session to:

1. Rank the three (3) finalists based upon the weighted evaluation factors established in the request for

proposals; and

2. Forward the ranking to the procuring agency.

(f) The procuring agency shall ***notify***[~~send a letter to~~] each finalist, informing the finalist of:

1. His ranking; and

2. The rest of the procedure that will be followed in the awarding of the contract.

(g) The procuring agency shall then begin negotiations with the top-ranked firm pursuant to subsection (9) of this section.

(9) The secretary of the procuring agency shall designate a procuring agency employee as the procuring officer in charge of negotiating a contract with the top-ranked firm, as determined by the selection committee, at compensation which the procuring officer determines in writing to be fair and reasonable to the Commonwealth. In making this decision, the employee shall take into account the estimated value of the services to be rendered, and the scope, complexity, and professional nature thereof. Should the procuring officer be unable to negotiate a satisfactory contract with the top-ranked firm, at a price that he considers fair and reasonable to the Commonwealth, he shall formally terminate negotiations with the firm. The procuring officer shall then undertake negotiations with the second-ranked firm. Failing accord with the second-ranked firm, the purchasing officer shall formally terminate negotiations. The purchasing officer shall then undertake negotiations with the third-ranked firm. Should the purchasing officer be unable to negotiate a satisfactory contract with any of the selected firms, he shall formally terminate negotiations, and the procurement procedure shall start again from the beginning pursuant to KRS 45A.810.

(10) Once a procuring officer has negotiated a contract, the procuring agency shall ***notify***[~~send a letter to~~] the other finalists, informing them of:

(a) Which firm has successfully negotiated a contract; and

(b) The rest of the procedure that will be followed in the awarding of the contract.

(11) Notwithstanding the provisions of KRS 45A.045, when the Transportation Cabinet is the procuring agency, the negotiated contract shall take effect without the approval of the secretary of the Finance and Administration Cabinet.

Section 20. KRS 45A.830 is amended to read as follows:

(1) After the procuring officer has negotiated an architectural or engineering services contract for the Finance and Administration Cabinet or an engineering or related services contract for the Transportation Cabinet, but before the contract is submitted to the Personal Service Contract Review Subcommittee, the procuring officer shall supply a copy of the proposed contract to each member of the selection committee involved in the procurement process ***for that contract***.

(2) The secretary of the procuring agency, the procuring officer, and each voting member of the selection committee shall sign separate certificates, devised by the procuring agency, which shall provide the signatory with the option of certifying that, to the best of his knowledge, he is either aware or unaware of circumstances which may constitute a violation of this chapter which has arisen in the procurement process. Any employee of the Auditor of Public Accounts, who was appointed to serve as a nonvoting member of the selection committee and who attended any committee proceeding, shall participate in the preparation of a report for filing with the Personal Service Contract Review Subcommittee certifying that the applicable procedural provisions of subsections (4), (6), (7), and (8) of KRS 45A.825 were, or were not, met. Before filing the report, the employee or employees who participated in its preparation shall sign it.

(3) The procuring agency shall file with the Personal Service Contract Review Subcommittee ***upon request***:

(a) The certificates;

(b) The selection committee's ranking of firms; and

(c) A statement affirming that responding firms in all regions of the Commonwealth were given equal consideration for selection.

Section 21. KRS 48.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Account" is a technical accounting term meaning a formal record in which related transactions and events, (i.e., expenditures, receipts, encumbrances, and inter-account charges or credits) which occur during a specific period of time, are summarized and accumulated.

(2) "Activities" means those actions or services performed by a budget unit which depict in a quantitative manner the fulfillment of lawful purposes.

(3) Appropriation-related terms are defined for procedures prescribed by this chapter as follows:

(a) "Appropriation" means an authorization by the General Assembly to expend, from public funds, a sum of money not in excess of the sum specified, for the purposes specified in the authorization and under the procedure prescribed in this chapter;

(b) "Appropriation provision" means a section of any enactment by the General Assembly which is not provided for by this chapter and which authorizes the expenditure of public funds other than by a general appropriation bill;

(c) "General appropriation bill" means an enactment by the General Assembly that authorizes the expenditure of public funds in an executive, judicial, or legislative branch budget bill as provided for by this chapter.

(4) "Budget" means the complete financial plan for each fiscal year contained in a branch budget bill provided for by this chapter.

(5) "Branch budget bill" means an enactment by the General Assembly which provides appropriations and establishes fiscal policies and conditions for the biennial financial plan of each branch of government.

(6) "Branch budget recommendation" means the recommendations to the General Assembly of the Governor for the executive branch and for fiscal matters related to the function of the government of the Commonwealth, the Chief Justice for the judicial branch, and the Legislative Research Commission for the legislative branch, accompanied by an estimate of the receipts and expenditures for each branch and accompanying explanations provided for by this chapter for the next two (2) fiscal years.

(7) "Budget unit request" means a detailed statement of the financial requirements of a budget unit by principal budget class, and an estimate of its receipts and expenditures for the next two (2) fiscal years, with the accompanying explanations provided for by this chapter.

(8) "Budget unit" or "appropriation unit" means any subdivision of any branch of government, however designated in any branch budget bill.

(9) "Capital outlay" means the exchange of values involved in acquiring lands, buildings, equipment or other permanent properties, or in their construction, development, or permanent improvement.

(10) "Disbursement" means cash actually paid out for any purpose.

(11) "Employee" means the lawful incumbent of a position.

(12) "Expenditure" means cash actually paid out or an exchange of value for any purpose.

(13) "Fund" means an independent fiscal and accounting entity with a self-balancing set of accounts recording cash or other resources or both together with all related liabilities, obligations, reserves, and equities which are segregated for the purpose of carrying on specific activities in accordance with legal restrictions or other limitations, to include:

(a) "General Fund." This fund shall consist of all moneys, not otherwise restricted, available for the general operations of state government.

(b) "Bond Debt Related Fund." This fund shall consist of all outstanding bonded debt liability and related funds of state government, including all revenue bonds issued by or approved by the State Property and Buildings Commission. Accounts necessary to assure integrity of trust indentures shall be maintained. Funds appropriated for debt service shall be allotted to these accounts and any excess of appropriation over net requirements for principal, interest, and reserves for any issue shall lapse to the surplus account of the general fund if general funds are a part of the appropriation for that budget unit.

(c) "Capital Construction Fund." This fund shall consist of moneys appropriated under the provision of KRS 45.750 to 45.800 for capital construction projects, except road construction projects, for all budget units of state government.

(d) "Federal Fund." This fund shall include all receipts from the federal government for any purpose.

(e) "Fiduciary Fund." This fund shall consist of moneys held by a budget unit in a trustee capacity.

(f) "Restricted Fund." This fund shall consist of budget unit receipts restricted as to purpose by statute.

(g) "Road Fund." This fund shall consist of money derived from excise or license taxation relating to gasoline and other motor fuels, and moneys derived from fees, excise or license taxation relating to registration, operation or use of vehicles for use on public highways. A separate record of each source of receipt within this fund group shall be maintained.

(14) "Principal budget class" includes the following:

(a) "Capital outlay" means the exchange of values involved in acquiring lands, buildings, or other permanent properties, or in their construction, development, or permanent improvement estimated to cost less than four hundred thousand dollars ($400,000), and items of equipment or other capital items estimated to cost less than one hundred thousand dollars ($100,000).

(b) "Debt service" means the amount of money required to pay the interest, principal, and required contributions to accumulate moneys for future retirement of lawfully incurred debt.

(c) "Grants, loans, or benefits" means expenditures for any grant, aid, loan, or relief payment to individuals, organizations, or jurisdictions not otherwise classified pursuant to this chapter.

(d) "Operating expenses" means expenditures directly attributable to the operation of state government not otherwise classified pursuant to this chapter.

(e) "Personnel costs" means the salaries, wages, benefits (including but not limited to, employer share of FICA, retirement contributions, insurance, unemployment insurance, workers' compensation), and increments of all officers and employees, and payment to persons awarded personal service contracts.

(15) "Receipts" includes the following:

(a) "Nonrevenue receipts" means values accruing that either decrease an asset or create a liability.

(b) "Operating receipts" means cash received by a budget unit for services rendered, or from the sale of materials, goods, or supplies created by the budget unit or of items held for resale.

(c) "Revenue receipts" means values accruing as a result of taxation or revenues, or both, and without resultant increase in liabilities or decrease in assets, whether such values are represented by cash actually received or by amounts due and payable, or partly by each.

(16) "Writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

Section 22. KRS 56.440 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Commission" means the State Property and Buildings Commission;

(2) "Real estate" includes lands together with improvements thereon and appurtenances thereto;

(3) "Building" includes any structure or improvement upon real estate of a permanent nature and additionally includes any sites, structures, equipment, machinery, or devices for the purpose of establishing, developing, or furthering television or related services in aid of education or in aid of any other proper public functions, whether or not the same would otherwise be legally defined as buildings; but only (except for industrial development projects) if used or to be used by the Commonwealth of Kentucky or one (1) of its departments or agencies (not including independent municipal corporations or political subdivisions);

(4) "Building project" includes the acquisition of any real estate and the acquisition, construction, reconstruction, and structural maintenance of buildings, the installation of utility services, including roads and sewers, and the purchase and installation of equipment, facilities, and furnishings of a permanent nature for buildings; the purchase and installation initially of movable equipment, furnishings, and appurtenances necessary to make a building operable; and for television or related purposes as referred to in subsection (3) of this section, for use by the state government or one (1) of its departments or agencies, not including any independent municipal corporation or political subdivision, or any other capital outlay program authorized by any branch budget bill or other legislation;

(5) "Industrial development project" means and includes the acquisition of any real estate and the construction, acquisition, and installation thereon and with respect thereto of improvements and facilities necessary and useful for the improvement of such real estate for conveyance to or lease to industrial entities to be used for manufacturing, processing, or assembling purposes, including surveys; site tests and inspections, subsurface site work, excavation, removal of structures, roadways, cemeteries, and other surface obstructions, filling, grading and provision of drainage, storm water detention, installation of utilities such as water, sewer, sewage treatment, gas, electricity, communication, and other similar facilities, off-site construction of utility extensions to the boundaries of such real estate, construction and installation of buildings, including buildings to be used for worker training and education, rail facilities, roads, sidewalks, curbs and other improvements to such real estate necessary to its manufacturing, processing, or assembling use by industrial entities; provided that an industrial entity must have agreed with the commission, prior to the financing of an industrial development project, to develop, in conjunction with such industrial development project, manufacturing, processing, or assembling facilities satisfactory to the commission;

(6) "Industrial entity" means any corporation, partnership, person, or other legal entity, whether domestic or foreign, which will itself or through its subsidiaries and affiliates construct and develop a manufacturing, processing, or assembling facility on the site of an industrial development project financed pursuant to this chapter;

(7) "Incremental taxes" means, for any fiscal year of the Commonwealth, that amount of money which is equal to all tax revenues received by the Commonwealth, as taxing entity, during such fiscal year in respect of an industrial development project and improvements and equipment thereon and the products thereof, and activities carried out by the occupants and users of such industrial development project, minus an amount equal to all tax revenues received by the Commonwealth, as taxing entity, in respect of the site of the industrial development project and the same type of taxable properties and activities during the fiscal year immediately preceding the fiscal year during which construction of the improvements undertaken by an industrial entity as a result of the financing of such industrial development project commenced. Incremental taxes shall include such tax revenues as state corporate income taxes, state income taxes paid by employees of manufacturing, processing, and assembling facilities developed on the site of an industrial development project, state property taxes, state corporation license taxes, and state sales and use taxes, but shall not include any taxes levied specifically for educational purposes;

(8) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.005, or any board, commission, institution, or division exercising any function of the state but which is not an independent municipal corporation or political subdivision;

(9) "Cabinet" means the Finance and Administration Cabinet;

(10) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); anthophyllite; tremolite; and actinolite;

(11) "Asbestos-containing material" means any material which contains more than one percent (1%) asbestos by weight; and

(12) "Friable material" means any material applied onto ceilings, walls, structural members, piping, ductwork, or any other part of the building structure which, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure.

(13) "Meeting" means all gatherings of every kind, including video teleconferences.

(14) "Video teleconference" means one (1) meeting, occurring in two (2) or more locations, where individuals can see and hear each other by means of video and audio equipment.

(15) "Writing" or "written" shall mean letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

Section 23. KRS 56.463 is amended to read as follows:

The cabinet shall have the power and duty:

(1) To determine the comparative needs and demands of the various state agencies for acquiring real estate and for building projects;

(2) To purchase or otherwise acquire all real property determined to be needed for state use and upon the approval of the secretary of the Finance and Administration Cabinet as to the determination of need and as to the action of purchase or other acquisition, except as provided in KRS Chapters 175, 176, 177, and 180. All such acquisitions of real property or interests therein shall be made in accordance with KRS 45A.045;

(3) To sell or otherwise dispose of all property, including any interest in real property, of the state that is not needed or has become unsuitable for public use or would be more suitable consistent with the public interest for some other use as determined by the secretary of the Finance and Administration Cabinet. All such sales or other disposition shall be made in accordance with KRS 45A.045;

(4) (a) To control the use of any real property owned or otherwise held by the Commonwealth, or any state agency, and to determine for what periods of time and for what purposes any state agency may use the same, including the agency for whose use it was initially acquired or improved, and to determine what appropriate uses shall be made of such real property during periods that the cabinet finds the same is not required for the purposes of any particular state agency. The cabinet shall allocate to the General Assembly and the Legislative Research Commission the amount of space within the New State Capitol Annex, currently assigned to the legislative branch in the basement and on the first floor totalling forty-nine thousand six hundred thirty-eight (49,638) square feet; approximately twenty-four thousand four hundred fifty-two (24,452) square feet on the second floor from an imaginary line running north and south down the center of the center wing hallway of the building and all space to the east of this line, excluding mechanical areas, public entrances, and restrooms; approximately twenty-three thousand nine hundred forty (23,940) square feet on the third floor from an imaginary line running north and south down the center of the center wing hallway of the building and all space to the east of this line, excluding mechanical areas, public entrances, and restrooms; approximately twenty-two thousand fifty-six (22,056) square feet on the fourth floor from an imaginary line running north and south down the center of the center wing hallway of the building and all space to the east of this line, excluding mechanical areas, public entrances, and restrooms. The occupancy of the Capitol Annex by the legislative branch shall be phased in with the Capitol Annex renovation project and shall be completed no later than November 30, 1991. All space assigned to the legislative branch and plans, uses, furnishings, and equipment therefor are subject to the specific approval of the Legislative Research Commission;

(b) Forty percent (40%) of the additional floor space provided by this section for use by the legislative branch shall be assigned for the use of the Senate. Sixty percent (60%) of the additional floor space provided by this section for use by the legislative branch shall be assigned for the use of the House of Representatives; and

(c) To determine the housing and furnishings needs of the various state agencies located in Frankfort and to establish and put into effect a permanent program for housing them. Subject to paragraph (a) of this subsection, the cabinet is also authorized and directed to allocate office space and furnishings in existing public buildings located in Frankfort, exclusive of the third and fourth floors of the New State Capitol, according to the needs of the various agencies and when necessary to provide additional office space and furnishings in Frankfort under any building program the cabinet deems most advisable and economical for the state. The permanent housing program shall include provisions for housing the General Assembly and its related agencies, including the Legislative Research

Commission, and its subcommittees, the executive offices, the Supreme Court and the clerk of the Supreme Court, the Department of Law and the law library, in the New State Capitol, provided the General Assembly and the Legislative Research Commission shall have complete control and exclusive use of the third and fourth floors of the New State Capitol and shall have exclusive use of the space in the New State Capitol Annex allocated to them under paragraph (a) of this subsection. If there be any additional space in the Capitol, it shall be assigned to agencies whose activities are most closely related to the agencies directed to be located permanently in the Capitol;

(5) To acquire, by condemnation in the manner provided in the Eminent Domain Act of Kentucky, any real estate necessary for use by the state or by any state agency, when the cabinet is unable to agree with the owner thereof on a price for such real estate;

(6) To lease any real property, or any interest in such real property, owned by the state or any agency thereof, in accordance with KRS 45A.045;

(7) To provide for and adopt plans and specifications as may be necessary, to ***provide adequate public notice***[~~advertise~~] for and receive bids for any expenditures proposed to be made, to award contracts for the purpose authorized, to supervise construction and make changes and revisions in plans and specifications or in construction as may become necessary, and generally to do any and all other things as may become necessary or expedient in order to effectively fulfill and carry out the purposes of this chapter, including the right to employ clerks, engineers, statisticians, architects, or other persons required to be employed in order to fulfill the functions of the Commonwealth relating to state property and buildings provided in KRS 56.450 to 56.550; and

(8) To adopt rules and ***promulgate administrative*** regulations as may be necessary to govern the acquisition, control, and disposition of the real property to which this section is applicable.

Section 24. KRS 56.491 is amended to read as follows:

(1) No state agency shall have power or authority to make plans and specifications, ***provide public notice of invitations***[~~advertise~~] for bids, let contracts, or incur any financing commitments, either in the way of a charge against public funds or in the way of negotiations for issuance of revenue bonds, for any capital construction projects involving the improvement of lands or the construction, alteration, reconstruction, or major repair of any building or other structure, or sewage disposal or water supply system, requiring the expenditure of more than one hundred and twenty-five thousand dollars ($125,000) without first securing the approval of the Finance and Administration Cabinet.

(2) The state agency seeking the approval shall submit to the Finance and Administration Cabinet a general description of the proposed project, with the detailed information the cabinet may require. Review of construction plans for conformance with the Uniform State Building Code shall be conducted by the Department of Housing, Buildings and Construction. The Finance and Administration Cabinet shall not approve any project requiring its approval in any instance if it finds that: the project is not needed; the proposed method of financing is not sound; the project will exceed the amount of the funds available therefor; the work contemplated will be insufficient to accomplish the purpose of the project; or after providing for the ordinary recurring expenses of government and debt service and for payments under existing allotments for extraordinary expenses and capital outlay, cash will not be available in the State Treasury to promptly pay for the work during the biennium, or except as provided in subsection (5) of this section, that the work is to be done by employees of the agency.

(3) The finding of the Finance and Administration Cabinet shall be final, except in cases where the issuance and sale of bonds is proposed, in which cases the cabinet shall submit its findings to the commission for final approval, modification, or disapproval.

(4) Any capital construction project, the total cost of completion of which the Finance and Administration Cabinet determines will exceed one hundred and twenty-five thousand dollars ($125,000), shall be contracted for on a competitive bid basis, and the execution of the contracts shall be approved and authorized by the cabinet. When a capital construction project has been approved as provided in this section, in whole or in part, the cabinet shall prepare the plans and specifications, ***provide public notice of invitations***[~~advertise~~] for bids, award the contracts, supervise the construction, and handle the financial negotiations on behalf of the requesting state agency; or with prior written approval, the cabinet may authorize a state agency to do so with delegated authority of the cabinet.

(5) A capital construction project, the total cost of completion of which the Finance and Administration Cabinet determines will not exceed one hundred and twenty-five thousand dollars ($125,000), may be performed by the employees of the requesting agency or by individuals hired specifically for the project who shall be exempt from the requirements of KRS Chapter 18A, if the project is approved and authorized by the cabinet. Necessary materials and supplies shall be procured in accordance with the standard purchasing procedures and policies of the cabinet as defined in KRS Chapter 45A.

(6) This section shall not apply to capital outlays to the Department of Highways for roads and bridges.

(7) This section shall not apply to capital outlays by the Justice Cabinet for repair, maintenance, improvement, or expansion of present correctional facilities on which projects inmates are used. Any capital construction project to be performed by the Justice Cabinet shall be approved and authorized by the Finance and Administration Cabinet.

Section 25. KRS 56.514 is amended to read as follows:

The following provisions shall be applicable to commission financing to carry out the purposes of this chapter:

(1) As used in this section, the following terms shall have the following meanings:

(a) "Commercial paper revenue bonds" means revenue bond anticipation notes which by their terms mature not more than two hundred seventy (270) days from the date of issuance thereof and are to be refunded by the issuance of commercial paper revenue bonds or by refunding revenue bonds; provided, however, that all commercial paper revenue bonds must possess the characteristics set forth and described in subsection (3)(d) of this section;

(b) "Refunding revenue bonds" means revenue bonds issued by the commission to refund outstanding issues of revenue bonds, commercial paper revenue bonds and variable rate revenue bonds; and

(c) "Variable rate revenue bonds" means revenue bonds the rate of interest on which fluctuates either automatically by reference to predetermined formulas and indices or pursuant to the standards set forth in subsection (3)(e) of this section.

(2) The commission may issue and sell revenue or other authorized bonds, including variable rate and commercial paper bonds, to pay all or any part of the expense or cost of or incidental to an industrial development project, or a building project in denominations and amounts, as it deems to be for the best interest of the Commonwealth.

(3) (a) Revenue bonds issued to pay the costs of industrial development projects or building projects may bear interest at any rate or rates, either fixed or variable in accordance with such method as shall be determined by the commission, shall be payable either annually or at shorter intervals, may be of such terms and maturities, may bear such conversion privileges, may be executed by the manual or facsimile signatures of such officers of the commission, and shall be executed in such manner and at such time or times, or from time to time, and be payable at such times not exceeding forty (40) years from the date thereof, or, if commercial paper, from the date of initial issuance thereof, and at such place or places as the commission determines;

(b) Such revenue bonds may provide that they or any of them may be called for redemption prior to maturity under conditions determined by the commission before issuing the bonds;

(c) Such revenue bonds may, at any time on or after the earliest redemption date provided therefor at the time of their issuance, be refunded by the commission, in such amount as the commission may deem necessary to refund the principal of the revenue bonds to be refunded, together with any unpaid interest thereon, to create any necessary debt service reserve fund, and to pay any premiums, expenses and commissions required to be paid in connection therewith;

(d) At the time of the initial issuance of commercial paper revenue bonds to pay the costs of industrial development projects or building projects, the commission may designate individual officials of any state agency as agents for purposes of approving the principal amount, the interest rate, the discount, if any, and the maturity date of revenue bonds being issued later to refund the maturing commercial paper revenue bonds; provided, however, that at the time of the initial issuance of any such commercial paper revenue bonds, the commission shall set the maximum principal amount, the maximum interest rate, and the maximum discount, if any, of the refunding revenue bonds plus the final maturity date of the last issue of such refunding revenue bonds; and provided further that the commission shall retain the right to revoke any such agent's authority at any time and for any reason whatsoever. Individual issues of commercial paper revenue bonds, issued as part of a continuing financing program, may be refunded by the approvals of such agents of the commission;

(e) At the time of issuance of variable rate revenue bonds to pay the costs of industrial development projects or building projects, the commission may designate individuals or institutions which in the sole judgment of the commission have financial market expertise to serve as agent for the commission for establishing and changing from time to time while such variable rate revenue bonds remain outstanding the rate of interest to be borne by and the price to be paid for such revenue bonds; provided, however, that the rate-setting procedures and authority of each such agent shall be set forth in writing, and may include a formula or an index or indices based upon market factors, and shall be established by the commission at the time of issuance of such revenue bonds; and provided further that at the time of the issuance of such revenue bonds, the commission shall establish the maximum interest rate to be borne by the revenue bonds; and provided further that the commission shall retain the right to remove or replace any such agent at any time and for any reason whatsoever;

(f) Any revenue bonds issued and outstanding hereunder to pay the costs of industrial development projects or building projects and the interest due on such revenue bonds shall, prior to the maturity or redemption date thereof, be deemed to have been paid to the same extent as if they had actually been paid in cash and retired, if:

1. In the event any of such revenue bonds are to be redeemed on any date prior to their maturity, the commission shall have given a trustee appointed for the holders of such revenue bonds in connection with their issuance, in form satisfactory to such trustee and in conformity with the requirements of the resolution authorizing their issuance irrevocable instructions to give notice of redemption of such revenue bonds to the holders thereof by written notice which is satisfactory to such trustee;

2. There shall have been deposited with the trustee either money in an amount which shall be sufficient, or direct obligations of or obligations guaranteed by the United States of America, or other obligations specified by the commission, the principal of and the interest on which, when due, will provide money which, together with the money, if any, deposited with the trustee at the same time, shall be sufficient to pay when due the principal and the interest due and to become due on such revenue bonds on and prior to redemption date or maturity date thereof, as the case may be; and

3. In the event that such revenue bonds are not to be redeemed within the next succeeding sixty (60) days, the commission shall have given the trustee in form satisfactory to it irrevocable instructions to give, as soon as practicable, in a manner satisfactory to it, a notice to the holders of such revenue bonds that the deposit required by subparagraph 2. of this paragraph has been made with the trustee, that such revenue bonds are deemed to have been paid in accordance with the provisions hereof and stating such maturity or redemption date upon which money is to be available for the payment of the principal of and interest on such revenue bonds;

(g) It is hereby declared and determined that the issuance of any and all refunding bonds as provided herein will be for a public purpose if the commission so declares in the proceedings authorizing same; and

(h) If any officer whose signature or countersignature appears on revenue bonds issued to pay the costs of industrial development projects or building projects ceases to be such officer before delivery of the bonds, his signature or countersignature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until delivery. Any such revenue bonds issued to pay the costs of industrial development projects or building projects shall be sold upon such terms as the commission deems best, either at public or private sale, and for such price, as the commission may determine. In the event the revenue bonds are sold at private, negotiated sale, the commission shall publish in accordance with the requirements of KRS Chapter 424 a notice of the intent of the commission to negotiate the sale of such revenue bonds within thirty (30) days of such proposed sale, which notice shall include the identification and description of such revenue bonds, an estimate of the week during which the negotiated sale is expected to occur and the identity of the state officer or agency and the fiscal advisor or managing underwriter from whom further information regarding the revenue bonds may be obtained. Revenue bonds, notes or other obligations issued by the commission under this chapter, the income thereon, and the transfer thereof, including any profit made on the sale thereof, shall at all times be exempt from taxation or assessment of any type by the Commonwealth, its agencies and departments, and by all political subdivisions within the state. Nothing contained in this section shall preclude or prevent the authorization and issuance by the commission from time to time of revenue bonds, notes or other obligations, the receipt of interest on which may be subject to federal income taxation.

(4) The payment of revenue bonds issued to pay the cost of an industrial development project or building project, together with the interest thereon, may be secured by a pledge of and a first lien on all of the receipts and revenue derived, or to be derived, from the rental, financing or operation of the industrial development projects or building projects involved, including rentals and financing payments made by the Finance and Administration Cabinet from appropriated funds on a biennial basis, pursuant to lease agreements or financing agreements between the Finance and Administration Cabinet and the commission. Neither the payment of any revenue bond, nor the interest thereon, issued under the authority of this section shall constitute an indebtedness of the Commonwealth of Kentucky, nor shall any revenue bond or interest thereon be payable out of any fund except funds derived from rentals, financing payments or other revenues derived from the operation of the industrial development projects or building projects or from revenues as are available for the purpose by law.

(5) ***If***[~~In the event~~] revenue bonds are sold at public, competitive sale, ***the***[~~such~~] revenue bonds issued by the commission under the provisions of this section shall be sold after ***notice adequate to inform the public of the sale. Notice may include posting on the Internet or*** newspaper advertising[~~ conforming to the requirements of KRS Chapter 424~~].

(6) ***If***[~~In the event~~] revenue bonds are sold at public, competitive sale, competitive bids for the sale of ***the***[~~such~~] revenue bonds shall be opened and read publicly by the secretary of the Finance and Administration Cabinet or ***the secretary's***[~~his~~] representative at a designated place, day and hour, all of which shall be announced in the ***notice***[~~advertising~~] made relative thereto.

(7) All money from the sale of revenue bonds issued pursuant to this section shall be deposited in the State Treasury and shall be credited to a special account to be designated as directed by the Finance and Administration Cabinet, and no part thereof shall be withdrawn from the State Treasury except for the purposes authorized by this chapter, together with the cost incidental to the issuing and selling of the revenue bonds and other expenses directly related thereto. The commission may provide in any trust indenture securing revenue bonds for additional terms and conditions thereof, or for other restrictions not in conflict with this chapter.

Section 26. KRS 56.520 is amended to read as follows:

(1) The commission may issue and sell revenue or other authorized bonds, in carrying out the provisions of this chapter, in denominations and amounts, as is deemed to be for the best interest of the Commonwealth, for any of the following

purposes:

(a) To acquire real estate for state governmental use;

(b) To pay all or any part of the expense or cost of or incidental to a building project for state governmental use;

(c) To defray the cost of plans, specifications, blueprints, architectural fees, and other expenses authorized to be incurred for state governmental use.

(2) The payment of bonds issued, together with the interest thereon, may be secured by a pledge and a first lien on all of the receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Neither the payment of any bond, nor the interest thereon issued under the authority of KRS Chapter 56, shall constitute an indebtedness of the Commonwealth of Kentucky, nor shall any bond or interest thereon be payable out of any fund except funds derived from rentals or other revenues derived from the operation of the properties or from revenues as are available for the purpose by law.

(3) All competitive bids for the sale of revenue bonds shall be opened and read publicly by the secretary of the Finance and Administration Cabinet or ***the secretary's***[~~his~~] representative at a designated place, day, and hour, all of which shall be ***indicated***[~~announced~~] in the ***notice***[~~advertising~~] made relative thereto.

(4) ***If***[~~In the event~~] the commission issues and sells bonds for a building project as authorized by KRS Chapter 56, insurance, including fire and windstorm, casualty, catastrophe, use and occupancy, and such other insurance as the commission may deem advisable, shall be carried in connection with the building project, and it may so obligate and bind itself in a trust indenture securing the payment of the bonds. Any insurance shall be paid for out of funds available for the project.

(5) As provided in KRS 42.500, the commission may invest proceeds from the sale of its revenue or other authorized bonds as follows:

(a) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States;

(b) Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the United States Postal Services;

(c) Obligations for the Commonwealth of Kentucky;

(d) Bonds and notes of any state or local government or public authority;

(e) Savings certificates issued by any federal savings and loan association if any principal amount of the certificate in excess of the amount insured by the federal government, or any agency thereof, is fully collateralized;

(f) Prime quality commercial paper bearing the highest rating of at least one (1) nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation;

(g) Bills of exchange or time drafts drawn on and accepted by a commercial bank and eligible for use as collateral by member banks in borrowing from a federal reserve bank, if the accepting bank or its holding company is either incorporated in the Commonwealth of Kentucky or has outstanding publicly held obligations bearing the highest rating of at least one (1) nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligations;

(h) Participating share in a mutual fund for local government investment;

(i) A commingled investment pool established and administered under KRS 66.480;

(j) Evidences of ownership of or fractional undivided interests in future interest and principal payments on either direct obligations of the United States government or obligations the principal of and the interest on which are guaranteed by the United States, which obligations are held by a bank or trust company organized and existing under the laws of the United States or any state in the capacity of custodian;

(k) Repurchase agreements with respect to either direct obligations of the United States or obligations the principal of and the interest on which are guaranteed by the United States or entered into with a broker or dealer, as defined by the Securities Exchange Act of 1934, which is a dealer recognized as a primary dealer by a federal reserve bank, or any commercial bank, trust company, or national banking association, the deposits of which are insured by the Federal Deposit Insurance Corporation or any successor thereof if:

1. Such obligations that are subject to the repurchase agreement are delivered in physical or in book entry form to the local government or public authority, or any financial institution serving either as trustee for the local government or public authority or as fiscal agent for the local government or public authority or are supported by a safekeeping receipt issued by a depository satisfactory to the local government or public authority. The repurchase agreement shall provide that the value of the underlying obligations shall be maintained at a current market value, calculated at least daily, of not less than one hundred percent

(100%) of the repurchase price. The financial institution serving either as trustee or as fiscal agent for the local government or public authority holding the obligations subject to the repurchase agreement or the depository issuing the safekeeping receipt shall not be the provider of the repurchase agreement;

2. A valid and perfected first security interest in the obligations which are the subject of the repurchase agreement has been granted to the local government or public authority or its assignee or book entry procedure, conforming to the extent practicable with federal regulations and satisfactory to the local government or public authority, have been established for the benefit of the local government or public authority or its assignee;

3. The securities are free and clear of any adverse third party claims; and

4. The repurchase agreement is in a form satisfactory to the local government or public authority; and

(l) Guaranteed investment contracts with a bank or insurance company, if the bank or insurance company bears one (1) of the two (2) highest ratings of at least one (1) nationally recognized rating service and does not bear a rating below one (1) of the two (2) highest ratings by any nationally recognized rating service.

Section 27. KRS 56.803 is amended to read as follows:

(1) When an agency determines that it will need office or other space, the agency shall submit a request for the acquisition of the additional space to the Department for Facilities Management in the Finance and Administration Cabinet. Except in the case of an emergency as described at KRS 56.805(3), an agency shall submit its space request in writing to the department at least ninety (90) calendar days before the space requested will be required by the agency. In the case of an emergency, an agency shall communicate its space needs to the department pursuant to KRS 56.805(3) as soon as an agency knows that it will need the space. If the commissioner of the Department for Facilities Management determines that insufficient space has been allocated to the agency making the request and that it is appropriate to lease additional space for the agency making the request, ***the commissioner***[~~he~~] shall acquire the space required by lease as provided by KRS 56.800 to 56.823 and KRS 43.050, 48.111, and 48.190.

(2) The Department for Facilities Management shall review each agency space request to determine whether space suitable to meet the agency's reasonable needs may be available in a state-owned or occupied building. If it is determined that there is suitable space available in a state-owned or occupied building, the commissioner shall notify the agency[~~ by letter~~]. A copy of the ***notice***[~~letter~~] shall be kept on file.

(3) If it is determined that there is no suitable space available in a state-owned or occupied building, the department shall comply with the procedures set forth in this section in the leasing of space, except as otherwise provided in KRS 56.800 to 56.823 and KRS 43.050, 48.111, and 48.190.

(4) The department shall draw up general requirement specifications for the space required. These general requirement specifications shall not be changed except, at the discretion of the commissioner, when the lease process is initiated again pursuant to paragraph (c) of subsection (15) of this section or pursuant to paragraph (b) of subsection (16) of this section. The general requirement specifications shall be kept on file.

(5) ***(a)*** In soliciting the interest of lessors who have property to let in a county where space is sought, the department shall ***give adequate public notice to reasonably inform persons having property to let within the county of the type of space required, the general location of the property, and the number of square feet needed. The notice may include posting on the Internet or***[~~comply with procedures established in this subsection.~~

~~(a) The department shall place~~] newspaper advertisements. Each ***notice***[~~advertisement~~] shall contain general information concerning the agency requirements for the space sought[~~ to reasonably inform persons having property to let within the county of the type of space wanted, the general location of the property, and the number of square feet needed,~~] and shall state the last time, date, and place that written responses shall be received. When it is anticipated that a lease may be negotiated containing deviations or variations from the terms and conditions of the state standard lease form prescribed by the Division of Real Properties, within the department, any deviations or variations shall be ***stated***[~~noted~~] in the ***notice***[~~advertisement~~].

(b)[~~ If a daily newspaper is published, and of general circulation, in the county where the space is sought, an advertisement shall be published two (2) times in that newspaper.~~

~~(c) If there is not a daily newspaper published, and of general circulation, in the county where the space is sought, an advertisement shall be published one (1) time in a weekly newspaper published, and of general circulation, in the county where the space is sought and two (2) times in a daily newspaper not published, but of general circulation, in the county where space is sought.~~

~~(d) If neither a daily newspaper nor a weekly newspaper is published, and of general circulation, in the county where the space is sought, an advertisement shall be published two (2) times in a daily newspaper not published, but of general circulation, in the county where the space is sought, and a copy of the advertisement shall be posted in a conspicuous place in the county courthouse.~~

~~(e) If the Commonwealth intends to lease space in any county when the estimated annual rental charge will exceed~~

~~one hundred thousand dollars ($100,000), the requirements established in paragraphs (a), (b), (c), and (d) of this subsection shall be followed. In addition, advertisements shall be published two (2) times in at least two (2) daily newspapers having broad circulation within the Commonwealth, to be designated by the secretary of the Finance and Administration Cabinet.~~

~~(f) When an advertisement is published in a daily newspaper, the advertisement shall appear on any consecutive Monday and Tuesday.~~

~~(g)~~] The Department for Facilities Management may use any means available to notify landlords that ***a notice has been given***[~~advertisements have been placed~~].

(6) [~~To respond to a newspaper advertisement,~~]A property owner, or his representative, shall respond in writing on or before the time and date designated in the ***notice***[~~advertisement~~] and shall state in the writing the type and location of the property, the name and address of the property owner, and the date of availability of the property. The department shall deal only with individuals who have submitted written responses on or before the time and date designated in the ***notice***[~~advertisement~~].

(7) All written responses ***received***[~~submitted~~] on or before the time and date designated shall be opened ***or downloaded*** at the same time, publicly read ***or posted***, and kept on file by the department.

(8) Within five (5) days of the opening of written responses[~~ submitted on or before the time and date designated~~], the department shall ***transmit***[~~mail~~] general requirement specifications to each person who submitted a written response on or before the time and date designated. The same general requirement specifications shall be ***transmitted***[~~mailed~~] to each person.

(9) After the general requirement specifications have been ***transmitted***[~~mailed~~], except as provided in paragraph (a) of subsection (13) of this section, the commissioner, and department employees under his supervision, may negotiate with persons who submitted written responses on or before the time and date designated. If in the course of negotiations, a person proposes terms and conditions of lease different from those contained in the state standard lease form which are determined to be in the Commonwealth's best interest to accept, but no mention of the acceptability thereof has been made in the ***notice given***[~~advertisement placed~~] pursuant to subsection (5) of this section, all other persons who submitted written responses on or before the time and date designated shall be ***notified***[~~advised by letter~~] of the terms and conditions and shall be allowed to incorporate the terms and conditions in written proposals when submitted pursuant to subsection (12) of this section. A copy of each ***notice***[~~of these letters~~] shall be kept on file.

(10) [~~After the general requirement specifications have been mailed,~~]The department shall inspect each space proposed to be leased to determine its suitability to the reasonable needs of the agency for whose use the property is sought. The owner of the property, or ***the owner's***[~~his~~] representative, shall provide access to the property for ***the***[~~such~~] inspection. A report of the findings about each property inspected shall be submitted on a site evaluation form to the commissioner of the department. Completed site evaluation forms shall be kept on file.

(11) After the commissioner has reviewed the completed site evaluation forms, ***the commissioner***[~~he~~] shall ***inform***[~~send to~~] each owner of property, or his representative, ***of the steps necessary***[~~a letter informing the person of what would have to be done~~] to bring the property up to general and specific requirement specifications. The ***commissioner***[~~commissioner's letter~~] shall also invite each person to submit a written proposal on a form created by the Department for Facilities Management. A copy of the form shall be ***provided to each bidder***[~~enclosed with each letter~~]. A written proposal shall constitute a best and final offer. The department shall not consider a written proposal unless it is submitted on a department form on or before the time and date designated[~~ in the letter. A copy of each letter shall be kept on file~~].

(12) All written proposals submitted on or before the time and date designated shall be opened at the same time, publicly identified by the name of the property owner and the location of the property, and kept on file.

(13) Except pursuant to paragraph (b) of subsection (15) of this section, when the requirements of paragraph (a) of this subsection shall not apply, from the time that written proposals are opened until the awarding of a lease, the department:

(a) Shall not negotiate or agree to changes in the terms of written proposals except to correct technical errors;

(b) Shall log in all contacts between department employees and any person with an interest in the awarding of a lease. The log shall state the time, date, place, and a summary of the substance of each contact. Each log entry shall be signed by the department employee who was contacted. After the lease is awarded, the log shall be kept as a department record.

(14) (a) The commissioner shall assess the proposals, taking into account factors including, but not limited to: consultation with the head of the agency for whose use the space is sought; the location and accessibility of the property to the public; its condition and state of repair; its conformity with the requirements of occupational health and safety regulations; its conformity with applicable state fire, health, safety and sanitation requirements; the proposed rental rates; utility and janitorial costs; agency moving costs; and whether the property proposed is in substantial conformity with the[~~ advertised requirements and~~] general and specific requirement specifications.

(b) The commissioner shall give preference to properties in areas which have received, within the previous five (5) year period, state community development funds for revitalization if properties are offered at a competitive rate and meet the provisions of paragraph (a) of this subsection.

(15) The commissioner, relying exclusively on his assessment made pursuant to subsection (14) of this section, shall:

(a) Choose the best proposal in the interest of the Commonwealth;

(b) Be permitted to negotiate with a potential lessor if he was the only responsive and responsible potential lessor who submitted a proposal; or

(c) Except as provided in paragraph (b) of this subsection, reject all proposals when none is in the Commonwealth's best interest to accept as assessed according to the factors stated in subsection (14) of this section and may, at his discretion, initiate the lease process again.

(16) (a) The commissioner shall award or decline to award a lease to the potential lessor who submitted the best proposal pursuant to paragraph (a) of subsection (15) of this section or who negotiated with the commissioner pursuant to paragraph (b) of subsection (15) of this section. However, the commissioner shall not award a lease to a potential lessor who negotiated with the commissioner pursuant to paragraph (b) of subsection (15) of this section if that potential lessor's proposal after negotiations was not in the Commonwealth's best interest to accept as assessed according to the factors stated in subsection (14) of this section, and the commissioner shall not award a lease to a person other than a potential lessor prescribed in this paragraph.

(b) If the commissioner declines to award a lease, he may, at his discretion, initiate the lease process again.

(17) The commissioner shall put in writing the justifications for his decisions made pursuant to subsections (15) and (16) of this section. This writing shall be kept on file.

(18) The department shall ***notify***[~~send to~~] each person who submitted a written response on or before the time and date designated in the ***public notice***[~~advertisement~~] pursuant to subsection (6) of this section, but who was not awarded the lease, ***of***[~~a letter stating~~] the selected property to be leased, and that the person has a right to examine the leasing records relevant to the lease that was awarded. If the Capital Projects and Bond Oversight Committee, pursuant to KRS 56.823(2), will review the awarding of a lease, each ***notice***[~~letter~~] shall state that fact. A copy of each ***notice***[~~of these letters~~] shall be kept on file.

Section 28. KRS 56.805 is amended to read as follows:

(1) Notwithstanding the provisions of KRS 56.803(4) to (18), this section shall govern the leasing of space in a building owned by the federal government, by a political subdivision or municipal corporation of the Commonwealth, or if the space is required as the result of a bona fide emergency.

(2) When the commissioner of the Department for Facilities Management determines that it is in the Commonwealth's best interest for him to negotiate a lease in a building owned by the federal government or by a political subdivision or municipal corporation of the Commonwealth, he shall do so. The commissioner shall state in writing his justifications for the determination, and the writing shall be kept on file.

(3) A bona fide emergency shall be deemed to exist only in cases where the head of an agency already occupying leased premises certifies in writing to the Secretary of the Finance and Administration Cabinet that:

(a) The leased premises have been damaged or destroyed by fire, windstorm, or other casualty; or

(b) The leased premises are found to be in violation of regulations of the Kentucky Occupational Safety and Health Review Commission, and the violations cannot be remedied within thirty (30) days after the issuance of a citation to the lessor of the premises; or

(c) The leased premises are found to be unsafe or unfit for occupancy due to any condition constituting a violation or infraction of fire or health laws and regulations and cannot be made safe within a reasonable time; or

(d) 1. The necessity for leased premises arises from the enactment or adoption of federal legislation or regulations or state legislation, the effective date of which mandates commencement of programs to be housed in leased space before there is time for space to be acquired by ***public notice***[~~advertisement~~]; and

2. The agency's functions will be impaired or have to be discontinued unless other quarters to house the agency's operations are immediately located and occupied by the agency; or

(e) An emergency, other than one described in paragraph (a), (b), (c), or (d) of this subsection, exists, and the Governor has given his express written authorization of an emergency lease. The certificate shall state the details of the emergency, and the head of the agency shall include the Governor's written authorization along with the certificate sent to the Secretary of Finance and Administration Cabinet.

(4) Upon receipt by the Finance and Administration Cabinet of the certificate, written pursuant to paragraph (a), (b), (c), or (d) of subsection (3) of this section, or the certificate and the Governor's authorization written pursuant to paragraph (e) of subsection (3) of this section, the Department for Facilities Management shall take the action to locate and negotiate for the lease of space meeting the certifying agency's reasonable needs. As appropriate, the department shall keep the certificate or the certificate and the Governor's written authorization on file.

Section 29. KRS 56.814 is amended to read as follows:

(1) No officer or employee of any state agency shall engage in any act or make any representation or commitment to any person relative to the lease of any real property by the state without specific written authorization from and approval by the Finance and Administration Cabinet and neither the state nor the department shall be bound by the act, representation, or commitment unless so authorized and approved.

(2) No officer or employee of any state agency shall disclose to any person or firm who might reasonably be expected to submit a proposal, any approved plans by the department for the lease of real property for which ***public notice***[~~advertisement~~] is required under KRS 56.800 to 56.823 and KRS 43.050, 48.111, and 48.190 prior to the ***public notice***[~~advertisement~~]. Discussions of approved leasing plans may be held after ***public notice***[~~advertisement~~] with persons interested in submitting a proposal pertaining to the space requirements.

Section 30. KRS 56.8169 is amended to read as follows:

(1) In conducting the built-to-suit process, the commissioner of the Department for Facilities Management, after consultation with the agency or agencies for whose use the space is sought, shall arrive at a request for proposals.

(2) The request for proposals shall indicate the relative importance of evaluation factors.

(3) A request for proposals may be amended at any time prior to the deadline for the submission of proposals.

(4) In soliciting the interest of firms to carry out a built-to-suit, the department shall comply with the procedures established in this subsection.

(a) The department shall[~~ place newspaper advertisements. The advertisements shall~~] provide ***adequated public*** notice of a request for proposals and notice of the materials that the department will provide to a firm to assist that firm in responding to a request for proposals. Those materials shall include, but not be limited to, the request for proposals and the proposal evaluation sheet to be used by the selection committee. The ***notice***[~~advertisement~~] shall also set a time and date for a written response to the ***notice***[~~advertisement~~].

(b)[~~ If a daily newspaper is published, and of general circulation in the county where the space is sought, an advertisement shall be published two (2) times in that newspaper.~~]

~~(c) If there is not a daily newspaper published, and of general circulation, in the county where the space is sought, an advertisement shall be published one (1) time in a weekly newspaper published, and of general circulation, in the county where the space is sought, and two (2) times in a daily newspaper not published, but of general circulation, in the county where the space is sought.~~

~~(d) If neither a daily newspaper nor a weekly newspaper is published, and of general circulation, in the county where the space is sought, an advertisement shall be published two (2) times in a daily newspaper not published, but of general circulation, in the county where the space is sought, and a copy of the advertisement shall be posted in a conspicuous place in the county courthouse.~~

~~(e) In addition to the requirements of paragraphs (b) to (d) of this subsection, advertisements shall be published two (2) times in at least two (2) daily newspapers having broad circulation within the Commonwealth, to be designated by the commissioner of the Department for Facilities Management.~~

~~(f) When an advertisement is published in a daily newspaper, the advertisement shall appear on any consecutive Monday and Tuesday.~~

~~(g)~~] The Department for Facilities Management may use any means available to notify firms that ***a notice has been given***[~~advertisements have been placed~~].

(5) To respond to a ***notice***[~~newspaper advertisement~~], a firm, or its representative, shall respond on or before the time and date designated in the ***notice***[~~advertisement~~]. ***The***[~~Its~~] response shall ***be in a***[~~take the~~] form ***determined by the department and***[~~of a one (1) page letter of interest which~~] shall provide ***the firm's***[~~its~~] name and address.

(6) All written responses submitted on or before the time and date designated shall be opened ***or downloaded*** at the same time, publicly read ***or posted***, and kept on file by the department. A firm which fails to meet the deadline shall be barred from the procurement process.

(7) The department shall ***transmit***[~~mail~~] to all firms that responded in time[~~ to the advertisement~~] a request for proposals.

(8) After the request for proposals have been ***transmitted***[~~mailed~~], but before written proposals are submitted, the commissioner, and his staff, may hold any meetings, discussions, or negotiations that they deem appropriate with the firms.

(9) (a) The commissioner shall ***invite***[~~send a letter to each of the firms, inviting~~] each firm to submit a written proposal, on a form created by the department, on or before the time and date set forth in the ***invitation***[~~letter~~]. A form shall be ***provided to each firm***[~~enclosed with each letter~~].

(b) A firm that does not submit a written proposal, on a form created by this department, on or before the deadline shall be barred from the procurement process.

(c) Employees of the department and the members of the selection committee shall keep the written proposals confidential until the lease is awarded.

(10) The commissioner shall designate a department employee to determine which firms have filed, in a timely fashion, both a response to the ***public noticed***~~[newspaper advertisement]~~ and a written proposal on a form created by the department. ***The designated employee***~~[He]~~ shall create a list of the firms which have done so and certify the list.

(11) The department shall organize the selection committee's first meeting. At that meeting, the selection committee shall:

(a) Elect from its members a chairman and a vice chairman who shall hold their positions for the duration of the selection process;

(b) Be provided with:

1. The certified list of firms;

2. The firms' written proposals submitted in response to a request for proposals;

3. The request for proposals;

4. The~~[advertised]~~ notice of request for proposals;

5. The proposal evaluation sheets; and

6. A ***notice***~~[letter]~~ from the commissioner informing the committee that the selection process is governed by KRS 56.800 to 56.823 and 56.990; and

(c) Discuss the future conduct of its affairs.

(12) The selection committee shall meet in executive session to:

(a) Evaluate the materials with which it has been provided;

(b) Select, but not rank, the three (3) most qualified firms, based upon the evaluation factors set forth in the request for proposals; and

(c) Notify the department of the three (3) finalists.

(13) The department shall ***notify***~~[send a letter to]~~ each firm which responded to the request for proposals, informing the firm of:

(a) The three (3) finalists; and

(b) The rest of the procedure that will be followed in the awarding of the built-to-suit lease.

(14) The selection committee shall interview the three (3) finalists, preferably on the same day. The finalists shall be interviewed one (1) at a time, and each interview shall be attended only by representatives of the finalist and members of the selection committee. Members of the selection committee shall keep confidential the substance of an interview.

(15) The selection committee shall meet in executive session to:

(a) Rank the three (3) finalists based on the weighted evaluation factors in the request for proposals; and

(b) Forward the ranking to the department.

(16) (a) The commissioner shall:

1. Award the built-to-suit lease to the top ranked finalist; or

2. Request best-and-final offers.

(b) The commissioner shall request best-and-final offers only of the three (3) finalists. ***The commissioner's***~~[His]~~ written request shall include his reason for requesting best-and-final offers, and shall state a time and date by which all best-and-final offers will have to be received. A firm that does not submit a best-and-final offer by the deadline shall not be awarded the built-to-suit lease.

(c) Employees of the department and the members of the selection committee shall keep the best-and-final offers confidential until the lease is awarded.

(d) The selection committee shall meet in executive session to assess all the materials with which it was provided pursuant to subsection (11)(b) of this section, as well as the request for best-and-final offers and best-and-final offers. The committee shall rank the best-and-final offers of the three (3) finalists based on the weighted evaluation factors in the request for proposals. If the committee determines that the top ranked best-and-final offer is adequate, the committee shall forward the name of the firm that submitted the top ranked best-and-final offer to the department. If the committee determines that the top ranked firm's best-and-final offer is inadequate, the process shall end.

(e) The commissioner shall award the built-to-suit lease to the firm chosen by the selection committee.

(17) After the best firm has been selected, the department shall ***notify***~~[send a letter to]~~ the finalists, informing them of:

(a) Which firm has been selected for the proposed lease; and

(b) The rest of the procedure that will be followed in the awarding of the lease.

Section 31. KRS 58.605 is amended to read as follows:

(1) Subject to the reporting and approval requirements in KRS 58.610, any governmental agency may issue energy conservation revenue bonds to pay for the cost of energy conservation projects for the purpose of reducing the cost of energy to buildings owned or operated by the governmental agency by making energy-saving improvements to these buildings.

(2) Upon the receipt of a qualified energy audit, including a cost-benefit analysis which establishes the expected annual energy cost savings which will result from an energy conservation project, a governmental agency, or an agency acting on its behalf, may issue energy conservation revenue bonds to finance the energy conservation project, with the following limitations:

(a) The term of the bonds shall not exceed ten (10) years from the date of issuance, or the anticipated useful life of the energy conservation project as determined by generally accepted accounting principles, whichever is less;

(b) The annual debt service payments on the energy conservation revenue bonds shall not exceed eighty percent (80%) of the projected annual energy cost savings resulting from the energy conservation project; and

(c) The principal amount of the energy conservation revenue bonds issued to finance an energy conservation project shall in no case exceed ten percent (10%) of the estimated replacement cost of the building in which the energy conservation project is installed.

(3) Energy conservation revenue bonds shall be issued in accordance with the provisions of KRS 58.010 to 58.140 and shall be sold at a[~~ publicly advertised,~~] competitive sale ***preceded by adequate public notice*** and shall bear interest at an interest rate or rates determined by the governmental agency at the time of the sale.

Section 32. KRS 278.380 is amended to read as follows:

The commission shall deliver a certified copy of any order issued by it to each party to the proceeding in which the order was made, and to an officer or agent of the utility affected thereby. ***Notwithstanding any statute to the contrary, the commission may deliver its orders by means of electronic transmission rather than by United States mail in those proceedings where each party and each utility to be affected by the order has filed with the commission a written statement that it waives any right to service of commission orders by mail and that it, or its authorized agent, possesses the facilities to receive electronic transmissions. When service of a commission order is by electronic transmission, mailing shall be deemed to have occurred on the date the transmission of the order is completed.***

HB 528, AN ACT relating to public purchasing.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 45A.470 is amended to read as follows:

(1) All governmental bodies and political subdivisions of this state shall, when purchasing commodities or services, give first preference to the products made by the Department of Corrections, Division of Prison Industries, as required by KRS 197.210. Second preference shall be given to the Kentucky industries for the blind as described in KRS 163.450 to 163.470 through June 30, 2000, and thereafter to any products produced ***by Kentucky Industries for the Blind, Incorporated or any other nonprofit corporation with which***[~~through the authority of~~] the Department for the Blind ***contracts under KRS 163.480(2)*** to further the purposes of KRS Chapter 163 and agencies of individuals with severe disabilities as described in KRS 45A.465.

(2) The Finance and Administration Cabinet shall make a list of commodities and services provided by these agencies and organizations available to all governmental bodies and political subdivisions. The list shall identify in detail the commodity or service the agency or organization may supply and the price.

(3) The Finance and Administration Cabinet shall annually determine the current price range for the commodities and services offered from its experience in purchasing these commodities or services on the open market. The prices quoted by these agencies or organizations shall not exceed the current price range.

(4) The Department for the Blind within the Workforce Development Cabinet and qualified agencies for individuals with severe disabilities shall annually cause to be made available to the Finance and Administration Cabinet, lists of the products or services available.

(5) If two (2) or more of the agencies or qualified nonprofit organizations wish to supply identical commodities or services, the Finance and Administration Cabinet shall conduct negotiations with the parties to determine which shall be awarded the contract. The decision of the Finance and Administration Cabinet shall be based upon quality of the commodity or service and the ability of the respective agencies to supply the commodity or service within the requested delivery time.

HB 549, AN ACT relating to appointments to boards and commissions.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 151B.095 is amended to read as follows:

(1) There is hereby established the State Board for Adult and Technical Education to be attached to the Cabinet for Workforce Development, which shall consist of nine (9) voting members, one (1) from each Supreme Court district as established by KRS 21A.010 and two (2) members from the state at large. Members shall serve for terms of four (4) years. A chairperson shall be selected by the membership.

(2) The Governor shall make appointments to the board and fill any vacancies as they occur. Appointments shall conform to subsection (4) of this section.

(3) ***Beginning on the effective date of this Act,*** the terms of the appointees shall expire on ***January 31***[~~June 30~~] in the appropriate year, and the terms of each new member appointed thereafter shall begin on ***February***[~~July~~] 1. ***Of the members appointed after the effective date of this Act, two (2) members appointed to fill the terms expiring June 30, 1999, shall serve until January 31, 2000; one (1) member appointed to fill the term expiring June 30, 2000, shall serve until January 31, 2001, three (3) members appointed to fill the terms expiring June 30, 2001, shall serve until January 31, 2002; three (3) members appointed to fill the terms expiring June 30, 2002, shall serve until January 31, 2003; and subsequent appointments shall be for four (4) year terms ending January 31.***

(4) The members of the State Board for Adult and Technical Education shall have the qualifications of school board members required by KRS 160.180, except that members of the board shall be at least thirty (30) years of age. Appointments shall be made without reference to occupation, political affiliation, or similar considerations. No member at the time of his appointment or during the term of his service shall be engaged as a professional educator.

(5) Members of the State Board for Adult and Technical Education shall possess an understanding of business and industry and a knowledge of occupational and academic needs of adults. At least one (1) member shall possess a knowledge of vocational rehabilitation services.

(6) The board may enter into agreements with other agencies in order to carry out services under its jurisdiction.

(7) The board may enter into agreements with the Kentucky Community and Technical College System to provide space and equipment for programs for adults in the state-operated area vocational education and technology centers. The board shall not operate full-time diploma postsecondary programs unless there is an agreement to operate these programs with the Kentucky Community and Technical College System.

Section 2. KRS 153.215 is amended to read as follows:

(1) There is established the Kentucky Arts Council (hereinafter referred to as "the council") which shall perform functions pursuant to KRS 153.210 to 153.235.

(2) The purpose of the council shall be to develop and promote a broadly conceived state policy of support for the arts in Kentucky pursuant to KRS 153.210 to 153.235.

(3) The membership of the council shall consist of not more than sixteen (16) members who have an interest in the arts. On July 1, 1972, the Governor shall appoint not more than four (4) members for a term of one (1) year; not more than four (4) members for a term of two (2) years; not more than four (4) members for a term of three (3) years; and not more than four (4) members for a term of four (4) years. Thereafter the Governor shall make all appointments for a term of four (4) years***, except that of the members appointed after the effective date of this Act, four (4) members appointed to fill the terms expiring July 1, 1999, shall serve until February 1, 2000; four (4) members appointed to fill the terms expiring July 1, 2000, shall serve until February 1, 2001; four (4) members appointed to fill the terms expiring July 1, 2001, shall serve until February 1, 2002; and members appointed to fill the terms expiring July 1, 2002, shall serve until February 1, 2003; and subsequent appointments shall be for four (4) year terms ending on February 1***.

(4) Council members shall not receive any compensation for their services, but may be reimbursed in accordance with the provisions of KRS Chapters 44 and 45 for actual and necessary expenses incurred in the performance of their duties under KRS 153.210 to 153.235.

(5) From the council membership the Governor shall appoint a chairman and a vice chairman of the council. The council may elect by majority vote other officers deemed necessary.

(6) The council shall meet at the call of the chairman, but not less often than twice during each calendar year. A majority of the members appointed to the council shall constitute a quorum.

(7) The council shall be attached to the Office of the Secretary for Education and Humanities for administrative purposes.

Section 3. KRS 153.380 is amended to read as follows:

(1) There is established the Kentucky Oral History Commission, hereinafter referred to as "the commission," which shall be attached to the Kentucky Historical Society as a branch of the Oral History and Educational Outreach Division.

(2) The commission, through funds made available from the State Treasury and from public or private foundations or other

sources, shall coordinate, promote***,*** and assist in the development of oral history programs across the state and shall otherwise implement programs which result in the accumulation of taped interviews and other supporting data which preserve the multifaceted history of the Commonwealth.

(3) The commission shall consist of twelve (12) voting members, ten (10) appointed by the Governor. The commissioner of the Department for Libraries and Archives and the director of the Kentucky Historical Society shall serve as ex officio members. Commission members shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties.

(4) After initial appointments, commission members shall be appointed for a four (4) year term***, except that of the members appointed after the effective date of this Act, three (3) members appointed to fill the terms expiring July 15, 1999, shall serve until February 15, 2000; two (2) members appointed to fill the terms expiring July 15, 2000, shall serve until February 15, 2001; three (3) members appointed to fill the terms expiring July 15, 2001, shall serve until February 15, 2002; and two (2) members appointed to fill the terms expiring July 2, 2002, and July 15, 2002, shall serve until February 15, 2003; and subsequent appointments shall be for four (4) year staggered terms ending on February 15***. Upon the expiration of terms or in case of vacancies, terms shall be filled by the Governor.

(5) The commission shall, upon the appointment of its members, organize and elect officers from its membership. The commission shall choose, by a majority vote, a chairperson and a vice chairperson annually. The commission shall meet upon call of the chairman or by a majority of the members of the commission, but no less than twice each year. A majority of the voting members of the commission shall constitute a quorum for the purpose of conducting the business of the commission.

(6) The commission shall serve in an advisory capacity to oral history activities at the Kentucky Historical Society and shall be the final grant approval authority for all funds collected by or appropriated to the commission.

(7) The Kentucky Historical Society shall hire staff, expend funds, and operate the normal business activities required by the commission, which shall include the duty to provide:

(a) Office space;

(b) Administrative support;

(c) Telephone and other utilities;

(d) Storage or processing of oral history tapes; and

(e) Other activities of a support nature.

Section 4. KRS 158.680 is amended to read as follows:

There shall be appointed by the Governor a State Advisory Committee for Educational Improvement in accordance with the following:

(1) The State Advisory Committee for Educational Improvement shall be eighteen (18) members broadly representative of citizens, parents, teachers, and administrators. Their principal duties shall be to advise the Governor, the State Board for Elementary and Secondary Education, and the department on the implementation of the provisions of KRS 158.650 to 158.710 and KRS 158.6453 and 158.6455.

(2) All members shall be voting members appointed by the Governor and shall serve terms of four (4) years, except that***:***

(a) The original appointments will be made as follows:

1.[~~(a)~~] Five (5) members for four (4) year terms;

2.[~~(b)~~] Five (5) members for three (3) year terms;

3.[~~(c)~~] Four (4) members for two (2) year terms; and

4.[~~(d)~~] Four (4) members for a one (1) year term***; and***

(b) Of the members appointed after the effective date of this Act, four (4) members appointed to fill the terms expiring June 17, 1999, shall serve until January 17, 2000; four (4) members appointed to fill the terms expiring June 17, 2000, shall serve until January 17, 2001; two (2) members appointed to fill the term expiring June 17, 2001, shall serve until January 17, 2002; three (3) members appointed to fill the terms expiring June 17, 2001, shall serve until January 17, 2002; five (5) members appointed to fill the terms expiring June 17, 2002, shall serve until January 17, 2003; and subsequent appointments shall be for four (4) year terms ending on January 17.

(3) The State Advisory Committee for Educational Improvement shall elect a chairman annually from its membership;

(4) The members shall be remunerated for actual and necessary expenses incurred while attending meetings of the State Advisory Committee for Educational Improvement or while serving in the capacity as representative of the State Advisory Committee for Educational Improvement.

(5) The State Advisory Committee for Educational Improvement shall meet at least three (3) times each year at times and

places as it determines by resolution.

Section 5. KRS 211.500 is amended to read as follows:

(1) The Kentucky Spinal Cord and Head Injury Research Board is hereby created for the purpose of administering the spinal cord and head injury research trust fund created pursuant to KRS 211.504. The board shall be composed of seven (7) members appointed by the Governor as follows:

(a) Two (2) members representing the University of Kentucky College of Medicine;

(b) Two (2) members representing the University of Louisville School of Medicine;

(c) One (1) member who has a spinal cord or head injury or who has a family member with a spinal cord or head injury;

(d) One (1) member representing the Kentucky Medical Association; and

(e) One (1) at-large member.

(2) Board members shall be reimbursed for ordinary travel expenses, including meals and lodging, incurred in the performance of duties incident to the provisions of KRS 211.500 to 211.504.

(3) The terms of board members shall be four (4) years, except that ***of the members appointed after the effective date of this Act, two (2) members appointed to fill the terms ending on June 30, 1999, shall serve until January 31, 2000; two (2) members appointed to fill the terms expiring on June 30, 2000~~,~~ shall serve until January 31, 2001; two (2) members appointed to fill the terms expiring on June 30, 2001, shall serve until January 31, 2002; and one (1) member appointed to fill the term expiring June 30, 2002, shall serve until January 31, 2003; and subsequent appointments shall be for four (4) year terms ending on January 31***[~~the terms of initial members shall be staggered to end as follows:~~

~~(a) Two (2) on June 30, 1995;~~

~~(b) Two (2) on June 30, 1996;~~

~~(c) Two (2) on June 30, 1997; and~~

~~(d) One (1) on June 30, 1998~~].

(4) At the end of a term, a member shall continue to serve until a successor is appointed and qualifies. A member who is appointed after a term has begun shall serve the rest of the term and until a successor is appointed and qualifies. A member who serves (2) consecutive full four (4) year terms shall not be reappointed for four (4) years after completion of those terms.

(5) A majority of the full authorized membership of the board shall constitute a quorum.

(6) The board shall elect, by a majority vote, a chairman who shall be the presiding officer of the board, preside at all meetings, and coordinate the functions and activities of the board. The chairman shall be elected or reelected for each calendar year. The board shall have such other organization as deemed necessary and approved by the board.

(7) Meetings of the board shall be held at least twice a year but may be held more frequently as deemed necessary, subject to call by the chairman or by request of a majority of the board members. Board meetings shall concern, among other things, policy matters relating to spinal cord and head injury research projects and programs, research progress reports, authorization of projects and financial plans, and other matters necessary to carry out the intent of KRS 211.500 to 211.504.

(8) No member of the board shall be subject to any personal liability or accountability for any loss sustained or damage suffered on account of any action or inaction of the board.

(9) The board shall be attached to the Cabinet for Human Resources for administrative purposes.

Section 6. KRS 229.151 is amended to read as follows:

(1) There is hereby established the Kentucky Athletic Commission which shall consist of seven (7) members, appointed by the Governor, with initial appointments for two (2) members for terms of four (4) years, two (2) members for terms of three (3) years, two (2) members for terms of two (2) years, and one (1) member for a term of one (1) year***, except that of the members appointed after the effective date of this Act, two (2) members appointed to fill the terms expiring July 14, 1999, shall serve until February 14, 2000; two (2) members appointed to fill the terms expiring July 14, 2000, shall serve until February 14, 2001; one (1) member appointed to fill the term expiring July 14, 2001, shall serve until February 14, 2002; two (2) members appointed to fill the terms expiring July 14, 2002, shall serve until February 14, 2003; and subsequent appointments shall be for four (4) year terms ending on February 14***. Thereafter, members shall be appointed by the Governor for staggered terms of four (4) years. At least one (1) member shall have a background in the professional boxing or wrestling industry. At least one (1) member shall be a licensed physician. The executive director of the Division of Occupations and Professions shall serve on the commission in an ex officio capacity. One (1) member shall be designated by the Governor as chairman and one (1) member shall be elected by the commission as vice chairman, who shall have authority to act as chairman in the event of the chairman's absence or

inability to act. The chairman, vice chairman, other members of the commission, and those persons referred to in KRS 229.161, shall receive one hundred dollars ($100) per day for each meeting attended and shall be paid their actual and necessary traveling and other expenses incurred by them in the performance of their official duties. The commission shall hold one (1) regular meeting every three (3) months. Four (4) members of the commission shall constitute a quorum to conduct business.

(2) The board shall be placed for organizational purposes under the Division of Occupations and Professions which shall provide administrative and secretarial services.

Section 7. KRS 317.430 is amended to read as follows:

(1) There is hereby created an independent agency of the state government to be known as the Kentucky Board of Barbering, which shall have complete supervision over the administration of the provisions of this chapter relating to barbers, barbering, barber shops, barber schools, the teaching of barbering, and barber apprenticeship.

(2) The Kentucky Board of Barbering, hereinafter referred to as the barber board or board, shall be composed of five (5) members appointed by the Governor. At least one (1) member shall be a master barber licensed to practice barbering in this state who is a member of a nationally recognized professional organization of master barbers and who is not otherwise a member of a union of barbers, a second and different member shall be a barber licensed to practice barbering in this state who is a member of an organized labor union of barbers, a third and different member shall be a barber who is not a member of a union or labor organization of barbers and a fourth and different member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. At all times in the filling of vacancies of membership on the barber board, this balance of representation shall be maintained.

(3) ***Appointments***~~[Upon the expiration of the term of any member, the appointment]~~ shall be for a term of two (2) years, ***except that of the members appointed after the effective date of this Act three (3) members appointed to fill the terms expiring October 1, 1998, shall serve until February 1, 1999; and two (2) members appointed to fill the terms expiring July 1, 1999, shall serve until February 1, 2000; and subsequent appointments shall be for two (2) year terms ending on February 1***.

(4) The Governor shall not remove any member of the barber board except for cause.

(5) The barber board shall elect from its members one (1) to serve as chairman, one (1) to serve as vice chairman, and a third to serve as secretary.

(6) Three (3) members shall constitute a quorum for the transaction of business.

(7) In addition to the other qualifications specified in this section, barber members of the barber board shall be at least twenty-three (23) years of age, citizens of the United States, residents of Kentucky and must have engaged in the practice of barbering in this state for a period of at least five (5) years.

(8) No member of the barber board shall be financially interested in, or have any financial connection with any barber or cosmetology school, wholesale cosmetic or barber supply or equipment business, nor shall any member of the barber board teach barbering, cosmetology, or manicuring for monetary considerations.

(9) Each member of the barber board shall receive a compensation of fifty dollars ($50) per day for each day of attendance at meeting of the board, and shall be reimbursed for necessary traveling expenses.

(10) The board shall hold such meetings at such places in the state and at such times as are deemed necessary by the board to discharge its duties.

Section 8. KRS 317A.030 is amended to read as follows:

(1) There is created an independent agency of the state government to be known as the Kentucky Board of Hairdressers and Cosmetologists, which shall have complete supervision over the administration of the provisions of this chapter relating to cosmetology, cosmetologists, schools of cosmetology, students enrolled in cosmetology, apprentice cosmetologists, nail technicians, teachers of cosmetology, cosmetology salons, and nail salons.

(2) The cosmetologist board shall be composed of five (5) members appointed by the Governor:

(a) Four (4) of the members shall have been cosmetologists five (5) years prior to their appointment and shall reside in Kentucky;

(b) Two (2) of whom shall be cosmetology salon owners;

(c) One (1) of whom shall be a cosmetology teacher in public education and shall not own any interest in a cosmetology salon;

(d) One (1) of whom shall be an owner of or one who shall have a financial interest in a licensed cosmetology school and shall be a member of a nationally-recognized association of hairdressers and cosmetologists;

(e) One (1) member shall be a citizen at large who is not associated with or financially interested in the practices or businesses regulated; and

(f) None of whom nor the administrator shall be financially interested in, or have any financial connection with, wholesale cosmetic supply or equipment businesses.

At all times in the filling of vacancies of membership on the board, this balance of representation shall be maintained.

(3) ***Appointments***~~[Upon expiration of a term of any member, the appointment]~~ shall be for a term of two (2) years***, except that of the members appointed after the effective date of this Act, two (2) members appointed to fill the terms expiring July 1, 1999, shall serve until February 1, 2000; and three (3) members appointed to fill the terms expiring July 1, 2000, shall serve until February 1, 2001; and subsequent appointments shall be for two (2) year terms ending on February 1***.

(4) The Governor shall not remove any member of the board except for cause.

(5) The board shall elect from its members a chairman, a vice chairman, and a secretary.

(6) Three (3) members shall constitute a quorum for the transaction of any board business.

(7) Each member of the board shall receive one hundred dollars ($100) per day for each day of attendance at board meetings, and shall be reimbursed for necessary traveling expenses and necessary expenses incurred in the performance of duties pertaining to official business of the board.

(8) The board shall hold meetings at the place in the state and at the times deemed necessary by the board to discharge its duties.

Section 9. KRS 323A.170 is amended to read as follows:

Four (4) members of the board appointed by the Governor shall be landscape architects registered in the Commonwealth of Kentucky, and shall have been residents of this Commonwealth for at least five (5) years immediately preceding their appointment. One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. Each member shall serve for a term of three (3) years, and until his successor is appointed and qualified***, except that of the members appointed after the effective date of this Act, two (2) members appointed to fill the terms expiring on June 30, 2000, shall serve until February 1, 2001; and subsequent appointments shall be for three (3) year terms ending on February 1***.

Section 10. KRS 344.510 is amended to read as follows:

(1) There is hereby established the Kentucky Commission on Women as a separate administrative body of state government within the meaning of KRS Chapter 12.

(2) The membership of the commission shall consist of the Lieutenant Governor and not more than twenty-four (24) members and a chairman who shall be appointed by the Governor. The members of the commission shall serve terms of four (4) years; except that***:***

(a) Of the members initially appointed after June 17, 1978, six (6) members shall serve a term of one (1) year, six (6) a term of two (2) years, six (6) a term of three (3) years and six (6) a term of four (4) years***; and***

(b) Of the members appointed after the effective date of this Act, six (6) members appointed to fill the terms expiring June 17, 1999, shall serve until January 17, 2000; six (6) members appointed to fill the terms expiring June 17, 2000, shall serve until January 17, 2001; six (6) members appointed to fill the terms expiring June 17, 2001, shall serve until January 17, 2002; and six (6) members appointed to fill the terms expiring June 17, 2002, shall serve until January 17, 2003; and subsequent appointments shall be for four (4) year terms ending on January 17. The Governor shall appoint a chairman who shall serve at the Governor's will. There shall be an executive director, who shall be appointed by the Governor, and shall be administrative head and chief executive officer of the commission. The Governor, in appointing the commission, shall attempt to insure, insofar as it may be practicable, and with due regard to the several geographic regions and socio-economic groupings of the state, that the membership is broadly representative of the women of the state. The commission shall meet at the call of the chairman, but at least twice during each calendar year; a majority of the members shall constitute a quorum for the transaction of the commission's business.

Section 11. KRS 353.565 is amended to read as follows:

(1) There is hereby created in the Department of Mines and Minerals, the "Kentucky Oil and Gas Conservation Commission" which shall be composed of five (5) members. Four (4) of the members shall be appointed by the Governor and the fifth member, who shall serve as chairman of the commission, shall be the director of oil and gas conservation and who shall serve in an ex officio capacity as a nonvoting member except in the case of a tie. The four (4) members appointed by the Governor shall be residents of this state and not more than one (1) of them may be directly employed in the exploration for or the production of oil or gas, or deriving more than fifty percent (50%) of that person's income from the exploration for or production of oil or gas, or engaged in a business directly servicing or supplying these activities. No member of the commission shall participate in the deliberations of the commission or vote on any matter before the commission in which he, his employer, or any business unit in which he has a financial interest is an interested party, but a member of the commission is not prohibited from deliberating or voting on matters of general interest, such as the fixing of statewide spacing patterns, affecting him, his employer, or a business unit in which he has financial interest as a

member of a class of persons to be affected by an administrative regulation or order of the commission. The commission shall not contain more than one (1) representative from any one (1) operator, including subsidiaries or affiliates. Of the four (4) members appointed by the Governor, two (2) shall be residents of eastern Kentucky and two (2) shall be residents of western Kentucky. Longitude 84 deg. 30 min. shall be deemed as the division line between eastern Kentucky and western Kentucky.

(2) The members of the commission, except the chairman, shall be appointed for terms of four (4) years each, except that***:***

(a) The original appointments shall be for terms of one (1), two (2), three (3), and four (4) years respectively***; and***

(b) Of the members appointed after the effective date of this Act, one (1) member appointed to fill the term expiring June 21, 1999, shall serve until January 21, 2000; one (1) member appointed to fill the term expiring June 21, 2000, shall serve until January 21, 2001; one (1) member appointed to fill one (1) of the two (2) terms expiring June 21, 2001, shall serve until January 21, 2002; and one (1) member appointed to fill the second of the two (2) terms expiring June 21, 2001, shall serve until January 21, 2003; and subsequent appointments shall be for four (4) year terms ending on January 21. Each member appointed by the Governor shall serve until his successor has been appointed and qualified. Members may be reappointed by the Governor to serve successive terms. The members of the commission, before performing any duty hereunder, shall take an oath which shall be certified by the officer administering it. The oath in writing and the certificate shall be filed in the office of the Secretary of State. Vacancies in the membership appointed by the Governor shall be filled by appointment by him and for the unexpired term of the member whose office shall be vacant, and the appointment shall be made by the Governor within sixty (60) days of the occurrence of a vacancy. Any member appointed by the Governor may be removed by the Governor in case of incompetency, neglect of duty, gross immorality, or malfeasance of office.

(3) The commission shall meet at times and places as shall be designated by the chairman. The chairman may call a meeting of the commission at any time, and he shall call a meeting of the commission upon the written request of two (2) members. Notification of each meeting shall be given in writing to each member by the chairman at least five (5) days in advance of the meeting. Any three (3) members, one (1) of which may be the chairman, shall constitute a quorum for the transaction of any business, including the holding of hearings. A majority of the commission present shall be required to determine any issue brought before it for decision.

(4) Each member of the commission, except the chairman, shall receive fifty dollars ($50) per diem not to exceed one hundred (100) days per calendar year while actually engaged in the performance of his duties as a member of the commission. Each member of the commission, including the chairman, shall also be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of the commission.

(5) The commission shall execute and carry out, administer, and enforce the provisions of KRS 353.651 and 353.652. The commission may make any investigation of records and facilities as it deems proper.

(6) If an emergency is found to exist by the commission which, in its judgment, requires the making, changing, renewal, or extension of an administrative regulation or order without first having a hearing, an emergency regulation may be promulgated in accordance with KRS Chapter 13A and an emergency order may be issued in accordance with KRS 13B.125.

(7) The commission shall have specific authority to:

(a) Promulgate and enforce reasonable administrative regulations and issue orders reasonably necessary to prevent waste, protect correlative rights, govern the practice and procedure before the commission, and otherwise administer the provisions of KRS 353.651 and 353.652; and

(b) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of any books, records, maps, charts, diagrams, and other pertinent documents, and administer oaths and affirmations to witnesses, whenever, in the judgment of the commission, it is necessary to do so for the effective discharge of its duties under the provisions of KRS 353.651 and 353.652.

(8) Any interested person may have the commission call a hearing for the purpose of taking action in respect to any matter within the jurisdiction of the commission by making a request therefor in writing. Upon the receipt of any request, the commission promptly shall call a hearing thereon, and, after the hearing and with all convenient speed, and in any event within thirty (30) days after the conclusion of the hearing, shall take appropriate action with regard to the subject matter thereof as it may deem appropriate. If the hearing is adjudicatory in nature, it shall be conducted in accordance with KRS Chapter 13B.

(9) Agreements made in the interest of conservation of oil or gas, or both, or for the prevention of waste, between and among owners or operators, or both, owning separate holdings in the same field or pool, or in any area that appears from geologic or other data to be underlaid by a common accumulation of oil or gas, or both, and agreements between and among these owners or operators, or both, and royalty owners therein, for the purpose of bringing about the development and operation of the field, pool, or area, or any part thereof, as a unit, and for establishing and carrying out a plan for the cooperative development and operation thereof, when the agreements are approved by the commission, are hereby

authorized and shall not be held or construed to violate any of the laws of this state relating to trusts, monopolies, or contracts and combinations in restraint of trade.

(10) Nothing in this section shall be construed as giving to the commission the right or authority to supersede the authority of the department in the administration of KRS 353.060.

HB 592, AN ACT relating to prison labor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 197.120 is amended to read as follows:

(1) The Department of Corrections may enter into contracts with any other state agency for the use and employment of prisoners who may be eligible for the assignments. The contracts shall specifically set forth the compensation to be paid to the Department of Corrections for the use and employment of the prisoners, for the payment of the expenses of transporting, guarding, housing, disciplining, and maintaining the prisoners while so employed. The amount to be paid shall be certified by the contracting parties to the Finance and Administration Cabinet at the end of each month and shall be charged to the appropriation of the agency liable for the payment thereof and credited to the budget of the department to be disbursed and expended as it directs. Any contract may provide for a fixed per diem compensation to be paid to the department for each day's work performed by the prisoner and the department shall pay, out of the per diem compensation, the expenses of transporting, guarding, disciplining, housing, and maintaining prisoners as may be provided in the contracts.

(2) The Department of Corrections shall not enter into any contract with the Revenue Cabinet for the use or employment of prisoners in any capacity that allows prisoners access to taxpayer information, including but not limited to tax returns, informational reporting returns, social security numbers, telephone numbers, or addresses.

SECTION 2. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

The Revenue Cabinet shall not enter into any contract with the Department of Corrections, the United States Government, any local government, or any private contractor operating a correctional institution on behalf of the Department of Corrections, the United States Government, or any local government for the use or employment of prisoners in any capacity that allows prisoners access to taxpayer information, including but not limited to tax returns, informational reporting returns, social security numbers, telephone numbers, or addresses.

SB 155, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. The General Assembly hereby confirms Executive Order 96-1503, dated November 8, 1996, which creates certain organizational units within the Department of Juvenile Justice, Justice Cabinet. The created organizational units are: Office of General Counsel, Division of Administrative Services, Division of Western Region, Division of Central Region, Division of Eastern Region, and Division of Quality Assurance. The executive order also: transfers the Central Kentucky Treatment Center/Division of Youth Services from Justice Administration, Justice Cabinet, to the Division of Central Region, Department of Juvenile Justice; transfers the Breathitt County, Northern Kentucky, and Western Kentucky Secure Juvenile Detention Facilities from the Department of Corrections, Justice Cabinet, to the Department of Juvenile Justice; transfers funding for two (2) juvenile diversion projects from the Department of Corrections to the Department of Juvenile Justice; abolishes the Divisions of Residential Services, Community Services, and Program Support Services within the Department of Juvenile Justice; and abolishes the Division of Youth Services within Justice Administration.

SCR 2, A CONCURRENT RESOLUTION requesting the Legislative Research Commission to reestablish the Subcommittee on Veterans' Affairs.

WHEREAS, Kentucky's veterans have many concerns meriting legislative attention; and

WHEREAS, the present committee structure of the Kentucky General Assembly does not allow proper attention to be paid to these concerns; and

WHEREAS, the Subcommittee to Study Problems of Vietnam Veterans in Kentucky requested the Legislative Research Commission to establish a permanent committee on veterans' affairs; and

WHEREAS, Kentucky owes its veterans a debt of gratitude for service in defense of their country;

NOW, THEREFORE,

Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky, the House of Representatives concurring therein:

Section 1. The Kentucky Legislative Research Commission is requested to establish a Subcommittee on Veterans'

Affairs to operate during the 1998-99 interim and present recommendations to the Kentucky General Assembly.

Section 2. It is recommended that this subcommittee be appointed by the Legislative Research Commission.

Motions, Petitions and Communications (Continued)

Representative Mason moved the adoption of **HR 90**. The Speaker announced that **HR 90** was not available.

Floor Amendments (Continued)

Floor Amendment No. 8 to the Committee Substitute to **HB 327**, by Representative Vincent:

On page 12, following line 26 to insert the following language:

"***(7) The court shall report to the Administrative Office of the Courts and to the Transportation Cabinet, Division of Driver's Licensing, on or within five (5) working day following January 1, April 1, July 1, and October 1, of each year the disposition of each hearing where the court addresses issues of suspension pursuant to KRS 189A.200, or return of the person's operator's license and driving privileges and the reasons for the disposition. The court shall submit the reports on a form provided by the Administrative Office of the Courts.***"

Floor Amendment No. 7 to the Committee Substitute to **HB 327**, by Representative Wilkey:

On page 12, following line 26 to insert the following language:

"Section 8. KRS 189A.090 is amended to read as follows:

(1) No person shall operate a motor vehicle while his license is revoked or suspended for violation of KRS 189A.010, nor shall any person who has no motor vehicle or motorcycle operator's license operate a motor vehicle while his privilege to operate a motor vehicle has been revoked or suspended for a violation of KRS 189A.010.

(2) Any person who violates subsection (1) of this section shall:

(a) For a first offense, be guilty of a Class B misdemeanor;

(b) For a second offense, be guilty of a Class A misdemeanor;

(c) For a third or subsequent offense, be guilty of a Class D felony.

(3) ***Any person who is convicted of a violation of Section 1 of this Act who at the time of the arrest for that offense was also in violation of subsection (1) of this section shall:***

(a) For the first offense, be guilty of a Class A misdemeanor;

(b) For a second offense, be guilty of a Class D felony;

(c) For a third or subsequent offense, be guilty of a Class C felony.

(4) In addition to the penalties above his operator's license shall be revoked for twice the original period of revocation***, but such period of revocation shall not be less than six (6) months***."

Floor Amendment No. 6 to the Committee Substitute to **HB 327**, by Representative Wilkey:

On page 12, following line 26, to insert the following:

"Section 8. KRS 189A.005 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Alcohol concentration" means either grams of alcohol per ***one hundred (***100***)*** milliliters of blood or grams of alcohol per ***two hundred ten (***210***)*** liters of breath***, as measured within a reasonable time of operation or physical control. Two (2) hours shall be considered a reasonable time after operation or physical control and the court shall have discretion to determine if a longer period is reasonable***;

(2) "Refusal" means declining to submit to any test or tests pursuant to KRS 189A.103. Declining may be either by word or by the act of refusal. If the breath testing instrument for any reason shows an insufficient breath sample and the alcohol concentration cannot be measured by the breath testing instrument, the law enforcement officer shall then request the defendant to take a blood or urine test in lieu of the breath test. If the defendant then declines either by word or by the act of refusal, he shall then be deemed to have refused; and

(3) When age is a factor, it shall mean age at the time of the commission of the offense."

Motions, Petitions and Communications (Continued)

Representative Long moved the adoption of the following **HR 88**:

HR 88, A RESOLUTION adjourning the House of Representatives in honor of Leadership Kentucky.

WHEREAS, Leadership Kentucky is committed to identifying and developing leadership resources to ensure a brighter future for the Commonwealth of Kentucky; and

WHEREAS, Leadership Kentucky deserves recognition for its outstanding efforts to develop high caliber citizens who are well-informed about the quality of life and the infrastructure of their communities; and

WHEREAS, Leadership Kentucky has demonstrated an unwavering commitment to action and service, thereby providing a better place to live and work to the citizens of this great Commonwealth; and

WHEREAS, Leadership Kentucky is a vital link in promoting the overall success of our community;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. That the House of Representatives salutes Leadership Kentucky for its dedication to the development of enlightened leaders committed to community service.

Section 2. That the House of Representatives commends this exemplary program for its noteworthy efforts and extends best wishes for its continued success.

Section 3. That when the House of Representatives adjourns this day, February 24, 1998, it does so in honor of Leadership Kentucky.

Section 4. That the clerk of the House of Representatives is hereby directed to transmit a copy of this Resolution to Leadership Kentucky Foundation, PO. Box 1172, Frankfort, KY 40602.

There being no objection **HR 88** was adopted.

Report On Enrolled Bills

The Committee on Enrollment reported that **HB 172** has been examined and found correctly enrolled. Said Bill was read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -3:17 p.m.) **HB 172** delivered to the Senate and signed by the President. Delivered to the Governor on February 24 at 3:26 p.m.

Motions, Petitions and Communications (Continued)

Representative D. Butler moved the adoption of the following **HR 91**:

HR 91, A RESOLUTION adjourning the House of Representatives in honor of the occasion of the birth of little Miss Emily Butler.

WHEREAS, little Miss Emily Butler was born on February 24, 1998, at 12:10 p.m. at Suburban Hospital in Louisville, Jefferson County, Kentucky; and

WHEREAS, little Miss Emily Butler weighs 7 pounds, 10.8 ounces, and she is 20-3/4 inches in length; and she is the adored daughter of Denny and Brittany Butler, and the cherished grand daughter of Representative and Mrs. Denver Butler; and

WHEREAS, this honorable body wishes to little Miss Emily Butler a life full of happiness and love;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. This honorable body is proud to recognize the birth of little Miss Emily Butler on this day, February 24, 1998, and we congratulate the proud parents and grandparents of this precious baby girl.

Section 2. When the House of Representatives adjourns this day, February 24, 1998, it does so in honor of the occasion of the birth of little Miss Emily Butler.

Section 3. The Clerk of the House of Representatives is hereby directed to transmit a copy of this Resolution to Representative Denver Butler for presentation to little Miss Emily Butler and her proud parents.

There being no objection **HR 91** was adopted.

Representative Yonts moved that **HB 123** be withdrawn. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 9 to the Committee Substitute to **HB 327**, by Representative Bowling:

On page 3, line 16, following the word "months," to insert "***shall be sentenced to attend an alcohol or drug education program,***"; and

On page 3, line 16, following the "and" to place brackets around and strike through the words "the person".

Motions, Petitions and Communications (Continued)

Representative Lee moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Lee moved that he be recorded as voting "yea" on **HB 333**. Agreed.

Representative Murgatroyd moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Murgatroyd moved that he be recorded as voting "yea" on **HB 130**. Agreed.

The following members filed requests to have their names added as co-sponsors of Bills under rules previously suspended: **HB 13, HB 534**, Representative Reinhardt; **HB 36, HB 278, HB 410**, Representative P. Clark; **HB 434, HB 471, HB 670**, Representative Palumbo; **HB 434, HB 518, HB 617**, Representative Jordan; **HB 532, HB 715**, Representative Sims; **HB 632**, Representative Murgatroyd; **HB 682**, Representatives Bowling, Zimmerman, Deskins.

The following member filed a request to have his name withdrawn as co-sponsor of a Bill under rules previously suspended: **HB 532**, Representative D. Graham.

Announcements

The following meetings were announced:

Budget Review Subcommittee on Human Resources, Room 129, upon adjournment, February 25, 1998.

State Government, 9:00 a.m., Room 131.

Appropriations and Revenue, Room 129, upon adjournment.

The following meeting was canceled:

Elections and Constitutional Amendments, February 25, 1998.

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., February 25, 1998.

On the roll call the vote was **Yeas 80**--J. Adams, R. Adams, Adkins, Alexander, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Bowling, Bratcher, Brown, Bruce, D. Butler, D. D. Butler, Cave, L. Clark, J. Clarke, Collins, Colter, Crenshaw, Crimm, Curd, Damron, DeWeese, Ford, Gee, Geveden, Gooch, D. Graham, G. Graham, Gray, Hatcher, Haydon, Hoffman, Hogancamp, Jenkins, Johns, Jordan, Kerr, Lee, Lindsay, Long, Marcotte, Marzian, Mason, McKee, Miller, Moberly, Napier, Nesler, Newsome, Nunn, Palumbo, Polston, Pope, Rader, Rasche, Reinhardt, Richards, Riggs, Riner, Scott, Siler, Simpson, Sims, Stacy, Stein, Stine, Stumbo, Thomas, Treesh, Turner, Vincent, Walton, Wayne, Weaver, Wilkey, Yonts, Zimmerman. **Nays 4**--Coleman, Cox, Crall, Stewart.

The motion to adjourn was adopted.

WEDNESDAY, FEBRUARY 25, 1998

THIRTY-THIRD LEGISLATIVE DAY

The House was called to order by Speaker Richards.

Prayer by Reverend David Campbell, Buck Grove Baptist Church, Ekron.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Crenshaw, Lovell, and Moberly.

Representative Ballard moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative Ballard moved that the reading of the Journal of February 24, 1998, be dispensed with and the same approved. Agreed.

Representative Ballard moved that the Rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Ballard moved that all properly filed co-sponsor requests be approved. Agreed.

Floor Amendments

Floor Amendment No. 1 to the Committee Substitute to **HB 453**, by Representative Geveden:

On page 4, line 15, following "***environment***" to insert the following "***and which a local emergency response agency determines is beyond its capabilities***"; and

On page 14, line 9, following "***requested***" to insert the following "***to the extent that local public safety is not unreasonably compromised***"; and

On page 41, line 18, following "***(7)***" to insert "***(a)***"; and

On page 41, line 20, to delete "***to take or direct immediate actions to protect the***"; and

On page 41, line 21, to delete "***public safety;***"; and

On page 41, below line 27, to insert the following:

"***(b) At a declared emergency or declared disaster, at the direction of the county judge executive or mayor, as appropriate, to take or direct immediate actions to protect public safety; however, this paragraph shall not preclude a local director from providing any assistance that he is requested to, and is able to, provide at any emergency.***"

Senate Message

Announcing passage of **SB 44, SB 136, SB 217, SB 228, SB 247, SB 275, SB 277, HB 58, HB 106, HB 201, HB 202, HB 245, HB 287, HB 383, HCR 9, HCR 10, HCR 32, HCR 45, and HCR 46**. Message received on **HB 1**: The Senate has passed **HB 1**, with Senate Committee Amendment No. 1 attached thereto, and respectfully requests concurrence of this Honorable Body. Message received on **HB 389**: The Senate has passed **HB 389**, with Senate Committee Amendment No. 1 attached thereto, and respectfully requests concurrence of this Honorable Body. (Time: 2:05 p.m.)

Report On Enrolled Bills

The Committee on Enrollment reported that **SB 93** has been examined and found correctly enrolled. Said Bill was read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -2:12 p.m.)

Representative Jenkins moved that the rules be suspended to grant floor privileges and to act upon a Legislative Citation. Agreed. Representative Jenkins moved the adoption of the following **Legislative Citation No. 112**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes and honors the members of the Javanon Under-16 Soccer Team of Louisville, Kentucky, upon being named the 1997 United States Youth Soccer National Champions. The first in Kentucky history to capture the highest national crown in its age division, the members of this team are applauded for the exceptional effort they put forth both in this national competition and during their season. The Javanon Under-16 Soccer Team captured the Kentucky State Cup three consecutive years, won the 1997 Midwest Regional Championship and was unanimously voted the recipient of the Snickers Fair Play Award by the four regional directors of the

U.S. Youth Soccer Association. These dedicated young athletes have demonstrated extraordinary talent and sportsmanship that is reflected in their endeavors to play both individually and as a team to the very utmost of their abilities. The members of this distinguished body are pleased to join with Representative Joni Jenkins in applauding the members of the Javanon Under-16 Soccer Team for the honor and acclaim they have brought to their communities and to this Commonwealth and in extending to them best wishes for continued athletic victories. **Legislative Citation No. 112** was adopted without objection.

Representative Rader moved that the rules be suspended to act upon a Resolution. Agreed.

Representative Rader moved the adoption of the following **HR 87**:

HR 87, A RESOLUTION adjourning the House of Representatives in honor of Sergeant Randy Keith Brumback, law enforcement officer for the Kentucky Department of Fish and Wildlife Resources.

With heartfelt gratitude and our deepest respect, we owe Sergeant Randy Keith Brumback our thanks and appreciation for his tremendous dedication and personal sacrifices in protecting Kentucky's wildlife resources and keeping our waterways safe for boating.

WHEREAS, Sergeant Randy Keith Brumback was born on August 18, 1956, a native of London, Kentucky, to parents Tyra and Jackie Madden Brumback, was raised in Gray Hawk, Jackson County, Kentucky, and was commissioned a Kentucky Conservation Officer on March 1, 1984; and

WHEREAS, Sergeant Randy Keith Brumback and his wife, Jennifer, continue to reside in Jackson County with their four children; and

WHEREAS, this honorable body does hereby recognize that Kentucky's fish, wildlife, and waterways are invaluable natural resources of the Commonwealth that must be protected; and

WHEREAS, Sergeant Randy Keith Brumback, at approximately 8:20 a.m. on October 29, 1997, while responding to a deer poaching complaint in Jackson County, discovered three armed suspects in possession of an illegally killed deer; after the suspects fled in their vehicle, Sergeant Brumback pursued them into Laurel County where they abandoned their stalled vehicle and fled on foot; during this pursuit, Sergeant Brumback was shot and severely wounded in a hail of gunfire; and

WHEREAS, Sergeant Randy Keith Brumback has undergone extensive surgery and rehabilitation therapy, and his long-range medical prognosis is good;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. This honorable body is indeed proud to recognize and honor Sergeant Randy Keith Brumback for his tireless devotion, personal sacrifice, and dogged determination in the face of tremendous danger to protect these valuable resources. He deserves our admiration, respect, and sincere appreciation for a job well done, and we wish to Sergeant Randy Keith Brumback a full and speedy recovery.

Section 2. When the House of Representatives adjourns this day, February 25, 1998, it does so in honor of Sergeant Randy Keith Brumback.

Section 3. The Clerk of the House of Representatives is hereby directed to transmit a copy of this Resolution to Representative Marie Rader for presentation to Sergeant Randy Keith Brumback.

There being no objection **HR 87** was adopted.

Representative Bowling moved that the rules be suspended to grant floor privileges and to act upon a Legislative Citation. Agreed. Representative Bowling moved the adoption of the following **Legislative Citation No. 114**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby congratulates J. Roy Shoffner for his participation in the recovery and restoration of the first "lost squadron" P-38. This historic aircraft was retrieved from 268 feet inside the Greenland Icecap, which is located fourteen miles south of the Arctic Circle. Shoffner captained the thirteenth and only successful recovery expedition during the summer of 1992. Restoration on the plane began when it arrived in Middlesboro in October of 1992, and is now nearly two-thirds complete. Within two years, the target date of completion of the restoration, the plane will be flown at various air shows in order to let others see this phenomenal aircraft in action. The members of this prestigious body are pleased to join Representative Mike Bowling in expressing sincere gratitude for the laudable efforts of J. Roy Shoffner and in extending to him best wishes as he works toward the dream of retracing the original route and flying this aircraft to England. **Legislative Citation No. 114** was adopted without objection.

Representative Stumbo moved that the rules be suspended to grant floor privileges to the Governor's Scholars. Agreed.

Introduction of Bills and Resolutions

HB 721, by Representative Palumbo: AN ACT relating to the installation of smoke detectors.

HB 722, by Representative Kerr: AN ACT relating to city-owned or operated sanitary sewers.

HB 723, by Representatives Deskins, Gooch, and J. Arnold: AN ACT relating to air quality.

HB 724, by Representative Lindsay: AN ACT relating to a school to careers system and declaring an emergency.

HB 725, by Representative Lindsay: AN ACT relating to consent decrees.

HB 726, by Representative Riggs: AN ACT relating to civil service commissions.

HB 727, by Representative Hoffman: AN ACT relating to state employees.

HB 728, by Representatives R. Adams, Coleman, Weaver, P. Clark, Murgatroyd, and Colter: AN ACT relating to alcoholic beverages.

HB 729, by Representative Barrows: AN ACT relating to the management of school districts.

HB 730, by Representative Barrows: AN ACT relating to school district finance.

HB 731, by Representative Barrows: AN ACT relating to school employees.

HB 732, by Representative Barrows: AN ACT relating to the Kentucky Personnel Board.

HCR 93, by Representative Brandstetter: A CONCURRENT RESOLUTION directing the Interim Joint Committee on Education through a special subcommittee to study community schools.

HCR 94, by Representative Barrows: A CONCURRENT RESOLUTION requesting a study relating to emergency services dispatchers.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolutions:

Agriculture and Small Business: **HB 699, HB 709**

Cities: **HB 701, HB 716, HB 719**

Education: **HB 706, HB 710, HB 714, HB 715, SB 186**

Health and Welfare: **HB 711, HB 712, HB 718**

Judiciary: **HB 698, HB 702, HB 705, HB 707, SB 121, SB 264**

Labor and Industry: **HB 713**

Licensing and Occupations: **HB 703, SB 34**

Natural Resources and Environment: **HB 717**

State Government: **HB 700, HB 704, HB 708, SB 75, SB 142**

Tourism Development and Energy: **HJR 89**

Transportation: **HB 720, HJR 92, SB 221**

The Clerk reported that the Committee on Committees has referred the following Resolutions:

House Floor: **HR 87, HR 90**

Report of Committees

The Committee on State Government reported **HB 377**, with Committee Substitute attached thereto, **SB 149, SB 150, SB 152, SB 153, SB 156, SB 158, SB 162, SB 173, SB 174, SB 175, SB 176, SB 178**, and **SB 190** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 377, AN ACT relating to funding of public libraries in Kentucky.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 171.201 is amended to read as follows:

(1) For grants to public libraries for promoting, aiding, and equalizing public library service in Kentucky, there may be funds appropriated out of the general expenditure fund of the State Treasury.

(2) In addition to any other funds appropriated to the Department for Libraries and Archives, there shall be appropriated annually to the department out of the general expenditure fund of the State Treasury an amount sufficient to provide the following assistance to local public libraries:

(a) The department shall first distribute to each county public library system a foundation grant based upon the county population using the last official census as follows:

1. Counties with a population of twenty-two thousand (22,000) or less shall receive nine thousand dollars ($9,000);
2. Counties with a population between twenty-two thousand one (22,001) and forty-five thousand (45,000) shall receive eight thousand dollars ($8,000);
3. Counties with a population over forty-five thousand (45,000) shall receive seven thousand dollars ($7,000); and

(b) The department shall distribute the remaining funds appropriated for this program to each county public library system, based on the county's share of the state population, at a rate of ***fifty-three cents ($0.53) per capita in fiscal year 1997-98, one dollar ($1) per capita in fiscal year 1998-99 and one dollar and fifty-three cents ($1.53) per capita***[~~twenty-three cents ($0.23) per capita in 1986-87, twenty-six cents ($0.26) per capita in 1987-88 and fifty-three cents ($0.53)~~] each year thereafter to be used for the following purposes:

1. ***Purchase, upgrading, and maintenance of the technology necessary to enable the staff and the public to have access to electronic information;***

2. Purchase of library materials and equipment;

3.[~~2.~~] Maintenance and operation of bookmobiles and extension programs;

4.[~~3.~~] Staff training and compensation;

5.[~~4.~~] Building maintenance;

6.[~~5.~~] Debt service;

7.[~~6.~~] Resource-sharing;

8.[~~7.~~] Program development; and

9.[~~8.~~]All other local library needs and services; and

(c) For counties which do not have a public library, the department shall make the foundation grant and per capita distribution to a recognized library organization for the purpose of providing or establishing countywide public library service under existing departmental guidelines.[~~ If there is no recognized library organization, the per capita distribution shall be made to the fiscal court of the county which shall distribute the funds to public education entities.~~]

(3) The appropriation necessary to fund the formula foundation grants and a ***one dollar and*** fifty-three cents ***($1.53)***[~~($0.53)~~] per capita distribution shall constitute the base for the agency's biennial budget request for this program.

The Committee Substitute to **HB 377** is as follows:

AN ACT relating to funding of public libraries in Kentucky.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 171.201 is amended to read as follows:

(1) For grants to public libraries for promoting, aiding, and equalizing public library service in Kentucky, there may be funds appropriated out of the general expenditure fund of the State Treasury.

(2) In addition to any other funds appropriated to the Department for Libraries and Archives, there shall be appropriated annually to the department out of the general expenditure fund of the State Treasury an amount sufficient to provide the following assistance to local public libraries:

(a) The department shall first distribute to each county public library system a foundation grant based upon the county population using the last official census as follows:

1. Counties with a population of twenty-two thousand (22,000) or less shall receive nine thousand dollars ($9,000);
2. Counties with a population between twenty-two thousand one (22,001) and forty-five thousand (45,000) shall receive eight thousand dollars ($8,000);

3. Counties with a population over forty-five thousand (45,000) shall receive seven thousand dollars ($7,000); and

(b) The department shall distribute the remaining funds appropriated for this program to each county public library system, based on the county's share of the state population, at a rate of ***fifty-three cents ($0.53) per capita in fiscal year 1997-98, one dollar ($1) per capita in fiscal year 1998-99 and one dollar fifty-three cents ($1.53) per capita***[~~twenty-three cents ($0.23) per capita in 1986-87, twenty-six cents ($0.26) per capita in 1987-88 and fifty-three cents ($0.53)~~] each year thereafter to be used for the following purposes:

1. ***Purchase, upgrading, and maintenance of the technology necessary to enable the staff and the public to have access to electronic information;***

2. Purchase of library materials and equipment;

3.[~~2.~~] Maintenance and operation of bookmobiles and extension programs;

4.[~~3.~~] Staff training and compensation;

5.[~~4.~~] Building maintenance;

6.[~~5.~~] Debt service;

7.[~~6.~~] Resource-sharing;

8.[~~7.~~] Program development; and

9.[~~8.~~]All other local library needs and services; and

(c) For counties which do not have a public library, the department shall make the foundation grant and per capita distribution to a recognized library organization for the purpose of providing or establishing countywide public library service under existing departmental guidelines.[~~ If there is no recognized library organization, the per capita distribution shall be made to the fiscal court of the county which shall distribute the funds to public education entities.~~]

(3) The appropriation necessary to fund the formula foundation grants and a ***one dollar*** fifty-three cents ***($1.53)***[~~($0.53)~~] per capita distribution shall constitute the base for the agency's biennial budget request for this program.

SB 149, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.

2. Lieutenant Governor.

3. Department of State.

(a) Secretary of State.

(b) Board of Elections.

(c) Registry of Election Finance.

4. Department of Law.

(a) Attorney General.

5. Department of the Treasury.

(a) Treasurer.

6. Department of Agriculture.

(a) Commissioner of Agriculture.

(b) Kentucky Council on Agriculture.

7. Superintendent of Public Instruction.
8. Auditor of Public Accounts.
9. Railroad Commission.

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
    - (a) Department of State Police.
    - (b) Department of Criminal Justice Training.
    - (c) Department of Corrections.
    - (d) Department of Juvenile Justice.
    - (e) Office of the Secretary.
    - (f) Offices of the Deputy Secretaries.
    - (g) Office of General Counsel.
    - (h) Medical Examiner Program.
    - (i) Parole Board.
    - (j) Kentucky State Corrections Commission.
    - (k) Commission on Correction and Community Service.
2. Education, Arts, and Humanities Cabinet:
    - (a) Department of Education.
        - (1) Kentucky Board of Education.
        - (2) Education Professional Standards Board.
    - (b) Department for Libraries and Archives.
    - (c) Kentucky Arts Council.
    - (d) Kentucky Educational Television.
    - (e) Kentucky Historical Society.
    - (f) Kentucky Teachers' Retirement System Board of Trustees.
    - (g) Kentucky Center for the Arts.
    - (h) Kentucky Craft Marketing Program.
    - (i) Kentucky Commission on the Deaf and Hard of Hearing.
    - (j) Governor's Scholars Program.
    - (k) Governor's School for the Arts.
    - (l) Office of Development.
    - (m) Kentucky Heritage Council.
    - (n) Kentucky African-American Heritage Commission.
3. Natural Resources and Environmental Protection Cabinet:
    - (a) Environmental Quality Commission.
    - (b) Kentucky Nature Preserves Commission.
    - (c) Department for Environmental Protection.
    - (d) Department for Natural Resources.
    - (e) Department for Surface Mining Reclamation and Enforcement.
    - (f) Office of Legal Services.
    - (g) Office of ***Information Services***~~[Communications and Community Affairs~~].
4. Transportation Cabinet:
    - (a) Department of Highways.
    - (b) Department of Vehicle Regulation.
    - (c) Department of Administrative Services.
    - (d) Department of Fiscal Management.
    - (e) Department of Rural and Municipal Aid.

(f) Office of Aeronautics.
(g) Office of General Counsel.
(h) Office of Public Relations.
(i) Office of Personnel Management.
(j) Office of Minority Affairs.
(k) Office of Environmental Affairs.

5. Cabinet for Economic Development:
(a) Department of Administration and Support.
(b) Department of Job Development.
(c) Department of Financial Incentives.
(d) Department of Community Development.
(e) Tobacco Research Board.
(f) Kentucky Economic Development Finance Authority.

6. Public Protection and Regulation Cabinet:
(a) Public Service Commission.
(b) Department of Insurance.
(c) Department of Housing, Buildings and Construction.
(d) Department of Financial Institutions.
(e) Department of Mines and Minerals.
(f) Department of Public Advocacy.
(g) Department of Alcoholic Beverage Control.
(h) Kentucky Racing Commission.
(i) Board of Claims.
(j) Crime Victims Compensation Board.
(k) Kentucky Board of Tax Appeals.
(l) Backside Improvement Commission.

7. Cabinet for Human Resources:
(a) Department for Health Services.
(b) Department for Social Insurance.
(c) Department for Social Services.
(d) Department for Medicaid Services.
(e) Department for Mental Health and Mental Retardation Services.
(f) Commission for Children with Special Health Care Needs.
(g) Public Assistance Appeals Board.
(h) Office of Administrative Services.
(i) Office of Communications.
(j) Office of General Counsel.
(k) Office of Inspector General.
(l) Office of Policy and Budget.
(m) Office of the Ombudsman.

8. Finance and Administration Cabinet:
(a) Office of Legal and Legislative Services.
(b) Office of Management and Budget.
(c) Office of Financial Management and Economic Analysis.
(d) Office of the Controller.
(e) Department for Administration.
(f) Department of Facilities Management.

(g) Department of Information Systems.
(h) State Property and Buildings Commission.
(i) Kentucky Pollution Abatement Authority.
(j) Kentucky Savings Bond Authority.
(k) Deferred Compensation Systems.
(l) Office of Equal Employment Opportunity Contract Compliance.
(m) Capital Plaza Authority.
(n) County Officials Compensation Board.
(o) Kentucky Employees Retirement Systems.
(p) Commonwealth Credit Union.
(q) State Investment Commission.
(r) Kentucky Housing Corporation.
(s) Governmental Services Center.
(t) Kentucky Local Correctional Facilities Construction Authority.
(u) Kentucky Turnpike Authority.
(v) Historic Properties Advisory Commission.

9. Labor Cabinet:
(a) Department of Workplace Standards.
(b) Department of Workers' Claims.
(c) Kentucky Labor-Management Advisory Council.
(d) Occupational Safety and Health Standards Board.
(e) Prevailing Wage Review Board.
(f) Workers' Compensation Board.
(g) Kentucky Employees Insurance Association.
(h) Apprenticeship and Training Council.
(i) State Labor Relations Board.
(j) Kentucky Occupational Safety and Health Review Commission.
(k) Office of Administrative Services.
(l) Office of Labor Management Relations.
(m) Office of General Counsel.
(n) Workers' Compensation Funding Commission.
(o) Employers Mutual Insurance Authority.

10. Revenue Cabinet:
(a) Department of Property Taxation.
(b) Department of Compliance and Taxpayer Assistance.
(c) Department of Administrative Services.
(d) Office of General Counsel.

11. Tourism Cabinet:
(a) Department of Travel Development.
(b) Department of Parks.
(c) Department of Fish and Wildlife Resources.
(d) Kentucky Horse Park Commission.
(e) State Fair Board.
(f) Office of Administrative Services.
(g) Office of Film Promotion.
(h) Office of General Counsel.

12. Cabinet for Workforce Development:

(a) Department for Adult Education and Literacy.
(b) Department for Technical Education.
(c) Department of Vocational Rehabilitation.
(d) Department for the Blind.
(e) Department for Employment Services.
(f) State Board for Adult and Technical Education.
(g) Governor's Council on Vocational Education.
(h) The State Board for Proprietary Education.
(i) The Foundation for Adult Education.
(j) The Kentucky Job Training Coordinating Council.
(k) Office of General Counsel.
(l) Office of Communication Services.
(m) Office of Development and Industry Relations.
(n) Office of Workforce Analysis and Research.
(o) Office for Administrative Services.
(p) Office for Policy, Budget, and Personnel.
(q) Unemployment Insurance Commission.

III. Other departments headed by appointed officers:
1. Department of Military Affairs.
2. Department of Personnel.
3. Council on Postsecondary Education.
    (a) Kentucky Community Service Commission.
4. Department of Local Government.
5. Kentucky Commission on Human Rights.
6. Kentucky Commission on Women.
7. Department of Veterans' Affairs.
8. Kentucky Commission on Military Affairs.

Section 2. The General Assembly confirms Executive Order 96-944, dated July 16, 1996, which relates to the reorganization of the Natural Resources and Environmental Protection Cabinet, to the extent it is not otherwise confirmed by this Act. That executive order creates the Office of Information Services and the Public Information and Education Branch within the Office of the Secretary and abolishes the Data Processing Branch and the Office of Communications and Community Affairs within the cabinet.

SB 150, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. The General Assembly confirms Executive Order 96-931, dated July 16, 1996, which creates the Division of Insurance Fraud Investigation in the Department of Insurance.

SB 152, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.17A-020 is amended to read as follows:

(1) There is hereby created the Kentucky Health Purchasing Alliance consisting of the entire Commonwealth. The alliance shall operate independently from the department but shall be attached to the department for administrative purposes. ***The alliance shall be composed of organizational entities deemed appropriate by the alliance board of directors.*** The alliance shall be operational by July 15, 1995.

(2) The alliance designated in subsection (1) of this section shall be the only entity permitted to operate as a statewide health purchasing alliance in the Commonwealth and shall operate for the benefit of the members of the alliance. The alliance is the exclusive entity for the oversight and coordination of alliance member purchases. Any health benefit plan offered through the alliance shall be offered by an accountable health plan, and the alliance shall not:

(a) Directly provide insurance;

(b) Directly contract, for purposes of providing insurance, with a health care provider or provider network, unless the provider or network constitutes an accountable health plan; or

(c) Bear any risk, or form self-insurance plans among its members.

Nothing in KRS 304.17A-010 to 304.17A-070 shall limit the formation of business health coalitions; however, a person or entity that pools together or assists in purchasing health coverage shall not discriminate in its activities based on the health status or historical or projected claims experience of such employers or recipients.

(3) Participation in the alliance shall be limited to mandatory alliance members and voluntary alliance members. The alliance shall be open to voluntary membership by those persons set forth in KRS 304.17A-010(23).

(4) The alliance shall be governed by a board of directors consisting of five (5) members to be appointed by the Governor and confirmed by the Kentucky Senate. Members shall have expertise in business, finance, economics, or health benefits management and shall represent the interests of employers and health care consumers. No member shall be, nor have been:

(a) A health care provider or health insurer;

(b) An employee of a health care provider, health insurer, or health plan; or

(c) A person having a fiduciary relationship to a health care provider, health insurer, or health plan.

(5) The Governor may at any time remove any member of the alliance board of directors for cause after furnishing the member with a written copy of the charges against the member and affording the member a public hearing if requested.

(6) The alliance may have regional advisory boards with the number of members, terms of office, and conditions of participation to be determined by the alliance and with the members to be appointed by the Governor from a list of three (3) candidates for each open position on each regional advisory board submitted by the President of the Senate and the Speaker of the House; however, the terms of office of any member of a regional advisory board shall not exceed four (4) years. The qualifications for regional advisory board members shall be the same as for alliance board members as set forth in subsection (4) of this section.

(7) The members of the alliance board of directors and regional advisory boards shall be reimbursed for actual expenses incurred in the discharge of the member's duties.

(8) The alliance board of directors shall employ ***an***~~[a chief]~~ executive ***director***~~[officer]~~ and comptroller for the alliance. The~~[chief]~~ executive ***director***~~[officer]~~ shall employ any professional staff necessary to carry out the duties of the alliance and any regional advisory board subject to the approval of the department.

(9) No member of the alliance board of directors or any regional advisory board shall be subject to any personal liability for any loss sustained or damage suffered on account of any action or inaction of the alliance.

(10) Nothing in KRS 304.17A-010 to 304.17A-070 shall be construed to prohibit or compel the health purchasing alliance or an accountable health plan from using the services of a licensed insurance agent or broker in order to assist in marketing, consumer education, claims assistance, grievance resolution, and servicing of health benefit coverage offered by the accountable health plan or through the health purchasing alliance. Any commissions or compensation paid by an accountable health plan to a licensed insurance agent or broker shall be determined between the accountable health plan and the agent or broker. An accountable health plan shall not vary compensation or commissions to such agents, brokers, contractors, or producers based directly or indirectly, on the anticipated or actual claims experience or health status associated with particular employers to which each plan is sold.

(11) Notwithstanding any other provisions to the contrary, in order to support the teaching programs at the two (2) Health Science Centers, selective contracting for inpatient and outpatient services will include all university-affiliated teaching facilities in order to maintain a broad base of patients essential for the support of accredited teaching programs.

Section 2. The General Assembly confirms Executive Order 96-884, dated July 9, 1996, to the extent it is not otherwise confirmed by this Act.

SB 153, AN ACT relating to government reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Recycling and Marketing Assistance program, referred to in this section as the "program," is created to develop a recycling infrastructure within the Commonwealth. The program shall:

(a) Encourage the collection, processing, and marketing of recovered materials;

(b) Provide assistance for the development of community and regional recycling;

(c) Identify resources to help market recyclables; and

(d) Promote the development of the market for recyclables.

(2) The Natural Resources and Environmental Protection Cabinet shall administer the program and assist local governments and commercial businesses seeking to recycle materials.

(3) The Secretary of the Natural Resources and Environmental Protection Cabinet shall create a Kentucky Recycling and Marketing Assistance Advisory Committee to act in an advisory capacity to the cabinet. In addition to its other duties, this committee shall develop and submit an annual report by October 1 to the Interim Committee on Agriculture and Natural Resources.

Section 2. KRS 224.43-080 is amended to read as follows:

(1) On July 15, 1994, and annually thereafter, each publisher shall submit a report to the cabinet. The report shall indicate the amount of newsprint used in the preceding year, its recycled content, along with any other information required by the cabinet.

(2) The Governor shall appoint a Newsprint Recycling Task Force consisting of the secretary of the Natural Resources and Environmental Protection Cabinet or a designee; the chairman of the ***Kentucky Recycling and Marketing Assistance Advisory Committee***~~[Kentucky Recycling Brokerage Authority]~~ or a designee; the executive director of the Kentucky Press Association or a designee; three (3) members from environmental organizations; and five (5) members representing the Kentucky newsprint publishing industry and newsprint manufacturers doing business in Kentucky. A list of names of potential task force members shall be provided by the president of the Kentucky Press Association.

(3) The task force members shall each serve a two (2) year term. The initial five (5) industry representatives appointments shall consist of two (2) two (2) year terms and three (3) one (1) year terms.

(4) The Newsprint Recycling Task Force shall meet as necessary to monitor the use of newsprint in the state for the following goals:

(a) To increase the demand for recycled newsprint in Kentucky;

(b) To increase the availability for the product;

(c) To establish Kentucky as a reliable source of old newsprint for recycling; and

(d) To identify, develop, and advance initiatives to recycle and reuse discarded newspapers and paper products with an emphasis on recycling these materials instead of diverting them for disposal.

(5) The Newsprint Recycling Task Force and the Kentucky Press Association shall encourage all Kentucky industries and businesses, their trade or professional organizations, and all public agencies at the state and local level to increase their use of recycled newsprint.

(6) The Newsprint Recycling Task Force shall take steps to attract a recycled newsprint mill or related facility to Kentucky by identifying potential sites and potential manufacturers. The task force shall also work with the ***Kentucky Recycling and Marketing Assistance Advisory Committee***~~[Kentucky Recycling Brokerage Authority]~~ in recommending appropriate economic and tax incentives to encourage such a project.

(7) The Newsprint Recycling Task Force shall promote the increased recovery of old newspapers and, with the Commonwealth of Kentucky representatives, work with communities to develop processing and collection programs to provide quality material to the marketplace.

(8) The Newsprint Recycling Task Force shall report to the Interim Joint Committee on Agriculture and Natural Resources by October 1, 1995, on the availability and cost of adequate supplies of newsprint which contain a recycled content of fifty percent (50%) or more, or any other information or recommendations deemed appropriate.

Section 3. The following KRS section is repealed:

224.01-500 Kentucky Recycling Brokerage Authority -- Powers -- Duties -- Brokerage fee -- Reports.

Section 4. Executive Order 96-946 is confirmed to the extent that it is not otherwise confirmed or superseded by this Act.

SB 156, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. The General Assembly hereby confirms Executive Order 96-930, dated July 16, 1996, which changes the name of the Division of Sales and Marketing within the Department of the Kentucky State Fair Board within the Tourism Cabinet to the Division of Public Relations and Media, and establishes the Division of Security and Traffic Control and the Division of Sales within the Department of the Kentucky State Fair Board within the Tourism Cabinet.

SB 158, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 151B.023 is amended to read as follows:

(1) The Department for Adult Education and Literacy is hereby created and is attached to the Cabinet for Workforce Development. The Department for Adult Education and Literacy shall be composed of the Division of Program Services***,*** ***the Division of Workforce Investment,*** and the Division of Management~~[and Support]~~ Services. Each division shall be headed by a director appointed by the commissioner of the Department for Adult Education and Literacy, and shall be composed of organizational entities as deemed appropriate by the commissioner of the Department for Adult Education and Literacy as set forth by administrative order.

(2) The Department for Adult Education and Literacy shall be headed by a commissioner. The appointment of the commissioner shall be made from a list of three (3) names submitted by the State Board for Adult and Technical Education to the secretary of the Cabinet for Workforce Development and the Governor. The commissioner shall be appointed by the secretary of the Cabinet for Workforce Development from the list with the approval of the Governor. The commissioner shall have general supervision and direction over all functions of the department and its employees and shall be responsible for carrying out the programs and policies of the department. The commissioner shall be responsible for implementing policies adopted by the State Board for Adult and Technical Education. The commissioner may delegate authority to deputies who may then act on his behalf in performing the duties assigned to the department.

(3) The department shall have the responsibility for all administrative functions of the state in relation to the management, control, and operation of programs and services in adult education and literacy. When appropriate, the department shall provide education training programs through contracts with private business and industries. These programs may be on a shared-cost basis or on a total cost recovery basis. The department shall have the authority to enter into agreements or contracts with other government or education agencies, including local school districts, in order to carry out services under its jurisdiction.

(4) The Department for Adult Education and Literacy shall be the education agency solely designated for the purpose of developing and approving state plans required by state or federal laws and regulations as prerequisites to receiving federal funds for adult education and literacy. The department shall be under the jurisdiction of the State Board for Adult and Technical Education for all appropriate purposes under this chapter. All appropriate rights, responsibilities, and benefits under this chapter governing adult education and literacy personnel and programs shall apply to the Department for Adult Education and Literacy.

(5) The commissioner shall, from time to time, prepare or cause to be prepared, and submit for approval and publication by the State Board for Adult and Technical Education, any bulletins, programs, outlines of courses, placards, and courses of study he deems useful in the promotion of the interests of adult education and literacy.

(6) The department shall prepare a biennial budget request and submit it for review by the State Board for Adult and Technical Education. The budget shall be forwarded to the secretary of the Cabinet for Workforce Development for review and modification.

Section 2. KRS 151B.125 is amended to read as follows:

(1) For purposes of any public employment, a high school equivalency diploma or a regular high school diploma obtained through participation in the external diploma program shall be considered equal to a high school diploma issued under the provisions of KRS 158.140.

(a) A high school equivalency diploma shall be issued without charge upon successfully passing a test or tests given by the General Educational Development Testing Service of the American Council on Education or successor organization. A five dollar ($5) fee may be assessed by the State Board for Adult and Technical Education for the issuance of a duplicate high school equivalency diploma and for issuance of a duplicate score report. All fees collected for duplicate diplomas and score reports shall be used to support the adult education program.

(b) As an alternative to receiving a high school equivalency diploma, persons who are twenty-five (25) years or older may obtain a high school diploma through participation in the external diploma program. The diploma shall be issued upon achieving one hundred percent (100%) mastery on the competencies established by the American Council on Education. The Department for Adult Education and Literacy may enter into agreements with local school districts to confer the high school diploma on successful participants in the external diploma program.

(2) Sufficient funding shall be provided to comply with the American Council on Education's Commission on Educational Credit and Credentials requirement of an essay as an additional requirement on the GED examination. Funds shall be used for the following purposes:

(a) GED teachers in local districts shall receive training to teach writing skills to adults;

(b) The Department for Adult Education and Literacy is authorized to contract annually with an institution of higher education or other appropriate agency or entity for scoring the GED examination essay;

(c) Staff shall be employed and trained by the Department of Adult Education and Literacy to score approximately seventeen thousand (17,000) essays annually as a part of the requirement for the GED high school equivalency examination; and

(d) Essay readers will be assigned to the Division of Management~~[and Support]~~ Services to score essays daily.

Section 3. The General Assembly confirms Executive Order 97-1508, dated November 17, 1997, relating to reorganization of the Cabinet for Workforce Development, to the extent it is not otherwise confirmed or superseded by this Act.

SB 162, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. The General Assembly confirms Executive Order 96-697, dated May 31, 1996, which establishes within the Office of Legal Services of the Natural Resources and Environmental Protection Cabinet the Central Investigation Section, to the extent it is not otherwise confirmed by this Act.

SB 173, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:
  1. The Governor.
  2. Lieutenant Governor.
  3. Department of State.
    (a) Secretary of State.
    (b) Board of Elections.
    (c) Registry of Election Finance.
  4. Department of Law.
    (a) Attorney General.
  5. Department of the Treasury.
    (a) Treasurer.
  6. Department of Agriculture.
    (a) Commissioner of Agriculture.
    (b) Kentucky Council on Agriculture.
  7. Superintendent of Public Instruction.
  8. Auditor of Public Accounts.
  9. Railroad Commission.

II. Program cabinets headed by appointed officers:
  1. Justice Cabinet:
    (a) Department of State Police.
    (b) Department of Criminal Justice Training.
    (c) Department of Corrections.
    (d) Department of Juvenile Justice.
    (e) Office of the Secretary.
    (f) Offices of the Deputy Secretaries.
    (g) Office of General Counsel.

(h) ***Division of Kentucky State Medical Examiners Office***~~[Medical Examiner Program]~~.

(i) Parole Board.

(j) Kentucky State Corrections Commission.

(k) Commission on Correction and Community Service.

2. Education, Arts, and Humanities Cabinet:

(a) Department of Education.

(1) Kentucky Board of Education.

(2) Education Professional Standards Board.

(b) Department for Libraries and Archives.

(c) Kentucky Arts Council.

(d) Kentucky Educational Television.

(e) Kentucky Historical Society.

(f) Kentucky Teachers' Retirement System Board of Trustees.

(g) Kentucky Center for the Arts.

(h) Kentucky Craft Marketing Program.

(i) Kentucky Commission on the Deaf and Hard of Hearing.

(j) Governor's Scholars Program.

(k) Governor's School for the Arts.

(l) Office of Development.

(m) Kentucky Heritage Council.

(n) Kentucky African-American Heritage Commission.

3. Natural Resources and Environmental Protection Cabinet:

(a) Environmental Quality Commission.

(b) Kentucky Nature Preserves Commission.

(c) Department for Environmental Protection.

(d) Department for Natural Resources.

(e) Department for Surface Mining Reclamation and Enforcement.

(f) Office of Legal Services.

(g) Office of Communications and Community Affairs.

4. Transportation Cabinet:

(a) Department of Highways.

(b) Department of Vehicle Regulation.

(c) Department of Administrative Services.

(d) Department of Fiscal Management.

(e) Department of Rural and Municipal Aid.

(f) Office of Aeronautics.

(g) Office of General Counsel.

(h) Office of Public Relations.

(i) Office of Personnel Management.

(j) Office of Minority Affairs.

(k) Office of Environmental Affairs.

5. Cabinet for Economic Development:

(a) Department of Administration and Support.

(b) Department of Job Development.

(c) Department of Financial Incentives.

(d) Department of Community Development.

(e) Tobacco Research Board.

(f) Kentucky Economic Development Finance Authority.

6. Public Protection and Regulation Cabinet:
    (a) Public Service Commission.
    (b) Department of Insurance.
    (c) Department of Housing, Buildings and Construction.
    (d) Department of Financial Institutions.
    (e) Department of Mines and Minerals.
    (f) Department of Public Advocacy.
    (g) Department of Alcoholic Beverage Control.
    (h) Kentucky Racing Commission.
    (i) Board of Claims.
    (j) Crime Victims Compensation Board.
    (k) Kentucky Board of Tax Appeals.
    (l) Backside Improvement Commission.
7. Cabinet for Human Resources:
    (a) Department for Health Services.
    (b) Department for Social Insurance.
    (c) Department for Social Services.
    (d) Department for Medicaid Services.
    (e) Department for Mental Health and Mental Retardation Services.
    (f) Commission for Children with Special Health Care Needs.
    (g) Public Assistance Appeals Board.
    (h) Office of Administrative Services.
    (i) Office of Communications.
    (j) Office of General Counsel.
    (k) Office of Inspector General.
    (l) Office of Policy and Budget.
    (m) Office of the Ombudsman.
8. Finance and Administration Cabinet:
    (a) Office of Legal and Legislative Services.
    (b) Office of Management and Budget.
    (c) Office of Financial Management and Economic Analysis.
    (d) Office of the Controller.
    (e) Department for Administration.
    (f) Department of Facilities Management.
    (g) Department of Information Systems.
    (h) State Property and Buildings Commission.
    (i) Kentucky Pollution Abatement Authority.
    (j) Kentucky Savings Bond Authority.
    (k) Deferred Compensation Systems.
    (l) Office of Equal Employment Opportunity Contract Compliance.
    (m) Capital Plaza Authority.
    (n) County Officials Compensation Board.
    (o) Kentucky Employees Retirement Systems.
    (p) Commonwealth Credit Union.
    (q) State Investment Commission.
    (r) Kentucky Housing Corporation.

(s) Governmental Services Center.
(t) Kentucky Local Correctional Facilities Construction Authority.
(u) Kentucky Turnpike Authority.
(v) Historic Properties Advisory Commission.

9. Labor Cabinet:
(a) Department of Workplace Standards.
(b) Department of Workers' Claims.
(c) Kentucky Labor-Management Advisory Council.
(d) Occupational Safety and Health Standards Board.
(e) Prevailing Wage Review Board.
(f) Workers' Compensation Board.
(g) Kentucky Employees Insurance Association.
(h) Apprenticeship and Training Council.
(i) State Labor Relations Board.
(j) Kentucky Occupational Safety and Health Review Commission.
(k) Office of Administrative Services.
(l) Office of Labor Management Relations.
(m) Office of General Counsel.
(n) Workers' Compensation Funding Commission.
(o) Employers Mutual Insurance Authority.

10. Revenue Cabinet:
(a) Department of Property Taxation.
(b) Department of Compliance and Taxpayer Assistance.
(c) Department of Administrative Services.
(d) Office of General Counsel.

11. Tourism Cabinet:
(a) Department of Travel Development.
(b) Department of Parks.
(c) Department of Fish and Wildlife Resources.
(d) Kentucky Horse Park Commission.
(e) State Fair Board.
(f) Office of Administrative Services.
(g) Office of Film Promotion.
(h) Office of General Counsel.

12. Cabinet for Workforce Development:
(a) Department for Adult Education and Literacy.
(b) Department for Technical Education.
(c) Department of Vocational Rehabilitation.
(d) Department for the Blind.
(e) Department for Employment Services.
(f) State Board for Adult and Technical Education.
(g) Governor's Council on Vocational Education.
(h) The State Board for Proprietary Education.
(i) The Foundation for Adult Education.
(j) The Kentucky Job Training Coordinating Council.
(k) Office of General Counsel.
(l) Office of Communication Services.

(m) Office of Development and Industry Relations.
(n) Office of Workforce Analysis and Research.
(o) Office for Administrative Services.
(p) Office for Policy, Budget, and Personnel.
(q) Unemployment Insurance Commission.

III. Other departments headed by appointed officers:
1. Department of Military Affairs.
2. Department of Personnel.
3. Council on Postsecondary Education.
  (a) Kentucky Community Service Commission.
4. Department of Local Government.
5. Kentucky Commission on Human Rights.
6. Kentucky Commission on Women.
7. Department of Veterans' Affairs.
8. Kentucky Commission on Military Affairs.

Section 2. KRS 15A.030 is amended to read as follows:

The Justice Cabinet, in addition to the departments set forth in KRS 15A.020, shall consist of the following organizational units which are hereby created or reestablished:

(1) Office of secretary of justice comprised of the secretary of justice, the Commission on Correction and Community Service, the Kentucky State Corrections Commission, and the Kentucky Crime Commission. The Parole Board shall be attached to the Office of the Secretary for administrative purposes only.

(2) Offices of deputy secretaries of justice.

(3) Office of the general counsel.

(4) ***Division of Kentucky State Medical Examiners Office***~~[Medical examiner service program]~~.

Section 3. KRS 64.185 is amended to read as follows:

(1) Coroners shall receive out of the county or urban-county treasury, whichever is appropriate, the monthly compensation the fiscal court of each county shall fix, subject to the following minimums:

	County Population	Monthly Minimum Compensation
(a)	10,000 or less	$ 200
(b)	10,001 to 20,000	300
(c)	20,001 to 40,000	350
(d)	40,001 to 60,000	400
(e)	60,001 to 100,000	450
(f)	100,001 to 150,000	800
(g)	150,001 or more	1,000

Coroners who hold a current certificate of continuing education, issued jointly by the Department of Criminal Justice Training, Justice Cabinet, and the ***Division of Kentucky State Medical Examiners Office***~~[Medical Examiner Program]~~, Justice Cabinet, shall be paid the following minimum monthly compensation set forth in this subsection in recognition of the training:

	County Population	Monthly Minimum Compensation
(a)	10,000 or less	$ 300
(b)	10,001 to 20,000	400
(c)	20,001 to 40,000	550
(d)	40,001 to 60,000	650
(e)	60,001 to 100,000	750
(f)	100,001 to 150,000	1,000
(g)	150,001 or more	1,200

(2) Deputy coroners, who hold a current certificate of continuing education, as described in subsection (1) of this section, shall receive out of the county or urban-county treasury, whichever is appropriate, the monthly compensation the fiscal court of each county shall fix, subject to the following minimums:

	County Population	Monthly Minimum Compensation
(a)	10,000 or less	$100
(b)	10,001 to 20,000	150
(c)	20,001 to 40,000	175
(d)	40,001 to 60,000	200
(e)	60,001 to 100,000	300
(f)	100,001 to 150,000	800
(g)	150,001 or more	1,000

(3) The initial course of continuing education required under subsection (1) of this section shall consist of a basic training course prescribed by the Justice Cabinet. Annually thereafter the coroner shall attend and successfully complete at least eighteen (18) hours of approved training in order to be compensated in accordance with subsection (1) of this section.

(4) If a deputy coroner assumes the office of coroner after receiving the training stipulated in this section, the deputy coroner shall be compensated in accordance with the compensation schedule set forth in subsection (1) of this section.

(5) The number of deputy coroners in a county shall not exceed one (1) for each twenty-five thousand (25,000) inhabitants, or fraction thereof, according to the most recent federal census, but every coroner may, subject to fiscal court approval, appoint two (2) deputy coroners, regardless of population.

Section 4. KRS 72.210 is amended to read as follows:

In enacting legislation establishing a ***Division of Kentucky State Medical Examiners Office***[~~medical examiner service program~~] for the Commonwealth of Kentucky***,*** it is not the intention of the General Assembly to abolish or interfere with the coroner in his role as a constitutionally elected peace officer. It is the intention of the General Assembly for the ***office***[~~medical examiner service program~~] to aid, assist***,*** and complement the coroner in the performance of his duties by providing medical assistance to him in determining causes of death.

Section 5. KRS 72.240 is amended to read as follows:

(1) The Justice Cabinet may employ a board certified forensic pathologist as the chief medical examiner who shall administer the ***Division of Kentucky State Medical Examiners Office***[~~medical examiner program~~] and one (1) associate chief medical examiner for the Commonwealth. The chief medical examiner and the associate chief medical examiner shall be affiliated with the state medical schools.

(2) The Justice Cabinet may employ physicians licensed to practice medicine in Kentucky as county or district medical examiners to carry out the provisions of KRS 72.210 to 72.275 within the counties or district to which they are assigned by the medical examiner section. The cabinet may designate county or district health officers as county or district medical examiners and may authorize additional compensation therefor.

Section 6. KRS 72.400 is amended to read as follows:

In enacting legislation relating to coroners, the General Assembly recognizes that the coroner is an elected constitutional peace officer. The General Assembly also recognizes that the ascertainment of the cause and manner of death in cases in which the coroner has jurisdiction is an essential governmental service. It is the intent of KRS 72.410 to 72.470 to encourage the coroner to participate in approved training sessions to improve his skills for the Commonwealth and to cooperate with the ***Division of Kentucky State Medical Examiners Office***[~~state medical examiner program~~] administered by the Justice Cabinet.

Section 7. KRS 72.410 is amended to read as follows:

(1) The coroner of each county shall investigate the cause and manner of all deaths that are defined by KRS 72.405 as a coroner's case.

(2) The coroner may, in his sound discretion, when investigating a coroner's case, request the assistance of the district medical examiner and the ***Division of Kentucky State Medical Examiners Office***[~~State Medical Examiner Program~~], order an autopsy, and hold an inquest.

(3) (a) Upon notification of the death of a child under the age of eighteen (18) years which meets the criteria for a coroner's case as defined in KRS 72.405 and 72.025, the coroner shall as soon as practicable contact the local office of the Department for Social Services, law enforcement agencies with local jurisdiction, and the local health department to determine the existence of relevant information concerning the case.

(b) Any agency of the state or any other agency, institution, or facility providing services to the child or the child's family, shall provide to the coroner upon his request the cooperation, assistance, and information to enable the coroner to comply with the provisions of this chapter. This section shall not be deemed to abrogate the attorney-client nor the clergy-penitent privilege or the confidentiality of records provided by KRS 311.377(2). If other privileged or confidential records are disclosed to the coroner pursuant to this section, the records shall remain confidential or privileged and shall not be disclosed except as authorized by this section, to the state or local child fatality response team, or as otherwise required by law.

Section 8. KRS 72.460 is amended to read as follows:

The cost of autopsies shall be paid for by the fiscal court; provided, however, that the Justice Cabinet, ***Division of Kentucky State Medical Examiners Office***~~[Medical Examiner Program]~~, may contract with pathologists and toxicologists and chemists and pay for such autopsies within the budgetary limitations of funds appropriated by the General Assembly for this purpose.

Section 9. The General Assembly hereby confirms Executive Order 96-941, dated July 15, 1996, which abolishes the Medical Examiner Program and creates in its place the Division of Kentucky State Medical Examiners Office, which will be headed by an executive director appointed by the Secretary of the Justice Cabinet with prior written approval of the Governor pursuant to KRS 12.050, to the extent that the Executive Order is not otherwise confirmed by this Act.

SB 174, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
    - (a) Secretary of State.
    - (b) Board of Elections.
    - (c) Registry of Election Finance.
4. Department of Law.
    - (a) Attorney General.
5. Department of the Treasury.
    - (a) Treasurer.
6. Department of Agriculture.
    - (a) Commissioner of Agriculture.
    - (b) Kentucky Council on Agriculture.
7. Superintendent of Public Instruction.
8. Auditor of Public Accounts.
9. Railroad Commission.

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
    - (a) Department of State Police.
    - (b) Department of Criminal Justice Training.
    - (c) Department of Corrections.
    - (d) Department of Juvenile Justice.
    - (e) Office of the Secretary.
    - (f) Offices of the Deputy Secretaries.

(g) Office of General Counsel.
(h) Medical Examiner Program.
(i) Parole Board.
(j) Kentucky State Corrections Commission.
(k) Commission on Correction and Community Service.

2. Education, Arts, and Humanities Cabinet:
(a) Department of Education.
  (1) Kentucky Board of Education.
  (2) Education Professional Standards Board.
(b). Department for Libraries and Archives.
(c) Kentucky Arts Council.
(d) Kentucky Educational Television.
(e) Kentucky Historical Society.
(f) Kentucky Teachers' Retirement System Board of Trustees.
(g) Kentucky Center for the Arts.
(h) Kentucky Craft Marketing Program.
(i) Kentucky Commission on the Deaf and Hard of Hearing.
(j) Governor's Scholars Program.
(k) Governor's School for the Arts.
(l) ***Operations and***[~~Office of~~] Development ***Office***.
(m) Kentucky Heritage Council.
(n) Kentucky African-American Heritage Commission.

3. Natural Resources and Environmental Protection Cabinet:
(a) Environmental Quality Commission.
(b) Kentucky Nature Preserves Commission.
(c) Department for Environmental Protection.
(d) Department for Natural Resources.
(e) Department for Surface Mining Reclamation and Enforcement.
(f) Office of Legal Services.
(g) Office of Communications and Community Affairs.

4. Transportation Cabinet:
(a) Department of Highways.
(b) Department of Vehicle Regulation.
(c) Department of Administrative Services.
(d) Department of Fiscal Management.
(e) Department of Rural and Municipal Aid.
(f) Office of Aeronautics.
(g) Office of General Counsel.
(h) Office of Public Relations.
(i) Office of Personnel Management.
(j) Office of Minority Affairs.
(k) Office of Environmental Affairs.

5. Cabinet for Economic Development:
(a) Department of Administration and Support.
(b) Department of Job Development.
(c) Department of Financial Incentives.
(d) Department of Community Development.

  (e) Tobacco Research Board.
  (f) Kentucky Economic Development Finance Authority.

6. Public Protection and Regulation Cabinet:
  (a) Public Service Commission.
  (b) Department of Insurance.
  (c) Department of Housing, Buildings and Construction.
  (d) Department of Financial Institutions.
  (e) Department of Mines and Minerals.
  (f) Department of Public Advocacy.
  (g) Department of Alcoholic Beverage Control.
  (h) Kentucky Racing Commission.
  (i) Board of Claims.
  (j) Crime Victims Compensation Board.
  (k) Kentucky Board of Tax Appeals.
  (l) Backside Improvement Commission.
7. Cabinet for Human Resources:
  (a) Department for Health Services.
  (b) Department for Social Insurance.
  (c) Department for Social Services.
  (d) Department for Medicaid Services.
  (e) Department for Mental Health and Mental Retardation Services.
  (f) Commission for Children with Special Health Care Needs.
  (g) Public Assistance Appeals Board.
  (h) Office of Administrative Services.
  (i) Office of Communications.
  (j) Office of General Counsel.
  (k) Office of Inspector General.
  (l) Office of Policy and Budget.
  (m) Office of the Ombudsman.
8. Finance and Administration Cabinet:
  (a) Office of Legal and Legislative Services.
  (b) Office of Management and Budget.
  (c) Office of Financial Management and Economic Analysis.
  (d) Office of the Controller.
  (e) Department for Administration.
  (f) Department of Facilities Management.
  (g) Department of Information Systems.
  (h) State Property and Buildings Commission.
  (i) Kentucky Pollution Abatement Authority.
  (j) Kentucky Savings Bond Authority.
  (k) Deferred Compensation Systems.
  (l) Office of Equal Employment Opportunity Contract Compliance.
  (m) Capital Plaza Authority.
  (n) County Officials Compensation Board.
  (o) Kentucky Employees Retirement Systems.
  (p) Commonwealth Credit Union.
  (q) State Investment Commission.

(r) Kentucky Housing Corporation.
(s) Governmental Services Center.
(t) Kentucky Local Correctional Facilities Construction Authority.
(u) Kentucky Turnpike Authority.
(v) Historic Properties Advisory Commission.

9. Labor Cabinet:
(a) Department of Workplace Standards.
(b) Department of Workers' Claims.
(c) Kentucky Labor-Management Advisory Council.
(d) Occupational Safety and Health Standards Board.
(e) Prevailing Wage Review Board.
(f) Workers' Compensation Board.
(g) Kentucky Employees Insurance Association.
(h) Apprenticeship and Training Council.
(i) State Labor Relations Board.
(j) Kentucky Occupational Safety and Health Review Commission.
(k) Office of Administrative Services.
(l) Office of Labor Management Relations.
(m) Office of General Counsel.
(n) Workers' Compensation Funding Commission.
(o) Employers Mutual Insurance Authority.

10. Revenue Cabinet:
(a) Department of Property Taxation.
(b) Department of Compliance and Taxpayer Assistance.
(c) Department of Administrative Services.
(d) Office of General Counsel.

11. Tourism Cabinet:
(a) Department of Travel Development.
(b) Department of Parks.
(c) Department of Fish and Wildlife Resources.
(d) Kentucky Horse Park Commission.
(e) State Fair Board.
(f) Office of Administrative Services.
(g) Office of Film Promotion.
(h) Office of General Counsel.

12. Cabinet for Workforce Development:
(a) Department for Adult Education and Literacy.
(b) Department for Technical Education.
(c) Department of Vocational Rehabilitation.
(d) Department for the Blind.
(e) Department for Employment Services.
(f) State Board for Adult and Technical Education.
(g) Governor's Council on Vocational Education.
(h) The State Board for Proprietary Education.
(i) The Foundation for Adult Education.
(j) The Kentucky Job Training Coordinating Council.
(k) Office of General Counsel.

(l) Office of Communication Services.
(m) Office of Development and Industry Relations.
(n) Office of Workforce Analysis and Research.
(o) Office for Administrative Services.
(p) Office for Policy, Budget, and Personnel.
(q) Unemployment Insurance Commission.

III. Other departments headed by appointed officers:
1. Department of Military Affairs.
2. Department of Personnel.
3. Council on Postsecondary Education.
   (a) Kentucky Community Service Commission.
4. Department of Local Government.
5. Kentucky Commission on Human Rights.
6. Kentucky Commission on Women.
7. Department of Veterans' Affairs.
8. Kentucky Commission on Military Affairs.

Section 2. The General Assembly confirms Executive Order 96-940 of the Education, Arts and Humanities Cabinet, relating to the renaming of the Office of Development to the Operations and Development Office, to the extent it is not otherwise confirmed by this Act.

SB 175, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 146.560 is amended to read as follows:

(1) There is hereby established a Kentucky Heritage Land Conservation Fund Board, referred to hereafter as "the board", which shall administer the Kentucky Heritage Land Conservation Fund established in KRS 146.570 and shall review and approve all grants payable from the fund. The board shall consist of the following members:

(a) The commissioner of the Department of Parks or a designee;
(b) The director of the Kentucky Nature Preserves Commission or a designee;
(c) The commissioner of the Department for Natural Resources or a designee;
(d) The commissioner of the Department of Fish and Wildlife Resources or a designee;
(e) The chairperson of the ***Kentucky*** Environmental ***Education*** Council or a designee;
(f) One (1) person appointed by the Governor, from two (2) persons nominated by the Kentucky Chapter of the Nature Conservancy;
(g) One (1) person appointed by the Governor, from two (2) persons nominated by the League of Kentucky Sportsmen;
(h) Two (2) persons appointed by the Governor, from four (4) persons recognized for their expertise in natural resource issues and nominated by the Kentucky Academy of Sciences;
(i) One (1) person appointed by the Governor, from three (3) persons nominated, one (1) by the Kentucky Farm Bureau, one (1) by the Commissioner of the Department of Agriculture, and one (1) by the Kentucky Association of Conservation Districts;
(j) One (1) person appointed by the Governor, from three (3) persons nominated, one (1) by the Kentucky Audubon Council, one (1) by the Cumberland Chapter of the Sierra Club, and one (1) by the Kentucky Conservation Committee; and
(k) One (1) person appointed by the Governor with at least five (5) years of experience in natural resources land acquisition.

The board shall receive staff support from the Natural Resources and Environmental Protection Cabinet and the Department of Fish and Wildlife Resources. Of the seven (7) members identified in paragraphs (f) to (k) of this subsection and first appointed, two (2) shall continue in office for terms of one (1) year, two (2) for terms of two (2) years, and three (3) for terms of three (3) years, as the Governor designates. At the expiration of the original terms and for all succeeding terms, the Governor shall appoint a successor to the board for a term of three (3) years in each case. Members may be reappointed. A vacancy in an unexpired term shall be filled for the unexpired portion of the term in the same manner as the original appointment to that term. The Governor shall appoint a chairperson for the board.

(2) The board shall promulgate in accordance with the provisions of KRS Chapter 13A administrative regulations as are deemed necessary for application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. Grants shall be made in amounts, for purposes, and to the agencies identified in KRS 146.570 as meet the priorities for acquisition which are:

(a) Natural areas that possess unique features such as habitat for rare and endangered species;

(b) Areas important to migratory birds;

(c) Areas that perform important natural functions that are subject to alteration or loss; or

(d) Areas to be preserved in their natural state for public use, outdoor recreation and education.

The board shall promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A on acquisition based on these priorities and property costs seeking to maximize the greatest public benefit by taking advantage of those priority areas available below fair market value and where public or private funds are available on a matching basis. The board shall expend the whole or any part of the principal and interest as needed. KRS 146.550 to 146.570 shall not allow the use of condemnation powers and shall only allow acquisition of land from willing sellers.

Section 2. KRS 157.910 is amended to read as follows:

(1) There is hereby established ***the Kentucky***~~[an]~~ Environmental ***Education*** Council, referred to hereafter as the council, to provide leadership and planning for environmental education for the population of Kentucky through the cooperative efforts of educators, government agencies, businesses, and public interests. The council shall be an independent agency and be attached to the Education, Arts, and Humanities Cabinet for administrative purposes.

(2) The nine (9) member council shall be appointed to four (4) year terms by the Governor and be composed of a balance of education, government, industry, and environmental interests. Members appointed by the Governor shall have the authority to carry out the provisions of KRS 157.900 to 157.915.

(3) The council shall hire an executive director, environmental education specialists, and clerical staff to carry out the functions and duties of the council.

(4) The council members shall receive no compensation, but shall be reimbursed for actual expenses incurred in accordance with state procedures and policies.

(5) The council membership shall elect a chairperson to serve a one (1) year term.

Section 3. KRS 224.01-500 is amended to read as follows:

(1) The Kentucky Recycling Brokerage Authority, referred to in this section as the "authority," is created by this section to further local governments' efforts to develop reliable markets for their recyclables. The authority shall be composed of sixteen (16) members as follows:

(a) The secretaries of the Cabinets for Finance and Administration and Natural Resources and Environmental Protection, and the commissioner of the Department of Local Government; and

(c) Thirteen (13) members appointed by the Governor including representatives of municipal and county governments; legislators; citizens representing environmental interests; and industry representatives.

(2) These sixteen (16) persons and their successors in office shall constitute the Kentucky Recycling Brokerage Authority, a public corporation, with perpetual succession and with power in that name to contract and be contracted with, to convey property, to sue and be sued, and to exercise, in addition to the powers and functions conferred by this section, all of the usual powers of corporations not inconsistent with specifically enumerated powers. The Governor shall appoint from the membership a chairperson who shall serve at the pleasure of the Governor. The authority may at its discretion elect from its membership other officers of the board.

(3) The members of the authority shall receive no compensation for their services, but shall be entitled to reimbursement for all reasonable expenses necessarily incurred in connection with performance of their duties and function as members.

(4) Nine (9) members of the authority shall constitute a quorum for the transaction of business. The Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection shall provide staff services to the authority. The authority shall establish and maintain complete records of the authority's action and proceedings, which shall be public records open to inspection.

(5) On or before July 1, 1991, the Governor shall appoint thirteen (13) members of the authority as follows: five (5) shall serve terms ending July 1, 1995; four (4) shall serve terms ending July 1, 1994; and four (4) shall serve terms ending July 1, 1993. As the terms of each group of members expire, the Governor shall appoint successors for terms of four (4) years and until their successors are appointed.

(6) The Department for Environmental Protection shall assist the authority and act as the state broker for local governments and commercial recycling businesses seeking to sell recyclable materials. The department shall:

(a) Identify local, state, and interstate markets for recyclables;

(b) Issue requests for proposals as well as directly contact potential buyers;

(c) Negotiate contracts with potential buyers on behalf of participating local governments, commercial recycling businesses, or local groups;

(d) Arrange details of contracts including price collection schedules, reimbursements, and quality assurance provisions;

(e) Conduct workshops and seminars throughout the state to train recycling center and solid waste facility operators on how to prepare and process materials that will be marketed through the brokerage office;

(f) Issue routine market bulletins containing pricing information and other program details to all local governments and commercial recycling businesses, both those participating as well as nonparticipants; and

(g) Handle all paperwork for the brokering service including contracts, invoices, weigh slips, and records of collections and issue revenue checks to participants.

(7) Local governments and commercial recycling businesses participating in the Kentucky Recycling Brokerage Program shall be assessed a brokerage fee of fifteen percent (15%) of the sale revenue or two dollars ($2) per ton of recyclables sold, whichever is greater.

(8) In addition to any brokerage fees received, the Department for Environmental Protection may receive and accept from any governmental agency, nonprofit organization, or from private enterprise appropriations, grants, or contributions of money, property, labor, or other things of value, to be used to carry out the functions of the department or the authority.

(9) The authority shall annually issue financial and informational reports to the General Assembly which shall contain full descriptions of tonnage volumes handled, revenues generated, contracts entered into, market summaries and reviews, and other information under which a full review of the brokerage program is possible. The report shall be due on July 1 of each year.

(10) The authority shall also include in its July 1, 1993 annual report to the General Assembly the following:

(a) A description and analysis of the Commonwealth's existing recycling industry, the types, and estimated amounts of recovered material being separated or reprocessed;

(b) An analysis of the projected long-term capacity of existing markets to absorb materials generated by materials recovery or recycling programs;

(c) An analysis of potential markets in the Commonwealth, in other states, or in foreign countries for recovered material or products manufactured using recovered material from this Commonwealth;

(d) An analysis of institutional, economic, and technical barriers to the use of recovered material or products manufactured using recovered materials;

(e) Recommendations for actions which may be taken to increase demand for recovered materials or products;

(f) Recommendations for actions which may be taken to increase the incentives for private individuals and for business and industry to recover materials;

(g) Recommendations on categories of materials which should be recovered in this Commonwealth, given existing and potential markets for those materials;

(h) Recommendations for a public education program to be implemented by the Natural Resources and Environmental Protection Cabinet and the ***Kentucky*** Environmental ***Education*** Council to provide information to the public and to business and industry on the benefits of materials recovery and recycling and on the availability of those materials or products; and

(i) A review of state and local government procurement policies and recommendations for actions which might be taken to encourage waste reduction and recycling.

(11) In subsequent years the authority shall include in its annual report the following:

(a) Any revisions which the authority determines are necessary to its initial report;

(b) An analysis of changes that have occurred with markets for recovered material and products manufactured using recovered material since the last report; and

(c) Any other recommendations to facilitate the development of markets for recovered material and products manufactured using recovered material in this Commonwealth.

Section 4. KRS 224.10-250 is amended to read as follows:

The first one hundred fifty thousand dollars ($150,000) of civil penalties collected per fiscal year by the cabinet or the Attorney General on its behalf under the provisions of KRS 224.99-010 shall be paid to the State Treasury and credited to the ***Kentucky*** Environmental ***Education*** Council for the purposes set out in KRS 157.915. All additional civil penalties collected by the cabinet, or the Attorney General on its behalf, under the provisions of KRS 224.99-010 shall be paid into the State Treasury and credited to the Kentucky Heritage Land Conservation Fund established by KRS 146.570.

Section 5. KRS 224.10-620 is amended to read as follows:

The ***Kentucky*** Environmental ***Education*** Council, the Natural Resources and Environmental Protection Cabinet, and the Department of Education shall establish a program to educate the citizens of the Commonwealth of the importance of reducing and managing waste effectively, the need for individual action to reduce the amount and toxicity of solid waste being disposed, the need for alternative disposal methods to landfilling for toxic materials commonly used in or around households such as cleaners, solvents, pesticides, and automotive and paint products, and the necessity of implementing environmentally protective management and disposal mechanisms for the solid waste that is generated. In helping develop the educational programs, the Department of Education shall identify and adopt mechanisms to inform students throughout the Commonwealth of the importance of reducing and managing solid waste effectively.

Section 6. The General Assembly confirms Executive Order 96-918 dated July 15, 1996, to the extent it is not otherwise confirmed by the Act.

SB 176, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 42.013 is amended to read as follows:

(1) The office of the secretary of the Finance and Administration Cabinet shall include a deputy secretary who shall be appointed by the secretary with the approval of the Governor. The deputy secretary shall be responsible to and have such authority to sign for the secretary as the secretary designates in writing.

(2) The secretary may organize the office into such additional administrative units as he deems necessary to perform the functions and fulfill the duties of the cabinet, subject to the provisions of KRS Chapter 12. ***The Office of the Secretary shall include the Division of Information Resources and the Division of Internal Audit.***

(3) All appointments under this chapter to positions not in the classified service shall be made pursuant to KRS 12.050 and such appointees shall be major assistants to the secretary and shall assist in the development of policy.

Section 2. KRS 42.014 is amended to read as follows:

(1) There is established within the cabinet the Office of Legal and Legislative Services, the Office of Management and Budget, the Office of Financial Management and Economic Analysis, and the Office of the Controller, each of which offices shall be headed by an executive director, the Department for Administration[~~ which shall be headed by a commissioner~~],[~~ and~~] the Department for Facilities Management***, and the Department of Information Systems each of*** which shall be headed by a commissioner[~~, each of whom shall be responsible to the secretary and~~] appointed by the secretary, upon the approval of the Governor***, and responsible to the secretary***. Each of these departments may have at least one (1) major assistant not in the classified service.

(2) The secretary shall establish the internal organization and assignment of functions which are not established by statute, and shall divide the cabinet into the offices, bureaus, divisions, or other units the secretary deems necessary to perform the functions, powers, and duties of the cabinet, subject to the provisions of KRS Chapter 12.

Section 3. KRS 42.027 is amended to read as follows:

(1) The Department for Facilities Management established in the Finance and Administration Cabinet by KRS 42.014 shall be generally responsible for performance of the cabinet's functions and duties as outlined in KRS Chapters 45, 45A, and 56 with relation to the management and administration of the State Capital Construction Program, including without limitation to the generality thereof, the procurement of necessary consulting services related to capital construction and building renovation projects, construction services, and supervision of building construction projects, and for the maintenance and operation of the state government's[~~ telecommunications systems,~~] real property management functions[~~,~~] and physical plant management functions. The department shall be divided for administrative and operational purposes into a Division of Engineering, a Division of Contracting and Administration,[~~ a Division of Telecommunications,~~] a Division of Physical Plant, a Division of Real Property, and a Division of Historic Properties, each of which shall be headed by a director appointed by the secretary, subject to the approval of the Governor, and responsible to the commissioner. The commissioner shall provide for the distribution of the department's work among the divisions within the department.

(2) In conjunction with the responsibilities listed in subsection (1) of this section, the Department for Facilities Management shall have the following duties:

  (a) Establish policies to ensure efficient utilization of state property by:

    1. Requiring the development of guidelines which set forth space standards and criteria for determining the space needs of state agencies, and maintaining an inventory which tracks the agencies' compliance with those standards and criteria; and

    2. Requiring certification of compliance, or justification for exceptions, as a criterion for approval of additional space.

(b) Establish policies to ensure effective planning for state facilities by:

1. Developing a long-range plan for the Frankfort area, with priority on reducing dependency on leased space and encouraging the consolidation of agencies' central offices into single locations, and shared offices for agencies with similar functions; and

2. Developing long-range plans for housing state agencies in metropolitan areas, with priority on centralization of services and coordination of service delivery systems; and

3. Encouraging executive branch agencies to expand long-range planning efforts, consistent with the policies of the Capital Planning Advisory Board; and

4. Supporting long-range planning for a statewide information technology infrastructure to more efficiently deliver state government services.

(c) Establish priorities to allow least-cost financing of state facilities by:

1. Initiating policies which authorize the state to use innovative methods to lease, purchase, or construct necessary facilities; and

2. Requiring cost analysis to determine the most effective method of meeting space needs, with consideration for ongoing operations and initial acquisition.

(3) The Department for Facilities Management shall develop plans for the placement of computing and communications equipment in all facilities owned or leased by state government. As part of this planning process, the department shall:

(a) Provide adequate site preparation in all state-owned facilities, and require the same of those from whom the state leases space, as part of the lease agreement;

(b) Fund a minimum level of site preparation for computing and communications in each new state-owned facility; and

(c) As new office sites are developed, or existing ones undergo renovation, consider the placement of shareable high-cost, high-value facilities at strategic locations throughout the state. These facilities may include video teleconference centers, optical scanning and storage services, and gateways to high-speed communication networks.

Section 4. KRS 42.029 is amended to read as follows:

(1) There is established a department of state government to be known as the Department of Information Systems. The department shall be a part of the Finance and Administration Cabinet. The Department of Information Systems shall be headed by a commissioner, appointed by the secretary of the Finance and Administration Cabinet, with the approval of the Governor. The commissioner shall be responsible to the secretary.

(2) The secretary of the Finance and Administration Cabinet shall appoint, with the approval of the Governor, a deputy commissioner of the Department of Information Systems, pursuant to KRS 12.050. The commissioner of information systems, with the approval of the secretary of the Finance and Administration Cabinet, may appoint such principal assistants, pursuant to KRS 12.050, as may be necessary for the development and implementation of policy. The commissioner may employ, pursuant to the provisions of KRS Chapter 18A, such personnel as may be necessary to execute the functions and duties of the department.

(3) The Department of Information Systems shall provide leadership, policy direction, and technical support to all executive agencies of state government in the application of information technology. The department shall:

(a) Assure compatibility, portability, and connectivity of Kentucky's information systems; and

(b) Implement necessary management processes to assure full compliance with the Kentucky information resources architecture as adopted by the Kentucky Information Resources Management Commission.

(4) The Department of Information Systems shall include the following divisions, each of which shall be headed by a director appointed by the secretary with the approval of the Governor, pursuant to KRS 12.050:

(a) The Division of Network Services, which shall be responsible for network planning, network design, network management, systems administration, research and evaluation of desktop and departmental computer technologies, support for end user computing, and information dissemination;

(b) The Division of Computer Services, which shall be responsible for all computer operations, systems programming, technical support services, data storage, and database management services;

(c) The Division of Systems Development, which shall be responsible for providing comprehensive systems analysis, design, and development services, and applications consulting services to designated state agencies with primary responsibility for supporting economic development, education, human services, and public protection systems;

(d) The Division of Systems Engineering, which shall be responsible for providing comprehensive systems analysis, design, and development services and applications consulting services to designated state agencies with primary responsibility for supporting environmental, financial, labor, personnel, revenue, safety, justice, tourism, and transportation systems;~~[and]~~

(e) The Division of Support Services, which shall be responsible for planning and procurement assistance, fiscal administration, service coordination, application development standards, data security, disaster recovery planning, technical training, technical publications, and facilities support***; and***~~[.]~~

(f) ***The Division of Telecommunications, which shall be responsible for the maintenance and operation of the state government's telecommunications systems.***

(g) The secretary of the Finance and Administration Cabinet, in consultation with the commissioner of the Department of Information Systems, shall designate the state agencies to be provided services by the Division of Systems Development and the Division of Systems Engineering based on the complexity of the services to be provided and each division's work load.

(5) The Department of Information Systems may delegate authority to individual state agencies for the performance of departmental and desktop level functions if the commissioner finds the delegation to be in the best interest of the Commonwealth. All delegations of authority shall:

(a) Be in written form;

(b) Specify the level and scope of functions to be performed; and

(c) Provide notice to the agency receiving delegation of authority, that the delegated authority will be revoked if the commissioner finds that the functions being performed fail to adhere to prescribed criteria or if the commissioner finds that it is no longer in the best interest of the Commonwealth to continue the agency's delegation of authority. Nothing in this subsection shall apply to the data processing operations or personnel of the Kentucky Retirement Systems or the Kentucky Teachers' Retirement System.

(6) The Department of Information Systems may provide general consulting services, technical training, and support for generic software applications, upon request from a local government, if the commissioner finds that the requested services can be rendered within the established terms of the federally approved cost allocation plan.

(7) Nothing in this section shall be construed to alter or diminish the provisions of KRS 171.410 to 171.740 or the authority conveyed by these statutes to the Archives and Records Commission and the Department for Libraries and Archives.

(8) The department may promulgate necessary administrative regulations for the furtherance of this section.

Section 5. KRS 42.065 is amended to read as follows:

(1) A Division of Internal Audit is established in the Office of ***the Secretary***~~[Management and Budget]~~ within the Finance and Administration Cabinet.

(2) The Division of Internal Audit shall be headed by a director, appointed by the secretary of finance pursuant to KRS 12.050, and shall include other personnel employed pursuant to KRS Chapter 18A, as determined by the director of the division, with the approval of the secretary, to be necessary and desirable to carry out the division's functions.

(3) The division may, with the approval of the secretary of finance, conduct any internal audit, investigation, or management review in the Finance and Administration Cabinet related to the secretary's duties and responsibilities as chief financial officer of the Commonwealth pursuant to KRS 42.012.

(4) When it is necessary to complete an internal audit, investigation, or management review in the Finance and Administration Cabinet, with the written approval of the secretary of the Governor's Executive Cabinet, the division shall have access, during business hours, to all books, reports, papers, and accounts in the office or under the custody or control of any budget unit, or of any other program cabinet, department, or agency under the authority and direction of the Governor.

Section 6. The General Assembly hereby confirms Executive Order 96-886, dated July 9, 1996, relating to the reorganization of the Finance and Administration Cabinet, to the extent it is not otherwise confirmed by this Act.

SB 178, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:
  1. The Governor.
  2. Lieutenant Governor.
  3. Department of State.
    (a) Secretary of State.
    (b) Board of Elections.
    (c) Registry of Election Finance.
  4. Department of Law.
    (a) Attorney General.
  5. Department of the Treasury.
    (a) Treasurer.
  6. Department of Agriculture.
    (a) Commissioner of Agriculture.
    (b) Kentucky Council on Agriculture.
  7. Superintendent of Public Instruction.
  8. Auditor of Public Accounts.
  9. Railroad Commission.

II. Program cabinets headed by appointed officers:
  1. Justice Cabinet:
    (a) Department of State Police.
    (b) Department of Criminal Justice Training.
    (c) Department of Corrections.
    (d) Department of Juvenile Justice.
    (e) Office of the Secretary.
    (f) Offices of the Deputy Secretaries.
    (g) Office of General Counsel.
    (h) Medical Examiner Program.
    (i) Parole Board.
    (j) Kentucky State Corrections Commission.
    (k) Commission on Correction and Community Service.
  2. Education, Arts, and Humanities Cabinet:
    (a) Department of Education.
      (1) Kentucky Board of Education.
      (2) Education Professional Standards Board.
    (b) Department for Libraries and Archives.
    (c) Kentucky Arts Council.
    (d) Kentucky Educational Television.
    (e) Kentucky Historical Society.
    (f) Kentucky Teachers' Retirement System Board of Trustees.
    (g) Kentucky Center for the Arts.
    (h) Kentucky Craft Marketing Program.
    (i) Kentucky Commission on the Deaf and Hard of Hearing.
    (j) Governor's Scholars Program.
    (k) Governor's School for the Arts.
    (l) Office of Development.
    (m) Kentucky Heritage Council.
    (n) Kentucky African-American Heritage Commission.

3. Natural Resources and Environmental Protection Cabinet:
    (a) Environmental Quality Commission.
    (b) Kentucky Nature Preserves Commission.
    (c) Department for Environmental Protection.
    (d) Department for Natural Resources.
    (e) Department for Surface Mining Reclamation and Enforcement.
    (f) Office of Legal Services.
    (g) Office of Communications and Community Affairs.
4. Transportation Cabinet:
    (a) Department of Highways.
    (b) Department of Vehicle Regulation.
    (c) Department of Administrative Services.
    (d) Department of Fiscal Management.
    (e) Department of Rural and Municipal Aid.
    (f) Office of Aeronautics.
    (g) Office of General Counsel.
    (h) Office of Public Relations.
    (i) Office of Personnel Management.
    (j) Office of Minority Affairs.
    (k) Office of Environmental Affairs.
5. Cabinet for Economic Development:
    (a) Department of Administration and Support.
    (b) Department of Job Development.
    (c) Department of Financial Incentives.
    (d) Department of Community Development.
    (e) Tobacco Research Board.
    (f) Kentucky Economic Development Finance Authority.
6. Public Protection and Regulation Cabinet:
    (a) Public Service Commission.
    (b) Department of Insurance.
    (c) Department of Housing, Buildings and Construction.
    (d) Department of Financial Institutions.
    (e) Department of Mines and Minerals.
    (f) Department of Public Advocacy.
    (g) Department of Alcoholic Beverage Control.
    (h) Kentucky Racing Commission.
    (i) Board of Claims.
    (j) Crime Victims Compensation Board.
    (k) Kentucky Board of Tax Appeals.
    (l) Backside Improvement Commission.
7. Cabinet for Human Resources:
    (a) Department for Health Services.
    (b) Department for Social Insurance.
    (c) Department for Social Services.
    (d) Department for Medicaid Services.
    (e) Department for Mental Health and Mental Retardation Services.
    (f) Commission for Children with Special Health Care Needs.

(g) Public Assistance Appeals Board.
(h) Office of Administrative Services.
(i) Office of Communications.
(j) Office of General Counsel.
(k) Office of Inspector General.
(l) Office of Policy and Budget.
(m) Office of the Ombudsman.

8. Finance and Administration Cabinet:
(a) Office of Legal and Legislative Services.
(b) Office of Management and Budget.
(c) Office of Financial Management and Economic Analysis.
(d) Office of the Controller.
(e) Department for Administration.
(f) Department of Facilities Management.
(g) Department of Information Systems.
(h) State Property and Buildings Commission.
(i) Kentucky Pollution Abatement Authority.
(j) Kentucky Savings Bond Authority.
(k) Deferred Compensation Systems.
(l) Office of Equal Employment Opportunity Contract Compliance.
(m) Capital Plaza Authority.
(n) County Officials Compensation Board.
(o) Kentucky Employees Retirement Systems.
(p) Commonwealth Credit Union.
(q) State Investment Commission.
(r) Kentucky Housing Corporation.
(s) Governmental Services Center.
(t) Kentucky Local Correctional Facilities Construction Authority.
(u) Kentucky Turnpike Authority.
(v) Historic Properties Advisory Commission.

9. Labor Cabinet:
(a) Department of Workplace Standards.
(b) Department of Workers' Claims.
(c) Kentucky Labor-Management Advisory Council.
(d) Occupational Safety and Health Standards Board.
(e) Prevailing Wage Review Board.
(f) Workers' Compensation Board.
(g) Kentucky Employees Insurance Association.
(h) Apprenticeship and Training Council.
(i) State Labor Relations Board.
(j) Kentucky Occupational Safety and Health Review Commission.
(k) Office of Administrative Services.
(l) Office of Labor Management Relations.
(m) Office of General Counsel.
(n) Workers' Compensation Funding Commission.
(o) Employers Mutual Insurance Authority.

10. Revenue Cabinet:

(a) Department of Property Taxation.
(b) Department of Compliance and Taxpayer Assistance.
(c) Department of Administrative Services.
(d) Office of General Counsel.
11. Tourism Cabinet:
(a) Department of Travel Development.
(b) Department of Parks.
(c) Department of Fish and Wildlife Resources.
(d) Kentucky Horse Park Commission.
(e) State Fair Board.
(f) Office of Administrative Services.
(g) Office of Film Promotion.
(h) Office of General Counsel.
12. Cabinet for Workforce Development:
(a) Department for Adult Education and Literacy.
(b) Department for Technical Education.
(c) Department of Vocational Rehabilitation.
(d) Department for the Blind.
(e) Department for Employment Services.
(f) State Board for Adult and Technical Education.
(g) Governor's Council on Vocational Education.
(h) The State Board for Proprietary Education.
(i) The Foundation for Adult Education.
(j) The Kentucky Job Training Coordinating Council.
(k) Office of General Counsel.
(l) Office of Communication Services.
(m) Office of Development and Industry Relations.
(n) Office of Workforce Analysis and Research.
(o) Office for Administrative Services.
(p) Office for Policy, Budget, and Personnel.
(q) Unemployment Insurance Commission.
III. Other departments headed by appointed officers:
1. Department of Military Affairs.
2. Department of Personnel.
3. Council on Postsecondary Education.
(a) Kentucky Community Service Commission.
4. Department ***for***[~~of~~] Local Government.
5. Kentucky Commission on Human Rights.
6. Kentucky Commission on Women.
7. Department of Veterans' Affairs.
8. Kentucky Commission on Military Affairs.

Section 2. KRS 12.023 is amended to read as follows:

The following organizational units and administrative bodies shall be attached to the Office of the Governor:

(1) Council on Postsecondary Education;
(2) Department of Military Affairs;
(3) Department ***for***[~~of~~] Local Government;
(4) Kentucky Commission on Human Rights;

(5) Kentucky Commission on Women;

(6) Kentucky Commission on Military Affairs; and

(7) Coal Marketing and Export Council.

Section 3. KRS 15.755 is amended to read as follows:

(1) The compensation of each Commonwealth's attorney shall be paid out of the State Treasury.

(2) The compensation of the staff of each Commonwealth's attorney shall be paid out of the State Treasury.

(3) In each judicial circuit containing a city of the first or second class or an urban-county government, or a city of the third class and a population of sixty-eight thousand (68,000) or more, or which has a full-time Commonwealth attorney, the Commonwealth's attorney shall not engage in the private practice of law. The population of a judicial circuit shall, for the purpose of this statute, be determined by the most recent federal decennial census enumeration. All other Commonwealth's attorneys shall not be prohibited from engaging in the private practice of law.

(4) Each Commonwealth's attorney who is prohibited from engaging in the private practice of law shall receive as compensation for his services the sum of twenty-six thousand dollars ($26,000) per annum.

(5) Each Commonwealth's attorney who is not prohibited from engaging in the private practice of law shall receive as compensation for his services the sum of fourteen thousand three hundred dollars ($14,300) per annum.

(6) Each Commonwealth's attorney of the state shall be paid each month the sum of five hundred dollars ($500), which sum is declared to be the equivalent of the minimum sum that each Commonwealth's attorney will expend each month in the performance of his official duties directed to be performed for the Commonwealth. The aforementioned sum shall be paid out of the State Treasury.

(7) In order to equate the compensation of Commonwealth's attorneys with the purchasing power of the dollar, the Department ***for***[~~of~~] Local Government shall compute by the second Friday in February of every year the annual increase or decrease in the consumer price index of the preceding year by using 1949 as the base year in accordance with Section 246 of the Constitution of Kentucky which provides that the above elected officials shall be paid at a rate no greater than twelve thousand dollars ($12,000) per annum. The Department ***for***[~~of~~] Local Government shall notify the appropriate governing bodies charged by law to fix the compensation of the above elected officials of the annual rate of compensation to which the elected officials are entitled ***in accordance with***[~~pursuant to~~] the increase or decrease in the consumer price index. Upon notification from the Department ***for***[~~of~~] Local Government, the appropriate governing body may set the annual compensation of the above elected officials at a rate no greater than that stipulated by the Department ***for***[~~of~~] Local Government.

Section 4. KRS 15.765 is amended to read as follows:

(1) Each county attorney shall receive, for prosecutorial duties, an annual salary to be paid out of the State Treasury which shall be the total compensation as county attorney which he received during the calendar year 1976, but which in no event shall be less than twenty thousand dollars ($20,000). Except, however, the annual salary of each county attorney shall be equal to that of each Commonwealth's attorney who is not prohibited from the private practice of law as provided in KRS 15.755(5), effective January 1, 1990.

(2) Each county attorney shall be paid each month the sum of two hundred fifty dollars ($250), which sum is declared to be the equivalent of the minimum sum that each county attorney will expend each month in the performance of his official duties directed to be performed for the Commonwealth. The aforementioned sum shall be paid out of the State Treasury.

(3) In order to equate the compensation of county attorneys with the purchasing power of the dollar, the Department ***for***[~~of~~] Local Government shall compute by the second Friday in February of every year the annual increase or decrease in the consumer price index of the preceding year by using 1949 as the base year in accordance with Section 246 of the Constitution of Kentucky which provides that the above elected officials shall be paid at a rate no greater than twelve thousand dollars ($12,000) per annum. The Department ***for***[~~of~~] Local Government shall notify the appropriate governing bodies charged by law to fix the compensation of the above elected officials of the annual rate of compensation to which the elected officials are entitled pursuant to the increase or decrease in the consumer price index. Upon notification from the Department ***for***[~~of~~] Local Government, the appropriate governing body may set the annual compensation of the above elected officials at a rate no greater than that stipulated by the Department ***for***[~~of~~] Local Government.

(4) The county attorney shall not be prohibited from engaging in the private practice of law.

Section 5. KRS 39.407 is amended to read as follows:

In performing his duties under this chapter, the adjutant general, with approval of the Governor, is authorized and empowered:

(1) To prepare a comprehensive plan and program for the disaster and emergency response of this state, ***this***[~~such~~] plan and program to be integrated into and coordinated with the disaster and emergency response plans of the federal government and of other states to the fullest possible extent, and to coordinate the preparation of plans and programs by areawide organizations, metropolitan governments, counties, and cities of this state for disaster and emergency response, ***these***[~~such~~] plans to be integrated into and coordinated with the disaster and emergency response plan and program of

this state to the fullest possible extent;

(2) In accordance with ***the***[~~such~~] plan and program for the disaster and emergency response of this state, to ascertain the requirements of the state and of the counties and cities thereof for food or clothing or other necessities of life in the event of disaster or attack and to plan for and procure supplies, medicines, materials, and equipment, and to use and employ from time to time any of the property, services, and resources within the state, for the purposes set forth in this chapter; to institute training programs and public information programs, and to take all other preparatory steps, including the partial or full mobilization of disaster and emergency response organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces of disaster and emergency response personnel in time of need;

(3) To cooperate with the President of the United States, the chiefs of the Armed Forces, and the civil preparedness agency of the United States, and officers and agencies of other states in matters pertaining to the disaster and emergency response of the state and nation and the incidents thereof; and in connection therewith, to take any measures which he may deem proper to carry into effect any request of the President and the appropriate federal officers and agencies, for any action looking to civil preparedness, including the direction or control of blackouts and practice blackouts, mobilization of disaster and emergency response forces, and other tests and exercises, warnings and signals for drills or attacks and the mechanical devices to be used in connection therewith, the effective screening or extinguishing of all lights and lighting devices and appliances, the shutting off of water mains, gas mains, electric power connections, and the suspension of all other utility services, the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, prior, and subsequent to drills or attack, public meetings or gatherings and the evacuation and reception of the civilian population;

(4) To take[~~ such~~] action and give[~~ such~~] directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this chapter, and with the orders, rules, and regulations made ***in accordance with the plan***[~~pursuant thereto~~];

(5) To employ ***these***[~~such~~] measures and give[~~ such~~] directions to the secretary for human resources or the local boards of health as may be reasonably necessary for the purpose of securing compliance with the provisions of this chapter, or with the findings or recommendations of ***the***[~~such~~] secretary or boards of health by reason of conditions arising from disasters, emergency situations, enemy attack, or the threat thereof or otherwise;

(6) To utilize the services and facilities of existing officers and agencies of the state and of the political subdivisions thereof; and all ***these***[~~such~~] officers and agencies shall cooperate with and extend their services and facilities to the director as he may request;

(7) To establish agencies and offices and to appoint executive, technical, clerical, and other personnel as may be necessary to carry out the provisions of this chapter;

(8) To delegate any authority vested in him under this chapter, and to provide for the subdelegation of any such authority;

(9) On behalf of this state, ***in accordance with***[~~pursuant to~~] executive order of the Governor or act of the General Assembly, to enter into reciprocal aid agreements or compacts with other states and the federal government, either on a statewide basis or local county or city basis or with a neighboring state or province of a foreign country. Such mutual aid agreements shall be limited to the furnishing or exchange of food, clothing, medicine, and other supplies, engineering services, emergency housing, police services, national or state guards while under the control of the state, health, medical, and related services, firefighting, rescue, transportation, and construction services and equipment, personnel necessary to provide or conduct these services, and[~~ such~~] other supplies, equipment, facilities, personnel, and services as may be needed, the reimbursement of costs and expenses for equipment, supplies, personnel, and similar items for mobile support units, firefighting, and police units and health units, and on[~~ such~~] terms and conditions as are deemed necessary;

(10) To sponsor and develop mutual aid plans and agreements among the areawide organizations, metropolitan governments, counties, and cities of the state, similar to the mutual aid arrangements with other states referred to above;

(11) To recommend to the state planning committee the allocation of[~~ such~~] funds as may be necessary to the Department ***for***[~~of~~] Local Government to be distributed to the area development districts for the development of emergency response plans and programs for the local governments and the area served by the area development districts, or a functional committee thereof.

Section 6. KRS 42.200 is amended to read as follows:

(1) The "Water Project Interest Rate Buy Down Fund" is hereby created as a special fund in the State Treasury. The fund may receive state appropriations, gifts, grants, and federal funds and shall include earnings from investments of moneys in the fund. Any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year, and moneys in this fund shall be continuously appropriated only for the purposes specified in this section.

(2) The fund shall be used to provide financial assistance to government agencies for the construction of publicly-owned water supply projects located in rural areas of the Commonwealth. In order to qualify for the financial assistance, the governmental agency shall obtain a loan from a bank or combined bank and trust company organized under the laws of this Commonwealth and at an interest rate no greater than two (2) percentage points higher than the current prime rate.

The financial assistance provided shall consist of an annual grant to the governmental agency to be made over the life of the loan obtained by the governmental agency for the construction of the publicly-owned water supply project. The amount of the annual grant shall be calculated over the life of the loan to provide to the governmental agency each year the portion of the interest on the loan calculated at a four percent (4%) interest rate. The governmental agency shall be responsible for the payment of the interest on the loan in excess of the four percent (4%) interest rate and for the payment of the principal on the loan.

(3) The Finance and Administration Cabinet shall administer the fund and may promulgate administrative regulations as necessary to implement the provisions of this section. The Department ***for***[~~of~~] Local Government shall advise government agencies of the fund and how to apply for moneys from the fund.

(4) The provisions of this section shall be known and may be cited as the Kentucky Rural Water Act.

Section 7. KRS 42.350 is amended to read as follows:

(1) The area development fund in the State Treasury shall be administered by the Department ***for***[~~of~~] Local Government. The fund may receive state appropriations, gifts, grants and federal funds and shall be disbursed by the State Treasurer upon the warrant of the commissioner of the Department ***for***[~~of~~] Local Government. Any unallotted or unencumbered balances in the fund shall be invested in United States government securities maturing not later than one (1) year from the date of investment and the income from ***the***[~~such~~] investments shall be prorated for expenditure for capital projects in area development districts according to the formula provided in KRS 42.370.

(2) Money in the fund shall be used only for capital projects which contribute to community or industrial development in the Commonwealth, KRS 48.300 and 48.500 notwithstanding. Capital projects eligible for financing out of the fund include and shall be limited to:

(a) The construction, reconstruction, renovation and maintenance of buildings and other improvements to real estate;

(b) The acquisition of real property and interests in real property;

(c) The purchase of major items of equipment;

(d) Industrial site development projects, including land reclamation, clearing, grading, draining, landscaping, and the construction of walkways and fences;

(e) The extension and installation of water, gas, sewer, and electrical utilities lines to public facilities and industrial sites;

(f) The provision of solid waste management or disposal systems bringing counties into compliance with state or federal law. All expenses incurred in connection with or incidental to the construction or acquisition of a capital project under this section, including architectural, engineering, legal, and other expenses required for ***the***[~~such~~] projects may be paid out of the fund. Money in the fund may be used to retire a mortgage or other indebtedness encumbering an eligible capital project made within the preceding five (5) calendar years to secure the repayment of moneys loaned or advanced to finance the construction or acquisition of ***the***[~~such~~] project, and may be used in match or in combination with funds obtained from other sources for an eligible capital project. No money shall be expended out of the fund, directly or indirectly, to pay or reimburse the cost of any feasibility study, master plan for any capital improvement development or redevelopment project, the purchase of consumable supplies or any administrative salary, or other operating or capital expense of any area development district, or for the acquisition, construction, reconstruction, renovation or maintenance of any building or property of schools, state institutions of higher learning, or any road, street, bridge or highway.

(3) The board of directors of each area development district shall determine from among the capital project proposals submitted by eligible beneficiary agencies, the capital projects to be proposed to be constructed or acquired out of the fund. The area development districts shall submit to the commissioner of the Department of Local Government the capital projects selected for construction or acquisition within the districts. Each project proposal shall include: a detailed description of the project; a statement of the public benefit to be derived from the project; if available, design plans and specifications for the project; an itemized estimate of the cost of the project; a statement of the sources and amounts of funds available from any other source for the construction or acquisition of the project; and[~~ such~~] other information relating to the proposed capital project as the Department of Local Government may require.

Section 8. KRS 42.355 is amended to read as follows:

(1) The Department ***for***[~~of~~] Local Government shall examine each capital project selected by the area development districts, and when it finds that a proposed project conforms to the requirements of KRS 42.350 to 42.370; that the estimated costs of the project are reasonable; that the costs proposed to be paid from the fund are within the amount available; and that the proposed beneficiary agency will be reasonably able to finance the operation and maintain the capital project during its estimated useful life, the commissioner of the Department ***for***[~~of~~] Local Government shall approve it. If the Department ***for***[~~of~~] Local Government determines that a capital project proposal does not conform to the requirements of KRS 42.350 to 42.370, that the estimated costs of the project are excessive or unreasonable in light of the public benefit to be derived from the project, or the unencumbered balance in the fund available for expenditure in the area

development district is insufficient to pay the costs of the project, or the part thereof proposed to be paid out of the fund, or the beneficiary agency cannot reasonably finance the operation of or maintain the capital project during its estimated useful life, the project proposal shall be disapproved by the Department ***for***[~~of~~] Local Government. The final decision to either approve or disapprove any project proposal shall be made no later than forty-five (45) days following official submittal of a complete proposal by the area development district, and the area development district shall be accordingly notified at that time.

(2) The commissioner of the Department ***for***[~~of~~] Local Government may make direct grants in aid of money out of the fund to any beneficiary agency for the construction or acquisition of any approved capital project. When a direct grant in aid has been made to a beneficiary agency, all contracts awarded for the purchase of materials, supplies, equipment, or services, except professional and technical services, required for the construction or acquisition of the project shall be awarded to the lowest and best bidder in the discretion of the beneficiary agency after public advertisement as required by KRS Chapter 424 or other applicable law. All contracts awarded under this section for the construction, reconstruction, or renovation of a building or other improvement to real estate shall be deemed contracts for public works within the meaning of KRS 341.317 and KRS Chapter 376 and other applicable statutes. All beneficiary agencies receiving a direct grant in aid under this subsection shall keep and maintain complete and accurate records of accounts of all expenditures of the grant moneys which shall be subject to audit by the Commonwealth for a period of five (5) years after completion of the capital project. Beneficiary agencies shall complete approved capital projects within a reasonable period of time as determined by the Department ***for***[~~of~~] Local Government. Upon completion of capital projects, beneficiary agencies shall submit project completion reports to the Department ***for***[~~of~~] Local Government as prescribed by the Department ***for***[~~of~~] Local Government and containing[~~ such~~] documents and information as may be necessary to determine compliance with KRS 42.350 to 42.360 and other applicable statutes and administrative regulations. Beneficiary agencies shall be liable to repay to the fund any granted funds for failure to submit full project completion reports within a reasonable period of time or for expenditure of granted funds in violation of statutes and regulations. No additional area development funds may be approved until compliance, except at the discretion of the commissioner of the department. Any grant moneys not required after all of the costs of the capital project have been paid by the beneficiary agency shall be promptly returned to the Commonwealth for reallocation for expenditure for other capital projects in the area development district to which ***the***[~~such~~] funds had been originally allocated.

(3) No capital project shall be constructed under KRS 42.350 to 42.370 except upon land to which (a) the Commonwealth, a political subdivision of the Commonwealth, or the beneficiary agency of the capital project has a good and marketable title, free of encumbrances, or (b) the beneficiary agency of the project has the right to the uninterrupted use, occupancy, and possession for a period longer than the estimated useful life of the capital project; provided nothing herein shall prohibit the construction or renovation of public buildings on land with an existing encumbrance to secure payment of funds obtained for the acquisition or improvement of said land. Each beneficiary agency shall execute and deliver to the Commonwealth its written assurances, which shall be binding on ***the***[~~such~~] agencies' successors and assigns, guaranteeing that during its estimated useful life, the capital project shall be operated and maintained for public purposes and pledging that no mortgage or other encumbrances shall be placed against any capital project wholly financed out of the fund, except industrial development projects, for the breach of which assurances the Commonwealth shall have right of entry to the capital project and the beneficiary agency, or its successors and assigns, shall forthwith convey the title to the capital project to the Commonwealth. Similar assurances shall be executed and delivered to the Commonwealth by the beneficiary agencies of capital projects financed in part out of the fund and in part from other sources, except that when[~~ such~~] additional funding is derived from the issuance and sale of revenue bonds or under other statutorily authorized financing methods, to secure the repayment of which funds a statutory mortgage lien is granted in favor of any person or group of persons, the capital project may be encumbered to the extent authorized or required by the law under which ***the***[~~such~~] financing method was undertaken; nor shall anything in this section prohibit the encumbrance of any real property located within an industrial park or constituting an industrial site, developed or improved as a capital project under KRS 42.350 and this section, by any person, firm, company, partnership, or corporation to which ***the***[~~such~~] property has been conveyed, to obtain financing for the construction upon ***the***[~~such~~] property of industrial and commercial buildings. The written assurances provided by beneficiary agencies under this section shall be lodged for recording and recorded in the office of the county clerk of the county in which the proposed project shall be located.

Section 9. KRS 42.360 is amended to read as follows:

The commissioner of the Department ***for***[~~of~~] Local Government shall promulgate[~~ such~~] rules and regulations governing submission and approval of proposed capital projects, the expenditure of moneys from the fund, and the designation of beneficiary agencies involved in capital projects as shall be appropriate to the implementation of KRS 42.350 and 42.355.

Section 10. KRS 42.455 is amended to read as follows:

(1) There is established within the Department ***for***[~~of~~] Local Government a Local Government Economic Assistance Program to consist of a system of grants to local governments to improve the environment for new industry and to improve the quality of life for the residents.

(2) Grants obtained under this program shall be used for priority expenditures. Thirty percent (30%) of all moneys in the

fund shall be spent on the coal haul road system as described in subsection (7) of this section. The remaining seventy percent (70%) of the fund shall be spent on priority categories limited to the following, but in no event shall grants obtained under this program be used for expenses related to administration of government:

(a) Public safety, including law enforcement, fire protection, ambulance service and other related services;
(b) Environmental protection, including sewage disposal, sanitation, solid waste, and other related programs;
(c) Public transportation, including mass transit systems, streets, and roads;
(d) Health;
(e) Recreation;
(f) Libraries and educational facilities;
(g) Social services for the poor, the elderly, and individuals with disabilities;
(h) Industrial and economic development;
(i) Vocational education;
(j) Workforce training; and
(k) Secondary wood industry development.

(3) The use of entitlement funds for repayment of debt as related to long-term bond issues is permissible as long as the revenue from the bond issues is expended on priority categories.

(4) Grants obtained under this program may be used as local portion to secure federal programs as long as program expenditures are in the priority category area. Interest earned on funds received by local units of government shall be considered available for use by the local unit of government in the priority expenditure categories.

(5) The Department ***for***[~~of~~] Local Government shall be responsible for the promulgation of rules and regulations necessary to implement the grants programs authorized by this section.

(6) The Department ***for***[~~of~~] Local Government shall assure that a public hearing is held on the expenditure of funds received under KRS 42.450 to 42.495. Advertisement of the public hearing shall be published at least once but may be published two (2) or more times, provided that one (1) publication occurs not less than seven (7) days nor more than twenty-one (21) days before the scheduled date of the public hearing. The department shall submit an annual report to the Governor indicating how the grants were used and an evaluation of the program's effectiveness in improving the economy of the units of government receiving assistance.

(7) On or before August 15, 1980, and each year thereafter, the Transportation Cabinet shall publish and furnish to the Department ***for***[~~of~~] Local Government a directory, including supporting maps and other documents, designating the official state coal road system in coal impact and coal producing counties which shall include all public highways, roads, and streets over which quantities of coal, sufficient to significantly affect the condition and state of repair of[~~ such~~] highways, roads, and streets, have been transported in the immediately preceding fiscal year. The cabinet shall further publish the total county mileage of the official state coal road system and the total ton/miles within each coal impact and coal producing county for said preceding fiscal year.

(8) Every person shipping or transporting coal, and every carrier for hire or common carrier hauling coal over the public highways, roads, and streets shall file with the Transportation Cabinet such information and at[~~ such~~] intervals as the department shall designate by regulation duly adopted for the purpose of identifying those highways, roads, and streets comprising the coal haul road system and the quantities of coal transported thereon, in order that the cabinet can accurately calculate total ton/miles within each coal impact and coal producing county.

(9) The Revenue Cabinet shall make available to the Transportation Cabinet coal severance and processing tax data for use in verifying and supplementing the information furnished under the provisions of subsection (8) of this section. The information shall be furnished in such a manner as to conceal the identity of individual taxpayers; if the data cannot be furnished without revealing the identity of individual taxpayers, it shall be withheld.

Section 11. KRS 42.4592 is amended to read as follows:

(1) Moneys remaining in the local government economic development fund following the transfer of moneys to the local government economic assistance fund provided for in KRS 42.4585 and following the transfer of moneys to the secondary wood products development fund provided for in KRS 42.4586 shall be allocated as follows:

(a) Thirty-three and one-third percent (33-1/3%) shall be allocated to each coal producing county on the basis of the ratio of total tax collected in the current and preceding four years on coal severed in each respective county to the total tax collected statewide in the current and four (4) preceding years.

(b) Thirty-three and one-third percent (33-1/3%) shall be allocated quarterly to each coal producing county on the basis of the following factors, which shall be computed for the current and four (4) preceding years, and which shall be equally weighted:

1. Percentage of employment in mining in relation to total employment in the respective county;

2. Percentage of earnings from mining in relation to total earnings in the respective county; and

3. Surplus labor rate.

(c) Thirty-three and one-third percent (33-1/3%) shall be reserved for expenditure for industrial development projects benefiting two or more coal producing counties. For purposes of this paragraph, "coal producing county" shall mean a county which has produced coal in the current or any one of the four (4) preceding years.

(2) (a) For purposes of paragraph (b) of subsection (1) of this section, "percentage of employment in mining" and "percentage of earnings from mining" shall be the percentages published for the latest available five (5) year period by the Bureau of Economic Analysis in the United States Department of Commerce; "surplus labor rate" shall be the rate published for the latest available five (5) year period by the Department of Employment Services in the Cabinet for Workforce Development, as provided in paragraph (b) of this subsection.

(b) 1. Each year the Department for Employment Services shall estimate surplus labor for each county and for the Commonwealth, and shall annually publish an estimate of the surplus labor rate for each county and the Commonwealth.

2. The estimate of surplus labor for each county and for the Commonwealth shall be made using the best practical method available at the time the estimates are made. In determining the method to be adopted, the Department of Employment Services may consult with knowledgeable individuals including, but not limited to, the Office of the United States Bureau of Labor Statistics, state and national researchers, state and local officials, and staff of the Legislative Research Commission. The description of the method used to estimate surplus labor shall be reported in each annual publication provided for in subparagraph 1. of this paragraph.

3. For purposes of this section, "surplus labor" means the total number of residents who can be classified as unemployed or as discouraged workers, and "surplus labor rate" means the percentage of the potential civilian labor force which is surplus labor.

(3) The funds allocated under the provisions of paragraphs (a) and (b) of subsection (1) of this section shall retain their identity with respect to the county to which they are attributable, and a separate accounting of available moneys within the fund shall be maintained for the respective counties. Accounting for funds allocated under the provisions of this section shall be by the Department ***for***[~~of~~] Local Government.

Section 12. KRS 42.4595 is amended to read as follows:

The Department ***for***[~~of~~] Local Government may promulgate administrative regulations to implement the provisions of KRS 42.4582, 42.4585, or 42.4592. The Cabinet for Economic Development or the Kentucky Economic Development Finance Authority may promulgate administrative regulations to implement the provisions of KRS 42.4588.

Section 13. KRS 42.460 is amended to read as follows:

Except as provided in subsection (4)(b) of KRS 91A.040, any assistance granted under KRS 42.450 to 42.495 shall include an agreement that an independent annual audit shall be conducted and that the audit report shall include a certification that the funds were expended for the purpose intended. A copy of the audit and certification of compliance shall be forwarded to the Department ***for***[~~of~~] Local Government, in the case of assistance granted from the local government economic assistance fund, or to the Cabinet for Economic Development and the Kentucky Economic Development Finance Authority, in the case of assistance granted from the local government economic development fund, within eighteen (18) months after the end of the fiscal year.

Section 14. KRS 42.480 is amended to read as follows:

(1) On or before July 1, 1992, and each year thereafter, the commissioner of the Department ***for***[~~of~~] Local Government[~~,~~] shall provide the Cabinet for Economic Development, the Kentucky Economic Development Finance Authority, and the legislative body of each local government eligible for funds under the provisions of KRS 42.450 to 42.495, an estimate of the funds that will be allocated to the local government for fiscal year 1992-93, and each year thereafter.

(2) On or before the fifteenth of the first month of a quarter, the commissioner of the Department ***for***[~~of~~] Local Government[~~,~~] shall cause to be remitted to the legislative bodies of the local governments eligible for funds from the local government economic assistance fund, the funds allocated to the respective local governments for the prior quarter; except that the remittance for the last quarter of a fiscal year shall be made after the close of the fiscal year accounting records, and shall be adjusted to provide the balance of the annual allocation due the local government.

Section 15. KRS 44.020 is amended to read as follows:

(1) Within three (3) working days after the first and fifteenth of each month, the sheriff, or any other public official with a claim payable from the State Treasury for duties performed in any court of the Court of Justice shall make out the claim and have it certified by the judge of the court as allowable for payment, and transmit the list to the Department ***for***[~~of~~] Local Government. The claim approved by the judge of the court shall serve as an order of allowance notwithstanding any statutory provision to the contrary. The Department of Local Government shall keep a separate record of all claims allowed in each county, noting the number and amount of each warrant issued for the payment of ***the***[~~such~~] claims.

(2) The order of any court authorized by law to approve and allow fee-bills, settlements, credits, charges, and other claims against the State Treasury shall not be treated as a judgment, or made conclusive against the state, but shall only be regarded as prima facie evidence of the correctness and legality of the fee-bill, settlement, credit, charge, or claim. The Department ***for***[~~of~~] Local Government, if it believes ***the***[~~such~~] fee-bill, settlement, credit, charge, or claim to be fraudulent, erroneous, or illegal, may, upon the advice of the Attorney General, refuse to pay and may contest the claim in the Franklin Circuit Court, which shall have exclusive jurisdiction of all actions against the Department ***for***[~~of~~] Local Government to compel the payment of claims against the State Treasury.

Section 16. KRS 45.031 is amended to read as follows:

(1) Any department, board, commission, agency, advisory council, interstate compact, corporate body, or instrumentality of the Commonwealth of Kentucky applying for federal funds, aids, loans, or grants shall file a summary notification of the intended application with the Department ***for***[~~of~~] Local Government in accordance with the existing A-95 procedures.

(2) When as a condition to receiving federal funds, the Commonwealth of Kentucky is required to match the federal funds, a statement shall be filed with the notice of intent or summary of the application stating:

(a) The amount and source of state funds needed for matching purposes;

(b) The length of time the matching funds shall be required;

(c) The growth of the program;

(d) How the program will be evaluated;

(e) What action will be necessary should the federal funds be canceled, curtailed, or restricted; and

(f) Any other financial and program management data required by the Finance and Administration Cabinet or by law.

(3) Any application for federal funds, aids, loans, or grants which will require state matching or replacement funds at the time of application or at any time in the future, must be approved by the secretary of the Finance and Administration Cabinet, the Legislative Research Commission, and the Chief Justice for their respective branches of government or their designated agents prior to its filing with the appropriate federal agency. Any application for federal funds, aids, loans, or grants which will require state matching or replacement funds at the time of application or at any time in the future, when funds have not been appropriated for that express purpose, must be approved by the General Assembly, if in session. When the General Assembly is not in session, the application shall be reported to and reviewed by the Interim Joint Committee on Appropriations and Revenue, as provided by subsection (4) of KRS 48.500.

(4) When any federal funds, aids, loans, or grants are received by any department, board, commission or agency of the Commonwealth of Kentucky, a report of the amount of funds received shall be filed with the Finance and Administration Cabinet; and this report shall specify the amount of funds which would reimburse an agency for indirect costs as provided for under OMB Circular A-87.

(5) The secretary of the Finance and Administration Cabinet may refuse to issue his warrant for the disbursement of any state or federal funds from the State Treasury as the result of any application which is not approved ***as provided by***[~~pursuant to~~] this section, or in regard to which the statement or reports required by this section were not filed.

(6) The secretary of the Finance and Administration Cabinet shall be responsible for the orderly administration of this section and for issuing the appropriate guidelines and regulations from each source of fund used.

Section 17. KRS 45A.050 is amended to read as follows:

(1) Except as provided in KRS 45A.800 to 45A.835 and KRS Chapters 175, 176, 177, and 180, all rights, powers, duties, and authority relating to the procurement of supplies, services, and construction, and the management, control, warehousing, sale, and disposal of supplies, services, and construction now vested in or exercised by any state agency under the several statutes relating thereto, are hereby transferred to the secretary of the Finance and Administration Cabinet as provided in this code, subject to the provisions of subsection (2) of this section.

(2) Unless otherwise ordered by the secretary of the Finance and Administration Cabinet, the acquisition of the following shall not be required through the Finance and Administration Cabinet:

(a) Works of art for museum and public display;

(b) Published books, maps, periodicals, and technical pamphlets; and

(c) Services of visiting speakers, professors, and performing artists.

(3) The Finance and Administration Cabinet shall include in all state agency price contracts for the purchase of materials or supplies a provision that, as approved by the secretary of the Finance and Administration Cabinet, any political subdivision, including cities of all classes, counties, school districts, or special districts, may participate in ***these***[~~such~~] contracts to the same extent as the Commonwealth. Any political subdivision may purchase materials and supplies ***in accordance with***[~~pursuant to~~] a contract for[~~ such~~] supplies and materials entered into by the Finance and Administration Cabinet for the Commonwealth, including those contracts negotiated by the cabinet with vendors who maintain a General Services Administration price agreement as provided in subsection (8) of KRS 45A.045. Political subdivisions of the

Commonwealth must comply with other provisions of the Kentucky Revised Statutes which require purchase by competitive bidding, before participating in the contract, unless the state contract has been let by competitive bidding, or the contract was negotiated as provided in subsection (8) of KRS 45A.045.

(4) The Finance and Administration Cabinet shall inform the Department ***for***[~~of~~] Local Government, which shall then inform the appropriate purchasing agent of each political subdivision interested in participating under this section, of all state agency contracts in effect between the Commonwealth and vendors.

(5) The secretary of the Finance and Administration Cabinet shall promulgate administrative regulations necessary for the implementation of this section and necessary to provide that the Commonwealth be reimbursed for any additional expenses incurred by the Commonwealth in allowing political subdivisions to participate in contracts with vendors.

(6) The Finance and Administration Cabinet shall comply with all provisions relating to the methods of purchasing in the Kentucky Revised Statutes. This section is not intended to repeal or otherwise affect any provision of the Kentucky Revised Statutes regarding purchasing methods of the Finance and Administration Cabinet.

Section 18. KRS 45A.310 is amended to read as follows:

(1) All payments received by a supplying public purchasing unit from any other public purchasing unit or foreign purchasing activity shall be available or appropriated to the supplying public purchasing unit to defray the cost of the services provided.

(2) Where the public purchasing unit or foreign purchasing activity administering a cooperative purchase complies with the requirements of this code, any public purchasing unit participating in such a purchase shall be deemed to have complied with this code.

(3) Where the public purchasing unit or foreign purchasing activity administering a cooperative purchase does not follow this code, then the purchasing officer of a state public purchasing unit must determine, in writing, that he has examined the procurement system of the public purchasing unit or foreign purchasing activity administering the purchase, and has found that the proposed method of purchase substantially meets the requirements of this code.

(4) The Department ***for***[~~of~~] Local Government shall collect information concerning the type, cost, quality, and quantity of commonly used supplies, services, or construction being procured or used by state public purchasing units. The Department ***for***[~~of~~] Local Government may also collect ***this***[~~such~~] information from local public purchasing units. The Department ***for***[~~of~~] Local Government may make available all such information to any public purchasing unit upon request.

(5) Nothing in KRS 45A.295 to 45A.320 shall be deemed to require a local public purchasing unit to comply with any other provision of KRS Chapter 45A.

Section 19. KRS 46.010 is amended to read as follows:

(1) The Department ***for***[~~of~~] Local Government shall prescribe and keep in operation a uniform system of accounting and reporting on the receipt, use and handling of all public funds, other than taxes, due and payable to the state from county, district and other local officers and agencies.

(2) The system so adopted shall require each county treasurer, and each county officer who receives or disburses state funds, to keep an accurate account of receipts and disbursements, showing a daily balance of receipts and disbursements.

(3) The system shall require all county officers handling state funds, other than taxes, to make an annual report to the Department ***for***[~~of~~] Local Government, showing receipts and disbursements, and to make[~~ such~~] other financial statements as the Department ***for***[~~of~~] Local Government requires.

(4) The Department ***for***[~~of~~] Local Government, subject to the approval of the Governor, may from time to time change the system, or any book, report, form or record provided for by the system, whenever in its opinion a change is necessary in order to conform to existing conditions.

Section 20. KRS 46.020 is amended to read as follows:

The Department ***for***[~~of~~] Local Government shall prepare, and shall cause to be printed and paid for in the same manner as other books, blanks, and records for counties and county officers, all books, blanks, and records necessary for the system of uniform accounting established under KRS 46.010. The department shall deliver to each county, district, or other local officer charged with the duty of collecting, disbursing or handling state funds[~~ such of~~] the books, blanks, and records as are necessary for that officer. Each county, district, or other local officer receiving ***the***[~~such~~] books, blanks, or records shall use them in the performance of his duties with reference to the handling and disbursing of state funds. Any of ***these***[~~such~~] books, blanks, or records used by state officers or employees shall be printed and paid for in the same manner as other state printing.

Section 21. KRS 46.990 is amended to read as follows:

(1) Any county or district officer authorized by law to make collections of funds for the state who fails or refuses to pay over to the state the funds so collected at the time he is required by law to report ***the***[~~such~~] collections to any state department shall be required to pay a penalty of ten percent (10%) on all funds not so paid.

(2) Any officer who fails or neglects to perform any duty required of him by subsection (1) of KRS 46.030 shall be fined not

less than fifty dollars ($50) nor more than one hundred dollars ($100) for each offense.

(3) Any officer who fails to use any book, blank or record required to be used under KRS 46.020, or who willfully refuses to make any report required by the Department ***for***[~~of~~] Local Government under the provisions of KRS 46.010 or 46.020, shall be subject to indictment in the Franklin Circuit Court, and upon conviction shall be fined not less than twenty-five dollars ($25) nor more than five hundred dollars ($500) for each offense.

Section 22. KRS 58.615 is amended to read as follows:

(1) The Department of Education shall promulgate administrative regulations ***in accordance with***[~~pursuant to~~] KRS Chapter 13A to establish procedures to be used by school districts for conducting and approving energy audits and cost-benefit analyses for energy conservation projects. To the extent practical, these procedures shall be compatible with those developed for local governments under subsection (2) of this section. The proposed regulations shall be filed with the Legislative Research Commission no later than September 1, 1996, and upon approval, the department shall distribute them to all school districts in the state.

(2) The Department ***for***[~~of~~] Local Government shall promulgate administrative regulations ***in accordance with***[~~pursuant to~~] KRS Chapter 13A to establish procedures to be used by cities, counties, urban-county governments, charter county governments, and special districts for conducting and approving energy audits and cost-benefit analyses for energy conservation projects. To the extent practical, these procedures shall be compatible with those developed for school districts under subsection (1) of this section. The proposed regulations shall be filed with the Legislative Research Commission no later than September 1, 1996, and upon approval, the department shall distribute them to the governmental agencies to which they apply.

Section 23. KRS 61.958 is amended to read as follows:

(1) There is hereby established a Geographic Information Advisory Council, ***referred to in this section and KRS 61.959 as***[~~hereinafter called~~] the "council," to the Kentucky Information Resources Management Commission to advise the Governor, the General Assembly, the Judicial Branch, and the Kentucky Information Resources Management Commission on issues as they relate to geographic information and geographic information systems.

(2) The council shall establish and adopt policies and procedures that assist state and local jurisdictions in developing, deploying, and leveraging geographic information resources and geographic information systems technology for the purpose of improving public administration.

(3) The council shall closely coordinate with users of geographic information systems to establish policies and procedures that insure the maximum use of geographic information by minimizing the redundancy of geographic information and geographic information resources.

(4) The Geographic Information Advisory Council shall consist of twenty-five (25) members and one (1) legislative liaison. The members shall be knowledgeable in the use and application of geographic information systems technology and shall have sufficient authority within their organizations to influence the implementation of council recommendations.

(a) The council shall consist of:

1. The secretary of the Transportation Cabinet or his designee;
2. The secretary of the Cabinet for Human Resources or his designee;
3. The director of the Kentucky Geological Survey or his designee;
4. The secretary of the Revenue Cabinet or his designee;
5. The commissioner of the Department of Information Systems or his designee;
6. The secretary of the Economic Development Cabinet or his designee;
7. The commissioner of the Department ***for***[~~of~~] Local Government or his designee;
8. The secretary of the Justice Cabinet or his designee;
9. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council on Postsecondary Education;
10. The adjutant general of the Department of Military Affairs or his designee;
11. The commissioner of the Department of Education or his designee;
12. The secretary of the Natural Resources and Environmental Protection Cabinet or his designee;
13. The commissioner of the Department of Agriculture or his designee;
14. The secretary of the Public Protection and Regulation Cabinet or his designee;
15. The secretary of the Tourism Cabinet or his designee;
16. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky League of Cities;
17. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of

the Kentucky Association of Counties;

18. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chapter of the American Planning Association;
19. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chamber of Commerce;
20. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Association of Land Surveyors;
21. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Society of Professional Engineers;
22. One (1) member appointed by the Governor from a list of three (3) persons submitted by the chairman of the Kentucky Board of Registered Geologists; and
23. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council of Area Development Districts.

(b) The council shall have one (1) nonvoting legislative liaison, to be appointed by the Legislative Research Commission.

(5) The council shall select from its membership a chairman and any other officers it considers essential. The council may have committees and subcommittees as determined by the council or an executive committee, if an executive committee exists.

(6) A member of the council shall not:

(a) Be an officer, employee, or paid consultant of a business entity that has, or of a trade association for business entities that has, a substantial interest in the geographic information industry and is doing business in the Commonwealth;

(b) Own, control, or have directly or indirectly, more than ten percent (10%) interest in a business entity that has a substantial interest in the geographic information industry;

(c) Be in any manner connected with any contract or bid for furnishing any governmental body of the Commonwealth with geographic information systems, the computers on which they are automated, or a service related to geographic information systems;

(d) Be a person required to register as a lobbyist because of activities for compensation on behalf of a business entity that has, or on behalf of a trade association of business entities that have substantial interest in the geographic information industry;

(e) Accept or receive money or another thing of value from an individual, firm, or corporation to whom a contract may be awarded, directly or indirectly, by rebate, gift, or otherwise; or

(f) Be liable to civil action or any action performed in good faith in the performance of duties as a council member.

(7) Those council members specified in subsection (4)(a) of this section who serve by virtue of an office shall serve on the council while they hold that office.

(8) Appointed members of the council shall serve for a term of four (4) years. Vacancies in the membership of the council shall be filled in the same manner as the original appointments. If a nominating organization changes its name, its successor organization having the same responsibilities and purposes shall be the nominating organization.

(9) The council shall have no funds of its own, and council members shall not receive compensation of any kind from the council.

(10) A majority of the members shall constitute a quorum for the transaction of business. Members' designees shall have voting privileges at council meetings.

Section 24. KRS 64.050 is amended to read as follows:

(1) When the term of any county clerk in counties of seventy-five thousand (75,000) population or over expires, or he dies or resigns, or is removed from office, he or his personal representative, trustee or committee, as the case may be, shall at once deliver to his successor in office all accounts, claims and fees due him in his official capacity. The successor shall have ***the***[~~such~~] fees, claims and accounts collected, or the Department ***for***[~~of~~] Local Government may, in its discretion, when said accounts, fees and claims are so delivered to the successor, appoint a person to collect them. If a collector is appointed, the successor shall at once, or when demanded by the collector, deliver to him all accounts, fees and claims uncollected. The successor or collector, as the case may be, shall, every sixty (60) days after receiving ***the***[~~such~~] accounts, fees and claims, report to the Department ***for***[~~of~~] Local Government, under oath, the amount collected thereon, and at the same time pay to the Department ***for***[~~of~~] Local Government the amount so collected, and shall continue to so report for three (3) years, unless the accounts, fees and claims are sooner collected.

(2) The Department ***for***[~~of~~] Local Government shall, upon each payment, draw a warrant on the State Treasurer in favor of

the person collecting, for an amount equal to twenty percent (20%) of the amount so paid in, which shall be the full compensation allowed for ***the***[~~such~~] collection.

(3) If the amount paid to any[~~ such~~] clerk during his term or incumbency was not sufficient to pay the salaries and office expenses of the clerk, the Department ***for***[~~of~~] Local Government shall, out of the money collected and paid in as provided in subsection (1) of this section, pay to the clerk, or to the person entitled to receive the same, an amount sufficient to supply the deficit due for salaries and expenses, not exceeding seventy-five percent (75%) of the amount of fees accrued during his official term and which have been collected and paid to the Department ***for***[~~of~~] Local Government.

Section 25. KRS 64.480 is amended to read as follows:

(1) Effective, with respect to the offices of Governor on December 11, 1979, and Lieutenant Governor on the fifth Tuesday following the regular November election in 1975, and with respect to the other offices named in this section on the first Monday in January, 1976, the compensation of the following named officers, payable monthly out of the State Treasury, shall be the sum per annum designated for the respective offices, as follows: Governor, forty-five thousand dollars ($45,000) until December 11, 1981, then fifty thousand dollars ($50,000) until December 13, 1983, and then sixty thousand dollars ($60,000) until January 1, 1985; Lieutenant Governor, twenty-seven thousand nine hundred dollars ($27,900) per annum, plus any compensation received while acting in the place of the Governor; Attorney General, Commissioner of Agriculture, Secretary of State, State Treasurer, Auditor of Public Accounts, and clerk of the Supreme Court of Kentucky elected in November, 1975, as clerk of the Court of Appeals, twenty-seven thousand nine hundred dollars ($27,900).

(2) In order to equate or adjust the compensation of the Lieutenant Governor, Attorney General, Commissioner of Agriculture, Secretary of State, State Treasurer, Auditor of Public Accounts, and clerk of the Supreme Court of Kentucky with the purchasing power of the 1949 dollar, the Department ***for***[~~of~~] Local Government of Kentucky shall compute by the second Friday in February of every year, beginning in 1977, the maximum permissible compensation of the officials mentioned in this subsection based precisely upon the consumer price index formula approved in Matthews v. Allen, Kentucky, 360 S.W.2d 139 (1962). Thus the maximum permissible compensation effective for the entire year of 1977 and subsequent years will be the actual compensation to be paid said officials. The year of adjustment will be the particular full calendar year involved.

(3) It is the intention of the Legislature that the constitutionally permissible adjustment of salaries of these officials be framed around equating current salaries with the purchasing power of the dollar in 1949 when Section 246 of the Constitution of Kentucky was amended. Section 246 of the Constitution of Kentucky, as amended, established a monetary level of twelve thousand dollars ($12,000) per annum for said officials. The formula merely effects an adjustment of the constitutional monetary level in terms of the current consumer price index.

(4) In order to adjust the compensation of the Governor to reflect changes in the purchasing power of the dollar, the Department ***for***[~~of~~] Local Government shall compute by the second Friday in February of every year, beginning in 1985, an adjusted salary of the Governor by multiplying sixty thousand dollars ($60,000) by the increase in the consumer price index during the period from January 1, 1984, to the beginning of the then-current calendar year. The actual compensation paid to the Governor for the entire calendar year of 1985 and subsequent years shall be the adjusted salary.

Section 26. KRS 64.527 is amended to read as follows:

In order to equate the compensation of county judges/executive, county clerks, sheriffs, jailers, justices of the peace, county commissioners, and coroners with the purchasing power of the dollar, the Department ***for***[~~of~~] Local Government shall compute by the second Friday in February of every year the annual increase or decrease in the consumer price index of the preceding year by using 1949 as the base year in accordance with Section 246 of the Constitution of Kentucky which provides that the above elected officials shall be paid at a rate no greater than seven thousand two hundred dollars ($7,200) per annum. The Department ***for***[~~of~~] Local Government shall notify the appropriate governing bodies charged by law to fix the compensation of the above elected officials of the annual rate of compensation to which the elected officials are entitled ***in accordance with***[~~pursuant to~~] the increase or decrease in the consumer price index. Upon notification from the Department ***for***[~~of~~] Local Government, the appropriate governing body may set the annual compensation of the above elected officials at a rate no greater than that stipulated by the Department ***for***[~~of~~] Local Government.

Section 27. KRS 64.770 is amended to read as follows:

(1) The County Officials' Compensation Board is hereby created and shall consist of the commissioner of the Department ***for***[~~of~~] Local Government, the state local finance officer, the president of each of the state associations of county clerks, county judges/executive, county attorneys, justices of the peace and commissioners, sheriffs, jailers, and coroners, three (3) members of the General Assembly appointed by the Governor from a list of possible appointees submitted to him by the Legislative Research Commission, and two (2) citizens of the Commonwealth appointed by the Governor. The legislative members shall be appointed for terms of two (2) years, unless their legislative term expires prior to the expiration of their term on the board, in which case a vacancy shall exist. Citizen members shall be appointed for terms of four (4) years. The terms of the members representing the state associations shall be identical to the term of their office as president of the state association. Vacancies shall be filled for the unexpired portion of any term in the same

manner as an original appointment.

(2) The commissioner of the Department ***for***[~~of~~] Local Government may, by written order filed with the chairman of the board, designate a deputy or other representative in his department to serve in his stead and to perform his duties as a member of the board in his absence. ***The***[~~Such~~] designation shall be deemed temporary and shall not affect the merit system or retirement rights of any person so designated. Other members may designate by proxy another person to serve in his stead. ***The***[~~Such~~] proxies shall clearly state the purpose and the length of time ***the***[~~such~~] proxies shall be in effect, but any[~~ such~~] proxy shall be subject to immediate termination by the person initially authorizing the proxy. All proxies shall be filed with the chairman or secretary of the board.

(3) No salary or other compensation shall be allowed any member of the board, but each member or person serving as a proxy may be reimbursed for actual and necessary expenses incurred in the performance of his official duties.

(4) The board shall select one (1) of its members as chairman and another member as vice chairman at its first regular meeting in each calendar year. The commissioner of the Department ***for***[~~of~~] Local Government or his designee shall be secretary of the board and the commissioner of the Department of Local Government shall be responsible for administering the clerical functions of the board.

(5) The board may hold meetings once every three (3) months. Special meetings may be called by the chairman or by five (5) members of the board by delivery of a written notice to the office or residence of each member of the board at least ten (10) days in advance of the date of any special meeting. Five (5) members of the board shall constitute a quorum at any meeting. The board shall establish bylaws for the conduct of its meetings and shall keep an accurate record of all its proceedings.

(6) The board may employ and compensate[~~ such~~] personnel and consultants as may be necessary to effectuate the provisions of KRS 64.780.

Section 28. KRS 64.990 is amended to read as follows:

(1) If any officer to whom KRS 64.050 applies, or his personal representative, trustee, or committee, as the case may be, collects any fees, accounts, or demands due him in his official capacity after the expiration of his term, or after he has resigned or died or vacated the office, or fails to deliver to his successor all the fees, claims, and accounts due to him in his official capacity, he, or his personal representative, committee, or trustee, as the case may be, shall be guilty of a Class B misdemeanor.

(2) If any successor or collector mentioned in subsection (1) of KRS 64.050 fails to make any report or pay the money collected to the Department ***for***[~~of~~] Local Government, as required by subsection (1) of KRS 64.050, he shall be guilty of a Class B misdemeanor. If he knowingly omits or fails to report a correct statement of all money received or collected, or knowingly makes or subscribes any false statement concerning the same, he shall be guilty of a Class D felony.

(3) If any deputy or personal representative issuing a fee bill ***in accordance with***[~~pursuant to~~] KRS 64.420 knowingly makes a wrong charge, or in any respect issues an illegal fee bill, he shall be subject to the same penalties as an officer issuing such a fee bill.

(4) Every fee bill containing one (1) illegal charge, or which, in any respect, is not according to what is required by law, shall be void for the whole amount.

(5) Any officer who splits up and divides his services so as to make two (2) charges, when the law intends but one (1) charge or fee for the whole service, or who knowingly makes an illegal charge, or issues an illegal fee bill, or collects or attempts to collect his fees twice for the same services, or by any indirection collects or attempts to collect more for his services than is allowed by law, shall be guilty of a Class B misdemeanor and his conviction shall be prima facie evidence of his guilt in a proceeding to remove him from office.

(6) Any official who violates the provisions of KRS 64.820 to 64.850 shall be guilty of a Class B misdemeanor.

Section 29. KRS 65.003 is amended to read as follows:

(1) The governing body of each city and county, including urban-counties and charter counties, shall adopt, by ordinance, a code of ethics which shall apply to all elected officials of the city or county, and to appointed officials and employees of the city or county government as specified in the code of ethics. The elected officials of a city or county to which a code of ethics shall apply include the mayor, county judge/executive, members of the governing body, county clerk, county attorney, sheriff, jailer, coroner, surveyor, and constable but do not include members of any school board. Candidates for the city and county elective offices specified in this subsection shall comply with the annual financial disclosure statement filing requirements contained in the code of ethics.

(2) Any city or county may enter into an agreement with one (1) or more other cities or counties, ***in accordance with***[~~pursuant to~~] the provisions of the Interlocal Cooperation Act, KRS 65.210 to 65.300, for joint adoption of a code of ethics which shall apply to all elected officials of the cities or counties, and to appointed officials and employees as specified by each of the cities or counties which enters into the agreement. Candidates for the city and county elective offices specified in this subsection shall comply with the annual financial disclosure statement filing requirements contained in the code of ethics.

(3) Each code of ethics adopted ***as provided by***[~~pursuant to~~] subsection (1) or (2) of this section, or amended ***as provided by***[~~pursuant to~~] subsection (4) of this section, shall include, but not be limited to, provisions which set forth:

(a) Standards of conduct for elected and appointed officials and employees;

(b) Requirements for creation of financial disclosure statements, which shall be filed annually by all candidates for the city and county elective offices specified in subsection (1) of this section, elected officials of each city and county government, and other officials or employees of the city or county government, as specified in the code of ethics, and which shall be filed with the person or group responsible for enforcement of the code of ethics;

(c) A policy on the employment of members of the families of officials or employees of the city or county government, as specified in the code of ethics;

(d) The designation of a person or group who shall be responsible for enforcement of the code of ethics, including maintenance of financial disclosure statements, all of which shall be available for public inspection, receipt of complaints alleging possible violations of the code of ethics, issuance of opinions in response to inquiries relating to the code of ethics, investigation of possible violations of the code of ethics, and imposition of penalties provided in the code of ethics.

(4) The code of ethics ordinance adopted by a city or county may be amended but shall not be repealed.

(5) (a) Within twenty-one (21) days of the adoption of the code of ethics required by this section, each city and county shall deliver a copy of the ordinance by which the code was adopted and proof of publication ***in accordance with***[~~pursuant to~~] KRS Chapter 424 to the Department ***for***[~~of~~] Local Government. The department shall maintain the ordinances as public records and shall maintain a list of city and county governments which have adopted a code of ethics and a list of those which have not adopted a code of ethics.

(b) Within twenty-one (21) days of the amendment of a code of ethics required by this section, each city or county shall deliver a copy of the ordinance by which the code was amended and proof of publication ***in accordance with***[~~pursuant to~~] KRS Chapter 424 to the Department ***for***[~~of~~] Local Government, which shall maintain the amendment with the ordinance by which the code was adopted.

(c) For ordinances adopting or amending a code of ethics under this section, cities of the first class shall comply with the publication requirements of KRS 83A.060(9), notwithstanding the exception contained in that statute.

(6) If a city or county government fails to comply with the requirements of this section, the Department ***for***[~~of~~] Local Government shall notify all state agencies, including area development districts, which deliver services or payments of money from the Commonwealth to the city or county government. Those agencies shall suspend delivery of all services or payments to the city or county government which fails to comply with the requirements of this section. The Department ***for***[~~of~~] Local Government shall immediately notify those same agencies when the city or county government is in compliance with the requirements of this section, and those agencies shall reinstate the delivery of services or payments to the city or county government.

Section 30. KRS 65.005 is amended to read as follows:

(1) (a) "Special district" means any agency, authority, or political subdivision of the state which exercises less than statewide jurisdiction and which is organized for the purpose of performing governmental or other prescribed functions within limited boundaries. It includes all political subdivisions of the state except a city, a county, or a school district.

(b) "Governing body" means the body possessing legislative authority in a city, county, or special district.

(2) No special district shall be legally created without sending notification of its existence in writing to the clerk of the county within the jurisdiction of which its principal office shall be located. This requirement for notification is in addition to all other provisions of existing law providing for the creation of special districts. The notification shall contain the names and addresses of the members of the governing body of the district, the name and address of its chief executive officer, a specific reference to the statute or statutes ***under***[~~pursuant to~~] which it was created, and a brief description of its service area and activities. The clerk shall record the original and forward a copy of the notification to the state local finance officer, Department ***for***[~~of~~] Local Government, and the state local debt officer, Office of the Controller, Finance and Administration Cabinet. The clerk shall be paid a fee of two dollars ($2) by the district for recording and mailing the notification.

(3) The governing body of any existing special district shall submit notification as required in subsection (2) of this section within thirty (30) days after June 16, 1966, and the governing body of a newly-created special district shall submit the required notification at or before its first meeting.

Section 31. KRS 65.070 is amended to read as follows:

(1) By the first day of May of each year, when the uniform financial information report is required by KRS 65.900 to 65.920 to be submitted to the Department ***for***[~~of~~] Local Government, a district shall:

(a) File with the county clerk of each county with territory in the district a certification showing any of the following information that has changed since the last filing by the district:

1. The name of the district;
2. A map or general description of its service area;
3. The statutory authority under which it was created; and
4. The names, addresses, and the date of expiration of the terms of office of the members of its governing body and chief executive officer;

(b) File a copy of the district budget, financial statement if prepared, and audit when performed, with the county judge/executive of each county with territory in the district; and

(c) Publish, in lieu of the provisions of KRS 424.220, but in compliance with other applicable provisions of KRS Chapter 424, the names and addresses of the members of its governing body and chief executive officer, and either a summary financial statement which includes the location of supporting documents, or the location of district financial records which may be examined by the public.

(2) The Department ***for***~~[of]~~ Local Government shall prepare and furnish to county clerks standard reporting forms which districts may use to comply with the provisions of this section.

(3) Any resident of the district may bring an action in the Circuit Court to enforce the provisions of this section. The Circuit Court shall hear the action and, on a finding that the governing body of the district has violated the provisions of this section, shall order the district to comply with its provisions. The Circuit Court, in its discretion, may allow the prevailing party, other than the district, a reasonable attorney's fee and court costs, to be paid from the district's treasury.

Section 32. KRS 65.320 is amended to read as follows:

There shall be created a Local Government Training Advisory Council in Kentucky, to be composed of the presidents or their designees of the Kentucky Association of Counties, the County Judge/Executives Association, the Kentucky League of Cities, the chairperson of the Kentucky Urban Affairs Council, and the commissioner of the Department ***for***~~[of]~~ Local Government.

Section 33. KRS 65.323 is amended to read as follows:

(1) The Local Government Training Advisory Council shall:

(a) Develop and update on a biennial basis a local government training plan that:

1. Quantifies the training needs of local governments;
2. Evaluates the abilities of existing training programs to meet the needs;
3. Identifies areas of unmet need that justify expanding existing programs or the creation of new programs; and
4. Formulates a strategy, giving consideration to the use of state-of-the-art communication techniques to enhance training efforts, that meets the needs of local governments;

(b) Submit a copy of the local government training plan to the Legislative Research Commission by November 1 of odd-numbered years;

(c) Ensure the proper coordination of training programs for city and county governments; and

(d) Elect a chairperson annually from its membership.

(2) The council shall adopt the plan provided for in subsection (1)(a) of this section by majority vote, at which time it shall become the policy document used by the Department ***for***~~[of]~~ Local Government to determine priorities for the expenditure of training funds.

Section 34. KRS 65.327 is amended to read as follows:

(1) The Local Government Training Advisory Council shall use the expertise of existing training providers in developing new or expanded programs. This includes, but is not limited to:

(a) All institutions of higher education and affiliate organizations that provide training and technical assistance to local governments;

(b) State agencies that provide training related to statutory or regulatory oversight responsibilities;

(c) Area development districts;

(d) Public official professional associations;

(e) Private providers associated with established certification programs;

(f) Any other provider suitable for developing effective training programs.

(2) The council shall be attached to the Department ***for***~~[of]~~ Local Government for administrative purposes.

Section 35. KRS 65.905 is amended to read as follows:

(1) Each local government shall annually, after the close of the fiscal year, complete a uniform financial information report.

The report shall be submitted to the Department ***for***[~~of~~] Local Government by May 1 immediately following the close of the fiscal year. The Department ***for***[~~of~~] Local Government shall immediately send one (1) copy of the uniform financial information report to the Legislative Research Commission to be used for the purposes of KRS 6.955 to 6.975.

(2) Each city may have the uniform financial information report completed by its selected auditor as part of the terms and conditions of the written agreement between the city and the auditor ***in accordance with***[~~pursuant to~~] KRS 91A.040. Each county may have the uniform financial information report completed by its auditor selected ***in accordance with***[~~pursuant to~~] KRS 43.070 or 64.810. Each special district may have the uniform financial information report completed by its auditor selected ***in accordance with***[~~pursuant to~~] KRS 65.065. If a city does not use the auditor to complete the uniform financial information report, it shall by order designate an elected or nonelected official to be responsible for annually completing the report and submitting it to the Department ***for***[~~of~~] Local Government. If a local government has any agency, board, or commission that receives any funding from the local government, but conducts its operations on an autonomous or semi-autonomous basis, the local government shall note on the uniform financial information report the name of the agency, board, or commission; the mailing address of the agency, board, or commission; and the dollar amount annually appropriated by the local government to the agency, board, or commission.

(3) The Department ***for***[~~of~~] Local Government shall by administrative regulation prescribe the format of the uniform financial information report. The department shall attempt to coordinate and combine efforts with the United States Bureau of the Census in the development of the format of the uniform financial information report so that a single report will meet the needs of both agencies and fulfill the requirements of KRS 65.900 to 65.925. Regardless of any agreement between the Department ***for***[~~of~~] Local Government and the United States Bureau of the Census, the department shall maintain responsibility for assuring that a uniform financial information report is distributed to each local government as soon as practicable after the close of each fiscal year, but in no event later than one hundred twenty (120) days prior to the required submission date of May 1.

(4) The Department ***for***[~~of~~] Local Government shall use the uniform financial information report to replace as many financial information forms as possible that local governments are currently required to complete and submit to the department for use by either the state or federal governments, by consolidating the required information into the uniform report.

Section 36. KRS 65.910 is amended to read as follows:

(1) The uniform financial information report shall include, but not be limited to, information relating to demographics, bonded indebtedness, debt service requirements, lease-purchase agreements, tax rates and revenues, licenses, permits, fees, utilities, intergovernmental revenues, miscellaneous revenues, charges for services, and all expenditures as set forth in this section.

(2) Demographic information shall include:

(a) The name of the unit of local government;
(b) The county in which the city or special district is located;
(c) The classification of the city;
(d) The population of the unit of local government;
(e) The form of government of the city; and
(f) The area development district in which the unit of local government is located.

(3) Bonded indebtedness and debt service information shall include:

(a) The name of each project listed individually;
(b) The type of bond issue used for each project;
(c) The bonded indebtedness of each project;
(d) The debt service requirements of each project; and
(e) The specific source of debt service funds, whether local government appropriations or use of nongovernment funds.

(4) Lease-purchase agreement information shall include:

(a) Purpose of the agreement;
(b) Identity of the lessor;
(c) Principal amount of the agreement;
(d) Interest rate or rates for the agreement;
(e) Date the local government entered into agreement;
(f) Length of term of agreement;
(g) Current annual debt service requirements for agreement; and

(h) A list of and the purpose of any short-term renewal bank notes.

(5) Tax rate and revenue information shall include:

(a) The compensating tax rate and the maximum tax rate for the current fiscal year and the preceding fiscal year;

(b) The current fiscal year ad valorem tax rate levied by the local government, the preceding fiscal year revenues collected by the local government, and the assessed property valuation for real property, personal property, and motor vehicles and watercraft; and

(c) The current fiscal year tax rate levied by the local government and the preceding fiscal year revenues collected by the local government for the following types of taxes:

1. Occupational license tax on persons;
2. Occupational license tax on business net profits, gross receipts, or a flat rate;
3. Insurance premium tax on fire and allied perils, casualty liability only, vehicle, inland marine, health, life, all other risks taxed, minimum tax and company taxable reserves;
4. Transient room tax;
5. Restaurant tax;
6. Bank franchise tax;
7. Delinquent collections; and
8. Special purpose and other taxes.

(6) Information on licenses, permits, and fees shall include the amount charged and the preceding fiscal year revenues collected by the local government for the following types of licenses, permits, and fees:

(a) Alcoholic beverage licenses for the manufacture and sale, distilled spirits and wine, malt beverages, Sunday sales, and regulatory license fee on gross receipts;

(b) Required sticker fees on automobiles and trucks;

(c) Motor vehicles fees on taxicabs, truck-tractors, semitrailers and trailers;

(d) Coin-operated machines;

(e) Cable television;

(f) Building, electrical, and plumbing permits;

(g) Zoning permits and development impact fees;

(h) Building, elevator, electrical, plumbing, food, rehabilitation, and any other inspection fees;

(i) Licensing of electricians and electrical contractors;

(j) Unloading fees;

(k) Public service fees for fire protection, police protection;

(l) Ambulance service franchise fees and ambulance run fees;

(m) Animal license fees; and

(n) Any other source of license, permit, or fee.

If varying rates or fees are charged based upon classification, volume, value, or other criteria, the local government shall submit a fee chart with the report form.

(7) Information on utilities shall include the franchise tax or fee, charge for service, user fee or "tap on" fee, and preceding fiscal year revenues collected by the local government on the following utilities:

(a) Waterworks;

(b) Sewage treatment;

(c) Electric light, heat, and power;

(d) Gas;

(e) Garbage collection for residential, commercial, and industrial customers, and landfill fees;

(f) Transit authority; and

(g) Any other type of utility.

If varying rates or fees are charged based upon classification, volume, value, or other criteria, the local government shall submit a fee chart with the report form.

(8) Information on intergovernmental revenues shall include the types of intergovernmental revenues received by the local government, preceding fiscal year revenues collected by the local government, and rate and interest requirements for loan repayments that shall include:

(a) Kentucky Law Enforcement Foundation Program fund;
(b) Professional Firefighters Foundation Program fund;
(c) Community development block grant funds;
(d) County or municipal road aid;
(e) Local government economic assistance funds;
(f) Net court revenues;
(g) Kentucky Infrastructure Authority funds;
(h) Economic development bonds;
(i) Kentucky Economic Development Finance Authority funds;
(j) Environmental Protection Agency funds;
(k) County or city transfers; and
(l) Any other source of state or federal funds.

(9) Information on miscellaneous revenues and charges for services shall include the source of revenue, charge, or fee levied by the local government and preceding fiscal year revenues collected for the following:
(a) Parking meter receipts;
(b) Parking facility receipts;
(c) Parking violation fines;
(d) Charges for impounded vehicles;
(e) Sale of abandoned vehicles;
(f) Delinquent tax bills;
(g) Fines and forfeitures;
(h) Penalties and interest;
(i) Franchise payments for governmental services bid out to the private sector;
(j) Golf course receipts;
(k) Parks and recreation;
(l) Proceeds from sale of seized and forfeited property;
(m) Rent;
(n) Interest from investments and dividends; and
(o) Any other source of revenue or charge for service.

(10) Information on expenditures shall be listed by total only and indicate the fund from which an appropriation was made. The Department ***for***[~~of~~] Local Government shall consult with the Kentucky League of Cities, the Kentucky Association of Counties, the Kentucky Municipal Finance Officers' Association, the Kentucky Society of Certified Public Accountants, and other affected interest groups, as well as local officials in the development of information to be included in the expenditure section of the uniform financial information report.

Section 37. KRS 65.915 is amended to read as follows:

The first uniform financial information report local governments shall be required to complete ***in accordance with***[~~pursuant to~~] KRS 65.900 to 65.925 shall be submitted to the Department ***for***[~~of~~] Local Government on or before February 1, 1992, for the July 1, 1990, to June 30, 1991, fiscal year.

Section 38. KRS 65.920 is amended to read as follows:

Any local government that fails to submit annually a uniform financial information report to the Department ***for***[~~of~~] Local Government shall be ineligible to receive county or municipal road aid moneys ***in accordance with***[~~pursuant to~~] KRS 177.360 or 177.366. Any local government receiving road aid moneys ***in accordance with***[~~pursuant to~~] KRS 177.365 to 177.369 or KRS 177.320 and 177.360 that fails to comply with the provisions of KRS 65.900 to 65.915 shall immediately have all road aid payments suspended until the local government submits the uniform financial information report to the Department ***for***[~~of~~] Local Government.

Section 39. KRS 65.925 is amended to read as follows:

The Department ***for***[~~of~~] Local Government shall consult with the Legislative Research Commission to determine a format for electronic data which is acceptable to both. At the earliest date possible, but no later than September 30, 1992, and each year thereafter, the Department ***for***[~~of~~] Local Government shall provide a copy of all reliable data from the uniform financial information reports of all reporting governments to the Legislative Research Commission in the agreed upon electronic format.

The Department ***for***[~~of~~] Local Government shall, upon receipt, file a copy of each completed uniform financial information report with the county clerk of the county in which the reporting unit of local government is located.

Section 40. KRS 68.001 is amended to read as follows:

As used in this chapter and other provisions of law, "state local finance officer" shall mean the commissioner of the Department ***for***[~~of~~] Local Government, or his agent designated in writing with the approval of the Governor.

Section 41. KRS 81A.470 is amended to read as follows:

(1) If the limits of a city are enlarged or reduced, the city shall, within sixty (60) days of the enlargement or reduction, cause an accurate map of the annexed, transferred, or severed area with a metes and bounds description, together with a copy of the ordinance duly certified, to be recorded in the office of the county clerk of the county or counties in which the city is located, in the office of the Secretary of State, and in the Department ***for***[~~of~~] Local Government.

(2) No city which has annexed unincorporated or accepted transfer of incorporated territory may levy any tax upon the residents or property within the annexed or transferred area until the city has complied with the provisions of subsection (1) of this section, and of KRS 81A.475.

Section 42. KRS 82.025 is amended to read as follows:

(1) There shall be created a Kentucky Urban Affairs Council that shall consist of the mayors of all cities of the first and second classes and urban-county governments and the designated chief executives of charter county governments that prior to the merger of city and county governments contained a city of the second class. The mayor of Louisville shall serve as the first chairman and subsequent chairmen shall be elected annually by the council members. The council shall study all matters pertaining to urban problems, including but not limited to human resources, environmental conditions, property values, law and order, and race relations. The council shall meet at least four (4) times per year to formulate a plan to improve urban conditions for presentation to the Governor annually and the General Assembly.

(2) The council shall be attached to the Department ***for***[~~of~~] Local Government for administrative purposes. The department shall be the administrative agent for the council providing staff and other services, as needed, by the council. The department shall provide adequate funding for staff services and the reasonable and necessary expenses of the council and its members for the effective performance of the council's work.

Section 43. KRS 83.580 is amended to read as follows:

(1) The mayor shall:

  (a) Cause the ordinances of the city and the laws of the state to be executed and enforced;

  (b) Communicate to the board of aldermen at least once a year a statement of the finances and general condition of the affairs of the city, and[~~ such~~] information in relation thereto as the board of aldermen requires;

  (c) Recommend, by written message to the board of aldermen, the measures he deems expedient;

  (d) Fill, with the consent of the board of aldermen, all vacancies in executive and ministerial offices and the filling of which is not otherwise provided for;

  (e) Exercise a general supervision over all the executive and ministerial officers of the city, and see that their official duties are honestly performed; and

  (f) No later than January 31 of each year, mail to the Department ***for***[~~of~~] Local Government a list containing current city information including, but not limited to the following:

    1. The correct name of the mayor, members of the board of aldermen, and the following appointed officials who are serving as of January 1 of each year:

      a. Clerk of the board of aldermen;

      b. City treasurer;

      c. City attorney;

      d. Finance director;

      e. Police chief;

      f. Fire chief; and

      g. Public works director;

    2. The correct name of the city, mailing address for city hall, and the telephone number of city hall; and

    3. The name and telephone number of either an elected or appointed official to serve as a contact person that may be reached during normal business hours of 8:00 a.m. to 4:30 p.m.

(2) The mayor shall appoint to those seats which are not subject to prior qualification on a board or commission an equal number of members from each county commissioner's district, as created ***in accordance with***[~~pursuant to~~] KRS 67.045, into which the authority of the board or commission extends. If there are more districts than members of a particular board or commission, the mayor shall not appoint more than one (1) member from any district. If there are more

members of a particular board or commission than there are districts, the mayor shall equalize appointments from among districts to the extent possible. The mayor shall not be required, but shall use his best efforts, to balance appointments from among districts on a board or commission if the appointments are to be made from nominees submitted by other groups or individuals, or if nominees shall have a professional or technical background, expertise, or membership. The mayor shall attempt to balance appointments from among districts on all boards and commissions to equalize representation of all districts over the entire range of boards and commissions.

(3) The mayor may:

(a) Remove from office, by a written order, any officer appointed by him, unless otherwise provided by law;

(b) Appoint his own staff, and remove them at pleasure;

(c) Require from any executive or ministerial officer of the city or joint agency of the city a statement in writing concerning the discharge of his duties; and

(d) Exercise the same power to administer oaths that justices of the peace and other judicial officers of the state have.

(4) The Department ***for***[~~of~~] Local Government shall immediately forward one (1) copy of the information received from the mayor to the Legislative Research Commission.

Section 44. KRS 83A.075 is amended to read as follows:

(1) In order to equate the compensation of mayors and members of city legislative bodies with the purchasing power of the dollar, the Department ***for***[~~of~~] Local Government shall compute by the second Friday in February of every year the annual increase or decrease in the consumer price index of the preceding year by using 1949 as the base year in accordance with Section 246 of the Constitution of Kentucky which provides that the mayor in cities of the first class shall be paid at a rate no greater than twelve thousand dollars ($12,000) per annum and mayors in cities other than the first class and legislative body members shall be paid at a rate no greater than seven thousand two hundred dollars ($7,200) per annum.

(2) The legislative body of the city shall set the compensation of the officer in accordance with KRS 83A.070 at a rate no greater than that stipulated by the Department ***for***[~~of~~] Local Government.

Section 45. KRS 83A.085 is amended to read as follows:

(1) Each city, except a city of the first class, shall establish the office of city clerk.

(2) The office of city clerk may be combined with any other nonelected city office by inclusion of the title and duties of ***the***[~~such~~] office in the ordinance establishing the office of city clerk.

(3) The duties and responsibilities of the clerk shall include, but not be limited to, the following:

(a) Maintenance and safekeeping of the permanent records of the city;

(b) Performance of the duties required of the "official custodian" or "custodian" ***in accordance with***[~~pursuant to~~] KRS 61.870 to 61.882;

(c) Possession of the seal of the city if used;

(d) No later than January 31 of each year, mail to the Department ***for***[~~of~~] Local Government, a list containing current city information including, but not limited to, the following:

1. The correct name of the mayor, legislative body members, and the following appointed officials who are serving as of January 1 of each year:

a. City clerk;

b. City treasurer;

c. City manager;

d. City attorney;

e. Finance director;

f. Police chief;

g. Fire chief; and

h. Public works director;

2. The correct name of the city, mailing address for city hall, and telephone number of city hall; and

3. The name and telephone number of either an elected or appointed official to serve as a contact person that may be reached during normal business hours of 8 a.m. to 4:30 p.m.;

(e) Performance of all other duties and responsibilities required of the city clerk by statute or ordinance; and

(f) The Department ***for***[~~of~~] Local Government shall immediately forward one (1) copy of the information received from each city clerk to the Legislative Research Commission.

Section 46. KRS 91A.040 is amended to read as follows:

(1) Each city of the first through fifth class shall, after the close of each fiscal year, cause each fund of the city to be audited by the Auditor of Public Accounts or a certified public accountant. The audits shall be completed by February 1 immediately following the fiscal year being audited. Within ten (10) days of the completion of the audit and its presentation to the city legislative body, ***in accordance with***[~~pursuant to~~] subsection (4)(f) of this section, each city shall forward three (3) copies of the audit report to the Kentucky Department ***for***[~~of~~] Local Government for information purposes. The department shall forward one (1) copy of the audit report to the Legislative Research Commission to be used for the purposes of KRS 6.955 to 6.975.

(2) Except as provided in subsection (3) of this section, each city of the sixth class shall, after the close of each odd-numbered fiscal year, cause each fund of the city to be audited by the Auditor of Public Accounts or a certified public accountant. The audits shall be completed by February 1 immediately following the fiscal year to be audited. Within ten (10) days of the completion of the audit and its presentation to the city legislative body, ***in accordance with***[~~pursuant to~~] subsection (4)(f) of this section, each sixth class city shall forward three (3) copies of the audit report to the Kentucky Department ***for***[~~of~~] Local Government for information purposes. The department shall forward one (1) copy of the audit report to the Legislative Research Commission to be used for the purposes of KRS 6.955 to 6.975. After the close of each even-numbered fiscal year, each sixth class city shall prepare a financial statement in accordance with KRS 424.220 and immediately forward one (1) copy to the Kentucky Department ***for***[~~of~~] Local Government. The department shall forward one (1) copy of the financial statement to the Legislative Research Commission.

(3) Any city of the sixth class, which for any fiscal year receives and expends, from all sources and for all purposes, less than twenty-five thousand dollars ($25,000), and which has no long-term debt, whether general obligation or revenue debt, shall not be required to audit each fund of the city for that particular fiscal year. Each city shall annually prepare a financial statement in accordance with KRS 424.220 and immediately forward one (1) copy to the Kentucky Department ***for***[~~of~~] Local Government for information purposes. The department shall be responsible for forwarding one (1) copy of the financial statement to the Legislative Research Commission to be used for the purposes of KRS 6.955 to 6.975.

(4) Each city required by this section to conduct an annual or biannual audit shall enter into a written contract with the selected auditor. The contract shall set forth all terms and conditions of the agreement which shall include, but not be limited to, requirements that:

(a) The auditor be employed to examine the general purpose financial statements of all governmental, proprietary, and fiduciary funds of the city;

(b) The auditor shall include in the annual city audit report an examination of local government economic assistance funds granted to the city under KRS 42.450 to 42.495. The auditor shall include a certification with the annual audit report that the funds were expended for the purpose intended;

(c) All audit information be prepared in accordance with generally accepted governmental auditing standards which include tests of the accounting records and auditing procedures considered necessary in the circumstances. Where the audit is to cover the use of state or federal funds, appropriate state or federal guidelines shall be utilized;

(d) The auditor prepare a typewritten or printed report embodying the general purpose financial statements and his opinion and statements relating to those statements;

(e) The auditor express an overall opinion as to whether the general purpose financial statements present fairly the financial condition of the city or state the reasons why an overall opinion cannot be expressed;

(f) The completed audit and all accompanying documentation shall be presented to the city legislative body at a regular or special meeting; and

(g) Any contract with a certified public accountant for an audit shall require the accountant to forward a copy of the audit report and management letters to the Auditor of Public Accounts upon request of the city or the Auditor of Public Accounts, and the Auditor of Public Accounts shall have the right to review the certified public accountant's work papers upon request.

(5) A copy of an audit report which meets the requirements of this section shall be considered satisfactory and final in meeting any official request to a city for financial data, except for statutory or judicial requirements, or requirements of the Legislative Research Commission necessary to carry out the purposes of KRS 6.955 to 6.975.

(6) Upon completion of an audit, each city may elect to publish the auditor's report in accordance with subsection (7) of this section, or publish a financial statement in accordance with subsection (8) of this section. Notwithstanding the election of subsection (7) or (8) of this section, the city shall, within ninety (90) days after the close of the fiscal year, cause to be published in a newspaper qualified under KRS 424.120 a legal display advertisement of not less than eight (8) column inches that the statement required by KRS 424.220 has been prepared and that copies have been provided to each local newspaper of general circulation, each news service, and each local radio or television station which has on file with the city a written request to be provided a statement.

(7) If the city elects to publish the auditor's report prepared in accordance with this section in lieu of the financial statement

required by KRS 424.220, it shall publish the auditor's cover letter to the city council, the combined balance sheet showing all fund types and account groups, the combined statement of revenues, expenditures, and changes in fund balance for all governmental fund types, the combined statement of revenues, expenses, and changes in retained earnings/fund balances for all proprietary fund types and similar trust funds, and the combined statement of changes in financial position for all proprietary fund types and similar trust funds in accordance with KRS Chapter 424. The advertisement shall contain a statement that a copy of the complete auditor's report, including financial statements and supplemental information, are on file at city hall and are available for public inspection during normal business hours. The advertisement shall also contain a statement that any citizen may obtain from city hall a copy of the complete auditor's report, including financial statements and supplemental information, for his personal use. The statement shall notify citizens requesting a personal copy of the city audit report that they will be charged for duplication costs at a rate that shall not exceed twenty five cents ($0.25) per page. In addition, the advertisement shall contain a statement that copies of the financial statement prepared in accordance with KRS 424.220 are available to the public at no cost at the business address of the officer responsible for preparation of the statement.

(8) If the city, other than a city of the first or second class or urban-county government, elects to publish the financial statement prepared in accordance with KRS 424.220 in lieu of publishing the auditor's report, it shall, within sixty (60) days after the completion of the audit, publish the statement in accordance with KRS Chapter 424.

(9) Any city of the fifth or sixth class may utilize the alternative publication methods authorized by KRS 424.190(2) to comply with the provisions of this section.

(10) Any person who violates any provision of this section shall be fined not less than fifty dollars ($50) nor more than five hundred dollars ($500). In addition, any officer who fails to comply with any of the provisions of this section shall, for each failure, be subject to a forfeiture of not less than fifty dollars ($50) nor more than five hundred dollars ($500), in the discretion of the court, which may be recovered only once in a civil action brought by any resident of the city. The costs of all proceedings, including a reasonable fee for the attorney of the resident bringing the action, shall be assessed against the unsuccessful party.

Section 47. KRS 91A.050 is amended to read as follows:

The Department ***for***~~[of]~~ Local Government shall make available to all cities assistance in meeting the requirements of KRS 91A.010 to 91A.060, including the preparation and dissemination of model systems for accounting and budgeting, and other technical materials.

Section 48. KRS 147A.002 is amended to read as follows:

(1) The Department ***for***~~[of]~~ Local Government shall be headed by a commissioner, and shall be divided for administrative purposes into the Division of Community Programs and such other divisions as the commissioner, with the approval of the Governor, determines. The Division of Community Programs shall be responsible for the administration of Title I of the Housing and Community Development Act of 1974 as amended through 1981, which includes the community block grant program and the 107 technical assistance program.

(2) The commissioner, with the approval of the Governor, shall appoint necessary deputies, assistants, attorneys and other employees and shall fix their compensation and authorize payment of their expenses according to law.

Section 49. KRS 147A.003 is amended to read as follows:

The following administrative bodies shall be attached to the Department ***for***~~[of]~~ Local Government for administrative purposes:

(1) Local Government Advisory Commission;

(2) Appalachian Development Council; and

(3) The State-Federal Council for Balanced Economic Growth.

Section 50. KRS 147A.004 is amended to read as follows:

(1) The Department ***for***~~[of]~~ Local Government shall administer distribution of state and federal planning funds to area development districts and shall require by ***administrative*** regulation~~[such]~~ financial and operational reports, audits, and other controls as are necessary to assure compliance with state and federal laws relating to funds received by the area development districts.

(2) The Department ***for***~~[of]~~ Local Government shall ***promulgate administrative***~~[issue such]~~ regulations as will assure statewide coordination of the planning and assistance operations of the area development districts.

Section 51. KRS 147A.006 is amended to read as follows:

(1) The Local Government Advisory Commission is hereby established and shall advise the Department ***for***~~[of]~~ Local Government on issues relating to the needs of the area development districts and local governments in Kentucky.

(2) The Local Government Advisory Commission shall have fifteen (15) members, consisting of the chairman of the board of directors of each of the fifteen (15) area development districts. The Governor shall select one (1) of this number to serve as chairman of the commission at the pleasure of the Governor.

(3) The members of the Local Government Advisory Commission shall serve without compensation, but shall be reimbursed

the reasonable and necessary expenses incurred by the members in performing the work of the commission.

Section 52. KRS 147A.009 is amended to read as follows:

(1) The Division of Flood Control is created within the Department ***for***[~~of~~] Local Government.

(2) The division shall be headed by a division director appointed by the commissioner of the Department ***for***[~~of~~] Local Government, with the approval of the Governor.

(3) The division shall be responsible for providing staff services to the Flood Control Advisory Commission established under KRS 151.560, assisting the commission in its duties established under KRS 151.570, and other duties as prescribed to the division by the commissioner.

Section 53. KRS 147A.020 is amended to read as follows:

(1) The state local debt officer within the Office of the Controller, Finance and Administration Cabinet and the state local finance officer within the Department ***for***[~~of~~] Local Government shall exercise the following administrative functions of the state:

(a) The state local debt officer shall exercise all administrative functions as provided in the county debt act, KRS 66.280 to 66.390, and administrative functions relating to local government bonds as provided in KRS 66.045; and

(b) The state local finance officer shall exercise all administrative functions regarding county and local government budgets, as provided in KRS 68.210 to 68.360.

(2) The state local debt officer shall have the following powers and duties:

(a) To require reports from local governments to enable him to adequately provide the technical and advisory assistance authorized by this section. The reports shall provide the necessary information for a complete file on local government debt, which the state local debt officer shall keep open for public inspection at the Office of the Controller;

(b) To conduct studies in debt management, including ways and means of appraising the terms of alternative bids;

(c) To request assistance and information, which shall be provided by all departments, divisions, boards, bureaus, commissions, and other agencies of state government, to enable the state local debt officer to carry out his duties under this section; and

(d) To compile and publish annually a report which shall include detailed information on local government long-term debt issued and retired during the previous year and outstanding, and other available statistical data on local government finances.

(3) The state local finance officer shall have the following powers and duties:

(a) To coordinate for the Governor the state's responsibility for, and shall be responsible for liaison with the appropriate state and federal agencies with respect to, general revenue sharing for local government;

(b) To provide technical assistance and information to units of local government on matters including, but not limited to, fiscal management, purchases, and contracts; and

(c) To conduct training programs to instruct county and other local officials respecting their duties and responsibilities in the collection, expenditure, and management of public moneys subject to their control and jurisdiction.

Section 54. KRS 147A.021 is amended to read as follows:

(1) The Department ***for***[~~of~~] Local Government shall have the following powers and duties:

(a) To require any reports from local governments that will enable it adequately to provide the technical and advisory assistance authorized by this section.

(b) To encourage, conduct, or participate in training courses in procedures and practices for the benefit of local officials, and in connection therewith, to cooperate with associations of public officials, business and professional organizations, university faculties, or other specialists.

(c) To request assistance and information, which shall be provided by all departments, divisions, boards, bureaus, commissions, and other agencies of state government to enable the department to carry out its duties under this section.

(d) At its discretion, to compile and publish annually a report on local government.

(2) The Department ***for***[~~of~~] Local Government shall coordinate for the Governor the state's responsibility for, and shall be responsible for liaison with the appropriate state and federal agencies with respect to, the following programs:

(a) Demonstration cities and metropolitan development act as amended with the exception of Title I of the Housing and Community Development Act of 1974 as amended through 1981;

(b) Farmers Home Administration;

(c) Veterans Administration Act as amended, as it pertains to housing.

(3) The Department ***for***[~~of~~] Local Government shall provide technical assistance and information to units of local government, including but not limited to:

(a) Personnel administration;

(b) Ordinances and codes;

(c) Community development;

(d) Appalachian Regional Development Program;

(e) Economic Development Administration Program;

(f) Intergovernmental Personnel Act Program;

(g) Land and Water Conservation Fund Program;

(h) Area Development Fund Program;

(i) Gas System Restoration Project;

(j) Joint Funding Administration Program;

(k) State clearinghouse for A-95 review;

(l) The memorandums of agreement with the area development districts to provide management assistance to local governments; and

(m) The urban development office.

(4) The Department ***for***[~~of~~] Local Government shall exercise all of the functions of the state local finance officer provided in KRS Chapters 66, 68, and 131 relating to the control of funds of counties, cities, and other units of local government.

Section 55. KRS 147A.025 is amended to read as follows:

(1) Except as provided in subsection (7) of this section, the Department ***for***[~~of~~] Local Government with the advice and approval of the state local finance officer annually shall conduct a program to instruct county clerks, sheriffs, jailers, and county treasurers respecting their duties and responsibilities in the collection and expenditure of public moneys, subject to their control and jurisdiction.

(2) The department with the advice and approval of the state local finance officer shall establish the content and publish instructional materials essential to implementing this program. Subsequent to every regular and extraordinary session of the General Assembly, the department with the state local finance officer shall review and revise, if necessary, the program when it is found not to be consistent with state law.

(3) The department may assess a charge to any person requesting copies of instructional materials published ***as provided by***[~~pursuant to~~] this section to cover actual costs of printing and handling these materials, except that no county official shall be charged for instructional materials provided for his use. Funds accruing from the sale of instructional materials shall be paid into the State Treasury, and the State Treasurer shall pay these funds into an account of the department to defray the costs of printing and handling these materials.

(4) The commissioner of the department with the advice and approval of the state local finance officer may prescribe completion standards for this program, and may, subject to subsection (6) of this section, establish the number, type and sequence of instructional sessions to be conducted by the department; but the commissioner of the department shall not require the attendance of any county official, nor shall he prescribe any requirement or standard that restricts or impairs a county official or elected candidate in the lawful pursuit or conduct of the office to which he is elected.

(5) The department shall notify in advance each county clerk, sheriff, jailer, and county treasurer respecting instructional session pertinent to his office. Notification shall be by mail, and it shall be posted no later than twenty-one (21) days prior to the instructional session. At a minimum, the notice shall give the date, time, place and title of the instruction session.

(6) The department shall conduct this program by providing a one (1) day session at various locations throughout this state in order to minimize the travel expenses of those officials attending, provided that the aggregate number of all sessions shall not exceed five (5) during any calendar year. Except as provided in subsection (7) of this section, the department may commence instruction anytime during a calendar year.

(7) The department shall not conduct a program ***as provided by***[~~pursuant to~~] this section during any calendar year when a general election is held for every constitutional county office. The department, however, shall commence instruction for the succeeding year within eighty (80) days following said general election.

(8) Every county official who attends an instructional session shall be paid his actual and necessary expenses in attending from the operating funds of his office.

(9) In fulfilling the requirements of this section, the department shall confer with and coordinate its duties and responsibilities with the Finance and Administration Cabinet, the Revenue Cabinet and the Auditor of Public Accounts.

The department shall also confer with those state universities whose mission statements mandate their participation in the training of public officials, the state associations for those officials listed in subsection (1) of this section, and the Kentucky Association of Counties, respecting the implementation of this section.

Section 56. KRS 147A.028 is amended to read as follows:

(1) In enacting a parks establishment aid law, it is the intention of the General Assembly to supplement local efforts to establish park and recreational facilities. The inadequacy of present facilities and the high cost of acquisition and establishment of park recreational facilities are hereby declared to be matters of public interest and concern and vital to the promotion of the health, welfare and industrial development of the inhabitants of the Commonwealth.

(2) The commissioner of the Department ***for***[~~of~~] Local Government shall cause to be established in the Treasury a special fund to be known as the local government parks and recreational facilities fund, to be administered by the commissioner. The fund shall be comprised of grants, contributions, appropriations and intergovernmental transfers. Moneys in the fund shall not lapse at the end of the fiscal year.

(3) The commissioner may, when he determines that a proposed local government plan for a park or other recreational facility would serve the public interest, use moneys from the local government parks and recreational facilities fund to aid local governmental units in their acquisition and establishment of local parks and recreational facilities, provided that local governmental units must provide matching funds for the project. The Department ***for***[~~of~~] Local Government may grant an amount up to one hundred thousand dollars ($100,000) for any one (1) project, which amount shall not exceed fifty percent (50%) of the cost of the entire project. For the purposes of this section, local governmental units shall mean county governments, urban-county government, and governments of cities of any class. Title to parks and recreational facilities acquired by the use of funds authorized by this section shall vest in the local governmental unit which proposed the project and provided the matching funds.

(4) In September of each year the commissioner shall determine the amount of funds available for distribution by December 31 of that same year. The commissioner may prescribe standards for determining the amounts to be granted for local projects and ***any administrative***[~~such~~] regulations as may be necessary to implement the provisions of this section. Funds granted by the department shall be spent by the local governing authorities only for the acquisition and establishment of parks and recreational facilities or major improvements or additions to existing parks and shall not be used for operating or maintenance expenses.

Section 57. KRS 147A.031 is amended to read as follows:

(1) The Department ***for***[~~of~~] Local Government, in cooperation with cities, counties, waste management districts, waste industries, the Natural Resources and Environmental Protection Cabinet, and the Environmental Quality Commission shall develop procedures designed to resolve conflicts resulting from municipal solid waste management facility siting and operation. The procedures shall address:

(a) Resolution of conflicts associated with multijurisdictional municipal solid waste management facilities, including the use of such techniques as negotiation, mediation, or arbitration to address issues including, but not limited to, host community compensation and collection and disposal fees; and

(b) Resolution of issues, except those relating to permit conditions imposed by the cabinet, resulting from municipal solid waste management facility siting and operation, including the use of such techniques as negotiation, mediation, or arbitration to address concerns of those persons and landowners who are directly affected by the facility's location and operation. Issues which may be addressed include, but are not limited to, the following:

1. Operational issues, such as hours of operation;
2. Recycling and composting efforts that may be implemented;
3. Protection of property values;
4. Traffic routing and road maintenance; and
5. Establishment of local advisory committees.

(2) The Department ***for***[~~of~~] Local Government shall adopt administrative regulations to implement the provisions of subsection (1) of this section.

(3) By January 1, 1992, the Department ***for***[~~of~~] Local Government shall report to the Governor and to the General Assembly the recommendations developed under subsection (1) of this section.

(4) Nothing in this section shall be construed to abridge any rights or remedies provided by KRS Chapters 109 and 224, or at common law.

Section 58. KRS 147A.060 is amended to read as follows:

There shall be in each area development district a board of directors. The composition of the board and the terms and appointments of its members in each district shall be specified by administrative regulation ***promulgated***[~~issued~~] by the Department ***for***[~~of~~] Local Government ***in accordance with***[~~pursuant to~~] KRS Chapter 13A. The designee of a mayor or county judge/executive shall be a member of the designator's respective legislative body or their staff. Other persons who are not elected officials or their staff may be designated as a representative with the consent of that body. The Department ***for***[~~of~~] Local Government in specifying the composition of the board shall conform to applicable federal requirements.

Section 59. KRS 147A.200 is amended to read as follows:

(1) The Department ***for***[~~of~~] Local Government is authorized and directed to apply for and receive federal funds to be placed in a state account called the Gas System Restoration Project Account, and to provide staff to administer said funds.

(2) A Gas System Restoration Project Account Review Board is established, and shall consist of seven (7) members appointed by the Governor, and including representatives of the Public Service Commission, state fire marshal's office, Department ***for***[~~of~~] Local Government, banking and finance industry, commercial or industrial consumers, Kentucky Gas Association, and low income or minority group consumers. Members shall be reimbursed for necessary expenses in attending meetings.

(3) The review board shall meet monthly, and shall establish rules for conducting its business. The review board shall consider applications for loans from the account, and approve or disapprove loan applications. No loan shall be considered unless the applicant has complied with all construction and securities requirements of the Public Service Commission. In reviewing loan applications, the review board may request the testimony of the county judge/executive of an affected county, and any other witnesses deemed appropriate.

Section 60. KRS 148.022 is amended to read as follows:

(1) The Department ***for***[~~of~~] Local Government shall administer and operate the outdoor recreation programs of the state and shall be responsible for developmental planning and the administration of United States Bureau of Outdoor Recreation funds.

(2) All functions of the Commonwealth relating to the Breaks Interstate Park shall be attached to the Tourism Cabinet for administrative purposes.

Section 61. KRS 151.560 is amended to read as follows:

(1) There is hereby created the Flood Control Advisory Commission, which shall be composed of sixteen (16) members appointed by the Governor as follows:

  (a) Two (2) state legislators, one (1) from the Senate and one (1) from the House of Representatives; two (2) mayors; and two (2) county judges/executive; and

  (b) One (1) member from each of the following river basins: Big Sandy; Licking; Kentucky; Salt; Green; Ohio River Main Stem; Tennessee; Mississippi; and Upper Cumberland; and

  (c) The commissioner of the Department ***for***[~~of~~] Local Government or commissioner's designee.

(2) Except for the commissioner of the Department ***for***[~~of~~] Local Government, each member shall serve a four (4) year term, except the first commission members were appointed by the Legislative Research Commission to serve terms as follows:

  (a) Three (3) members to serve for terms of two (2) years from the date of appointment;

  (b) Three (3) members to serve for terms of three (3) years from the date of appointment; and

  (c) Three (3) members to serve for terms of four (4) years from the date of appointment.

(3) Commission members may be reappointed. A vacancy in an unexpired term shall be filled for the unexpired portion of the term in the same manner as the original appointment to that term.

(4) Any member who misses three (3) consecutive meetings of the commission shall be deemed to have vacated the office. The commission shall declare the office vacant, and the office shall be filled as provided by subsection (3) of this section.

(5) Two (2) of the commission members shall be elected by the commission to serve on the Water Resources Authority of Kentucky, which service shall cease with the expiration of the term of appointment on the commission, if not sooner.

(6) The commission shall annually elect one (1) of its members as chairperson. The commission shall meet quarterly or more often if necessary. A quorum for the transaction of business shall be nine (9) members, and a majority of the members present at a meeting may take action on any matter legally before it.

(7) Members shall be paid their necessary expenses incurred in attending meetings and in the performance of their official duties.

(8) The commission shall be attached for administrative purposes to the Department ***for***[~~of~~] Local Government which shall provide the staff services and resources necessary to support the commission in the performance of its statutory duties through the Division of Flood Control established by KRS 147A.009.

(9) The commission shall promulgate administrative regulations as necessary to control internal procedures. The commission shall promulgate by administrative regulation the boundary for each river basin referred to in subsection (1)(b) of this section.

Section 62. KRS 152.055 is amended to read as follows:

The Department ***for***[~~of~~] Local Government shall have responsibility for the administration and coordination of Appalachian regional development programs and economic development administration programs.

Section 63. KRS 154.33-020 is amended to read as follows:

(1) There is created an Appalachian Development Council. The council shall be attached to the Department ***for***[~~of~~] Local Government for administrative purposes. The Department ***for***[~~of~~] Local Government shall provide staff assistance to the council.

(2) The council shall serve as an advisory body to the department and to the General Assembly on all phases of economic development in that part of Kentucky contained within the Appalachian region as defined by the federal Appalachian Regional Development Act of 1965, as amended.

(3) The council shall consist of the Lieutenant Governor and twenty-two (22) members appointed by the Governor. The Governor shall appoint three (3) members from the Appalachian region at-large. The remaining nineteen (19) members shall be appointed from the forty-nine (49) Appalachian counties of Kentucky, within area development districts, as follows:

(a) Two (2) members from Appalachian counties within the Fivco Area Development District;
(b) Two (2) members from Appalachian counties within the Gateway Area Development District;
(c) Two (2) members from Appalachian counties within the Big Sandy Area Development District;
(d) Two (2) members from Appalachian counties within the Bluegrass Area Development District;
(e) Three (3) members from Appalachian counties within the Kentucky River Area Development District;
(f) Three (3) members from Appalachian counties within the Cumberland Valley Area Development District;
(g) Three (3) members from Appalachian counties within the Lake Cumberland Area Development District;
(h) One (1) member from Appalachian counties within the Barren River Area Development District; and
(i) One (1) member from Appalachian counties within the Buffalo Trace Area Development District.

(4) The three (3) at-large members of the council shall serve for terms of one (1) year. The remaining nineteen (19) appointed members shall be appointed for terms of four (4) years, except that of the members initially appointed by the Governor five (5) shall be appointed for a term of one (1) year, five (5) shall be appointed for a term of two (2) years, five (5) shall be appointed for a term of three (3) years, and four (4) shall be appointed for a term of four (4) years. The Governor shall fill vacancies by appointment for the remainder of the unexpired term.

(5) The chairman of the council shall be selected annually by the council members.

(6) The members of the council shall serve without compensation but shall be reimbursed for reasonable and necessary expenses incurred in performing the work of the council.

Section 64. KRS 164.3571 is amended to read as follows:

(1) The Governmental Services Center may, upon request, of the Department ***for***[~~of~~] Local Government, and as financial and staff resources permit, develop, coordinate, implement, assist, and conduct employee and management training programs, seminars, and conferences, for agencies, departments, divisions, boards, and commissions of county and city government, and any other political subdivisions of the state.

(2) The Governmental Services Center may enter into contractual agreements with county and city governments and other political subdivisions as necessary to allow the Governmental Services Center to properly perform its duties and responsibilities as established by KRS 164.3571 to 164.3573.

(3) Any agency of a county, city, or other political subdivision whose employees receive the benefit of the Governmental Services Center's services, shall reimburse the Governmental Services Center for those costs and expenses which it incurs as a result of providing these services.

Section 65. KRS 177.360 is amended to read as follows:

(1) Except as provided in subsection (5) of this section, the Department of Rural and Municipal Aid shall allocate the funds set apart under KRS 177.320(1) for construction, reconstruction, and maintenance of state-maintained secondary and rural highways as follows:

(a) One-fifth (1/5) shall be apportioned equally among the one hundred twenty (120) counties.

(b) One-fifth (1/5) shall be apportioned among the one hundred twenty (120) counties on the basis of the ratio which the rural population of each county bears to the total rural population of the state. "Rural population" as used here means the population in a county outside cities, towns, and urban areas having a population of twenty-five hundred (2,500) or more as shown by the most recent decennial census of the United States Bureau of the Census, and county population shall be determined by the most recent decennial census of the United States Bureau of the Census.

(c) One-fifth (1/5) shall be apportioned among the one hundred twenty (120) counties on the basis of the ratio that the public road mileage outside of cities, towns, and urban areas having a population of twenty-five hundred

(2,500) or more bears to the total mileage of such roads for the entire state.

(d) Two-fifths (2/5) shall be apportioned among the one hundred twenty (120) counties on the basis of the ratio which the square-mile rural area of the county bears to the total square-mile rural area of the state. "Rural area" as used here means that area of the county outside of cities, towns, and urban areas having a population of twenty-five hundred (2,500) or more and shown by the most recent decennial census of the United States Bureau of the Census.

(2) A sum not exceeding six percent (6%) of the allocation provided by KRS 177.320(1) to each county shall be deducted at the beginning of each fiscal year and adjusted quarterly to cover the maintenance, administrative, engineering, and other costs of the program.

(3) Of the total amount apportioned by the provisions of this section, a sum not exceeding six percent (6%) may be deducted and placed by the Department of Rural and Municipal Aid in a special emergency account to be expended at the direction of the commissioner to meet unforeseen emergencies on rural and secondary roads and bridges.

(4) Apportionments as required by the provisions of this section shall be made on the basis of revenue estimates supplied by the Finance and Administration Cabinet and adjusted quarterly in accordance with the most recent revision of the estimates by the Finance and Administration Cabinet.

(5) Any county eligible to receive county road aid moneys ***in accordance with***[~~pursuant to~~] KRS 177.320 and this section shall be required to submit a uniform financial information report to the Department ***for***[~~of~~] Local Government ***in accordance with***[~~pursuant to~~] KRS 65.905 before any payment of county road aid funds shall be made. The Department ***for***[~~of~~] Local Government shall notify the Department of Rural and Municipal Aid no later than March 1 annually of any county that has not submitted a uniform financial information report. The Department of Rural and Municipal Aid shall upon notification by the department immediately suspend all county road aid moneys to the county until the county complies with the provisions of KRS 65.900 to 65.915 and submits the uniform financial information report to the Department ***for***[~~of~~] Local Government. The department shall immediately notify the Department of Rural and Municipal Aid to reinstate county road aid moneys to any county affected by this subsection as soon as the county submits the uniform financial information report.

Section 66. KRS 177.366 is amended to read as follows:

(1) Except as provided in subsection (8) of this section, on and after July 1, 1980, the Finance and Administration Cabinet shall allocate to each incorporated city and "unincorporated urban place" its pro rata share of the funds set apart for construction, reconstruction, and maintenance of urban roads and streets on the basis of the ratio which the population in the incorporated cities and in "unincorporated urban places" bears to the total population in incorporated cities and in "unincorporated urban places" of the state. "Unincorporated urban places" as used here, means an area as defined in KRS 81.015, and any area outside of incorporated cities, which area has a population of 2,500 or more as shown by the most recent decennial census of the United States Bureau of the Census, and all populations shall be determined by the most recent decennial census of the United States.

(2) Any area which becomes incorporated after December 31, 1970, shall not be eligible to participate in the Municipal Aid Program until the beginning of the second fiscal year following its incorporation and population certification. It shall be the responsibility of the newly incorporated area to provide the Finance and Administration Cabinet with documentation from the United States Bureau of the Census showing the population of the newly incorporated area as it existed at the time of the last decennial census.

(3) In the event the newly incorporated area cannot obtain a population count from the Bureau of the Census, it shall not be eligible to participate in the Municipal Aid Program until the next decennial census.

(4) If an incorporated city, whose incorporation took place prior to December 31, 1970, annexes additional area, the population of the annexed area will not be counted in the allocation of municipal aid funds until the beginning of the second fiscal year following annexation and population certification.

(5) It shall be the responsibility of the incorporated city to provide the Finance and Administration Cabinet with documentation from the United States Bureau of the Census showing the population for the annexed area as it existed at the time of the last decennial census.

(6) If the incorporated area cannot obtain a population count from the Bureau of the Census, the annexed area's population shall not be eligible to be counted in the distribution of the municipal aid fund. However, the streets included in the annexed areas shall be eligible to receive work through this program.

(7) Apportionments as required by the provisions of this section shall be made on the basis of revenue estimates supplied by the Finance and Administration Cabinet and shall be adjusted quarterly in accordance with the most recent revision of the estimates by the Finance and Administration Cabinet.

(8) Any local government eligible to receive municipal road aid moneys pursuant to KRS 177.365 to 177.369 shall be required to submit a uniform financial information report to the Department ***for***[~~of~~] Local Government pursuant to KRS 65.905 before any payment of municipal road aid funds shall be made. The Department ***for***[~~of~~] Local Government shall

notify the Finance and Administration Cabinet no later than March 1 annually of any local government that has not submitted a uniform financial information report. The Finance and Administration Cabinet shall upon notification by the department, immediately suspend all municipal road aid moneys to the local government until the local government complies with the provisions of KRS 65.900 to 65.915 and submits the uniform financial information report to the Department ***for***[~~of~~] Local Government. The department shall immediately notify the Finance and Administration Cabinet to reinstate municipal road aid moneys to any local government affected by this subsection as soon as the local government submits the uniform financial information report.

Section 67. KRS 179.410 is amended to read as follows:

The Department ***for***[~~of~~] Local Government shall allocate the sum appropriated by the General Assembly from the funds arising under the provisions of KRS 177.320(2), for the construction, reconstruction, improvement, and maintenance of county roads and bridges in accordance with the provisions of KRS 177.360(1).

Section 68. KRS 179.415 is amended to read as follows:

(1) On and after the fiscal year beginning July 1, 1980 and each fiscal year thereafter, the Department ***for***[~~of~~] Local Government shall pay to each county its pro rata share of any funds appropriated and any unexpended balance of funds appropriated for construction, reconstruction, improvement, and maintenance of county roads and bridges. During each fiscal year, the department shall make quarterly payments to each such county of the funds allocated ***in accordance with***[~~pursuant to~~] KRS 177.369.

(2) The expenditure of any money received by the county ***in accordance with***[~~pursuant to~~] the provisions of subsection (1) of this section shall be made solely for the purpose of construction, reconstruction, improvement, and maintenance of county roads and bridges.

(3) Any county which has received any money ***in accordance with***[~~pursuant to~~] the provisions of subsection (1) of this section shall retain all records of the expenditure of ***the***[~~such~~] money for a period of five (5) years and said records shall be subject to audit by the Department ***for***[~~of~~] Local Government for said period of time in order to determine the proper expenditure of said money for the purpose required by KRS 179.410.

Section 69. KRS 198A.030 is amended to read as follows:

(1) There is hereby created and established an independent, de jure municipal corporation and political subdivision of the Commonwealth which shall be a public body corporate and politic to be known as the Kentucky Housing Corporation.

(2) The Kentucky Housing Corporation is created and established as a de jure municipal corporation and political subdivision of the Commonwealth to perform essential governmental and public functions and purposes in improving and otherwise promoting the health and general welfare of the people by the production of residential housing in Kentucky.

(3) The corporation shall be governed by a board of directors, consisting of fourteen (14) members, six (6) of whom shall be the Lieutenant Governor, the secretary of the Finance and Administration Cabinet, the commissioner of the Department ***for***[~~of~~] Local Government, the secretary of the Revenue Cabinet, the Attorney General, and the secretary of the Cabinet for Economic Development, or their duly appointed designees, as public directors, and eight (8) private directors who shall be appointed by the Governor, subject to confirmation by the Senate as provided by KRS 11.160, as follows:

   (a) One (1) private director representing the interests of financial lending institutions located within the Commonwealth;

   (b) One (1) private director representing the interests of the manufactured housing industry within the Commonwealth;

   (c) One (1) private director representing the interests of real estate practitioners licensed by the Kentucky Real Estate Commission;

   (d) One (1) private director representing the interests of the homeless population within the Commonwealth;

   (e) One (1) private director representing the interests of local government;

   (f) One (1) private director representing the interests of the home construction industry in the Commonwealth;

   (g) One (1) private director representing the interests of consumers in the Commonwealth; and

   (h) One (1) private director representing the interests of the Kentucky State Building Trades Council.

(4) Private directors appointed by the Governor may include previous members of the board, and members may be reappointed for successive terms. All appointments shall be for four (4) years, and the appointees shall serve until a qualified successor is appointed.

(5) In case of a vacancy, the Governor may appoint a person for the vacancy to hold office during the remainder of the term. A vacancy shall be filled ***in accordance with***[~~pursuant to~~] the requirement and procedures for appointments.

(6) The Governor may remove any private director whom he may appoint in case of incompetency, neglect of duty, gross immorality, or malfeasance in office; and he may declare his office vacant and may appoint a person for the vacancy as provided in this section.

(7) The Governor shall designate a director of the corporation to serve as chairman. The term of the chairman shall extend to the earlier of either the date of expiration of his then current term as a director of the corporation or a date six (6) months after the expiration of the then current term of the Governor designating the chairman.

(8) The board of directors shall annually elect one (1) of its members as vice chairman. The board of directors shall also elect or appoint, and prescribe the duties of, other officers the board of directors deems necessary or advisable, including an executive director and a secretary, and the board of directors shall fix the compensation of the officers.

(9) The executive director shall administer, manage, and direct the affairs and business of the corporation, subject to the policies, control, and direction of the board of directors of the corporation. The secretary of the corporation shall keep a record of the proceedings of the corporation and shall be custodian of all books, documents, and papers filed with the corporation, the minute book or journal of the corporation, and its official seal. The secretary shall have authority to cause copies to be made of all minutes and other records and documents of the corporation and to give certificates under the official seal of the corporation to the effect that copies are true copies, and all persons dealing with the corporation may rely upon the certificates.

(10) A majority of the board of directors of the corporation shall constitute a quorum for the purposes of conducting its business and exercising its powers and for all other purposes. A majority shall be determined by excluding any existing vacancies from the total number of directors.

(11) Action shall be taken by the corporation upon a vote of a majority of the directors present at a meeting at which a quorum shall exist called upon three (3) days' written notice to each director or upon the concurrence of at least eight (8) directors.

(12) Each private director shall be entitled to a fee of one hundred dollars ($100) for attendance at each meeting of the board of directors or duly called committee meeting of the board.

Section 70. KRS 198A.035 is amended to read as follows:

(1) The Kentucky Housing Corporation shall oversee the development and implementation of the Kentucky housing policy. The corporation shall create an advisory committee on housing policy consisting of the following:

(a) The following ten (10) state government members, or their duly-appointed designees: the commissioner of education; commissioner of the Department ***for***[~~of~~] Local Government; commissioner of the Department of Housing, Buildings and Construction; secretary of the Cabinet for Economic Development; secretary of the Cabinet for Human Resources; secretary of the Natural Resources and Environmental Protection Cabinet; executive director of the Human Rights Commission; state historic preservation officer; secretary of the Transportation Cabinet; and executive director of the Kentucky Housing Corporation.

(b) At-large members shall be appointed by the chairman of the board of directors of the Kentucky Housing Corporation. There shall be one (1) at-large representative for each of the following:

1. Public housing authorities;
2. Mortgage banking industry;
3. Manufactured housing industry;
4. Realtors;
5. Homebuilders;
6. Urban nonprofit housing organizations;
7. Rural nonprofit housing organizations;
8. Urban advocates for the homeless;
9. Rural advocates for the homeless;
10. Residents of economically-diverse urban neighborhoods;
11. Residents of economically-diverse rural neighborhoods;
12. Rental property providers;
13. Advocates for persons with physical disabilities;
14. Advocates for persons with mental disabilities;
15. The Kentucky State Building Trades Council;
16. The Kentucky League of Cities; and
17. The Kentucky Association of Counties.

(c) One (1) member of the Senate and one (1) member of the House of Representatives.

(2) State government members and General Assembly members shall serve on the advisory committee during the term of their elected or appointed state government positions. Members appointed ***as provided by***[~~pursuant to~~] subsection (1)(b)

of this section shall be appointed for four (4) year terms, except that initially five (5) shall be appointed for two (2) year terms, six (6) shall be appointed for three (3) year terms, and six (6) shall be appointed for four (4) year terms.

(3) The advisory committee shall meet at least quarterly and hold additional meetings as necessary. Eleven (11) members of the committee shall constitute a quorum for the purposes of conducting business and exercising its powers for all purposes.

(4) Any vacancy shall be filled ***as provided by***[~~pursuant to~~] the requirements and procedures for the initial appointment and only for the remainder of the term of the initial appointment.

(5) Any at-large member may be removed at any time, with or without cause, by resolution of a majority of the board of directors of the corporation.

(6) The advisory committee shall consult with and advise the officers and directors of the corporation concerning matters relating to the Kentucky housing policy.

(7) The corporation shall annually report its findings and recommendations regarding the Kentucky housing policy to the Governor and the Interim Joint Committee on Local Government of the Legislative Research Commission.

(8) The advisory committee shall elect a presiding officer from among its members and may establish its own rules of procedure which shall not be inconsistent with the provisions of this chapter.

(9) Members of the advisory committee shall serve without compensation. Members who are not employees of the Commonwealth shall be entitled to reimbursement for actual expenses incurred in carrying out their duties on the committee.

(10) The Kentucky Housing Corporation shall provide the staff and funding for the administrative activities of the advisory committee. The Kentucky Housing Corporation shall perform all budgeting, procurement, and other administrative activities necessary to the functioning of the advisory committee. The advisory committee may authorize studies as it deems necessary and utilize Kentucky Housing Corporation funds and other available resources from the public or private sector to provide housing needs data.

Section 71. KRS 198B.040 is amended to read as follows:

The Kentucky Board of Housing, Buildings and Construction shall have the following general powers and duties:

(1) To conduct or cause to be conducted studies to determine the needs of the building industry of Kentucky;

(2) To conduct or cause to be conducted or participate in studies of the costs of the various factors of building construction and use of buildings, and to recommend programs and procedures which will minimize the cost of buildings, including the use of energy, while maintaining safety, durability and comfort;

(3) To administer regulatory legislation relating to buildings and construction;

(4) To assume administrative coordination of the various state construction review programs and to cooperate with various federal, state and local agencies in the programs as they relate to buildings and construction;

(5) To assume administration and coordination of various state housing programs to include:

(a) Devising and implementing procedures, in conjunction with the Department ***for***[~~of~~] Local Government, for attaining and maintaining an accurate count of the housing inventory in Kentucky, including information on the age, physical condition, size, facilities and amenities of ***this***[~~such~~] housing, and housing constructed and demolished each year;

(b) Designing programs coordinating the elements of housing finance, production, maintenance and rehabilitation for the purpose of assuring the availability of safe, adequate housing in a healthful environment for all Kentucky citizens;

(c) Establishing or causing to be established public information and educational programs relating to housing, to include informing Kentucky citizens about housing and housing related programs that are available on all levels of government;

(d) Designing and administering, or participating in the design and administration of educational programs to prepare low income families for home ownership, and counseling them during their early years as homeowners;

(e) Promoting educational programs to assist sponsors in the development and management of low and moderate income housing for sale or rental;

(f) Cooperating with various federal, state and local agencies in their programs as they relate to housing;

(g) Conducting or causing to be conducted studies to determine the housing preferences of Kentucky citizens and the present and future housing requirements of the state;

(6) To recommend state building industry policies and goals to the Kentucky General Assembly;

(7) To adopt and promulgate a mandatory uniform state building code, and parts thereof, which shall establish standards for the construction of all buildings, as defined in KRS 198B.010, in the state;

(8) To ***promulgate administrative***[~~issue~~] regulations providing for the proper construction of public water purification plants, other than the water treatment equipment and systems in such plants, provided, however, that any such regulations must require that applications for permits to build public water purification plants will be submitted by the department to the Natural Resources and Environmental Protection Cabinet for that cabinet's comments. Any such regulations shall require the Natural Resources and Environmental Protection Cabinet's comments to be completed and submitted to the department within sixty (60) days;

(9) To ***promulgate administrative***[~~issue~~] regulations providing for the proper construction of sewage treatment plants, other than the sewage treatment equipment and systems in such plants, provided, however, that any such regulations must require that applications for permits to build public sewage treatment plants will be submitted by the department to the Natural Resources and Environmental Protection Cabinet for that cabinet's comments. Any such regulations shall require the Natural Resources and Environmental Protection Cabinet's comments to be completed and submitted to the department within sixty (60) days; and

(10) To ***promulgate administrative***[~~issue~~] regulations for the safe installation and operation of plumbing and plumbing fixtures.

Section 72. KRS 224.01-500 is amended to read as follows:

(1) The Kentucky Recycling Brokerage Authority, referred to in this section as the "authority," is created by this section to further local governments' efforts to develop reliable markets for their recyclables. The authority shall be composed of sixteen (16) members as follows:

 (a) The secretaries of the Cabinets for Finance and Administration and Natural Resources and Environmental Protection, and the commissioner of the Department ***for***[~~of~~] Local Government; and

 (c) Thirteen (13) members appointed by the Governor including representatives of municipal and county governments; legislators; citizens representing environmental interests; and industry representatives.

(2) These sixteen (16) persons and their successors in office shall constitute the Kentucky Recycling Brokerage Authority, a public corporation, with perpetual succession and with power in that name to contract and be contracted with, to convey property, to sue and be sued, and to exercise, in addition to the powers and functions conferred by this section, all of the usual powers of corporations not inconsistent with specifically enumerated powers. The Governor shall appoint from the membership a chairperson who shall serve at the pleasure of the Governor. The authority may at its discretion elect from its membership other officers of the board.

(3) The members of the authority shall receive no compensation for their services, but shall be entitled to reimbursement for all reasonable expenses necessarily incurred in connection with performance of their duties and function as members.

(4) Nine (9) members of the authority shall constitute a quorum for the transaction of business. The Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection shall provide staff services to the authority. The authority shall establish and maintain complete records of the authority's action and proceedings, which shall be public records open to inspection.

(5) On or before July 1, 1991, the Governor shall appoint thirteen (13) members of the authority as follows: five (5) shall serve terms ending July 1, 1995; four (4) shall serve terms ending July 1, 1994; and four (4) shall serve terms ending July 1, 1993. As the terms of each group of members expire, the Governor shall appoint successors for terms of four (4) years and until their successors are appointed.

(6) The Department for Environmental Protection shall assist the authority and act as the state broker for local governments and commercial recycling businesses seeking to sell recyclable materials. The department shall:

 (a) Identify local, state, and interstate markets for recyclables;

 (b) Issue requests for proposals as well as directly contact potential buyers;

 (c) Negotiate contracts with potential buyers on behalf of participating local governments, commercial recycling businesses, or local groups;

 (d) Arrange details of contracts including price collection schedules, reimbursements, and quality assurance provisions;

 (e) Conduct workshops and seminars throughout the state to train recycling center and solid waste facility operators on how to prepare and process materials that will be marketed through the brokerage office;

 (f) Issue routine market bulletins containing pricing information and other program details to all local governments and commercial recycling businesses, both those participating as well as nonparticipants; and

 (g) Handle all paperwork for the brokering service including contracts, invoices, weigh slips, and records of collections and issue revenue checks to participants.

(7) Local governments and commercial recycling businesses participating in the Kentucky Recycling Brokerage Program shall be assessed a brokerage fee of fifteen percent (15%) of the sale revenue or two dollars ($2) per ton of recyclables sold, whichever is greater.

(8) In addition to any brokerage fees received, the Department for Environmental Protection may receive and accept from any governmental agency, nonprofit organization, or from private enterprise appropriations, grants, or contributions of money, property, labor, or other things of value, to be used to carry out the functions of the department or the authority.

(9) The authority shall annually issue financial and informational reports to the General Assembly which shall contain full descriptions of tonnage volumes handled, revenues generated, contracts entered into, market summaries and reviews, and other information under which a full review of the brokerage program is possible. The report shall be due on July 1 of each year.

(10) The authority shall also include in its July 1, 1993 annual report to the General Assembly the following:

  (a) A description and analysis of the Commonwealth's existing recycling industry, the types, and estimated amounts of recovered material being separated or reprocessed;

  (b) An analysis of the projected long-term capacity of existing markets to absorb materials generated by materials recovery or recycling programs;

  (c) An analysis of potential markets in the Commonwealth, in other states, or in foreign countries for recovered material or products manufactured using recovered material from this Commonwealth;

  (d) An analysis of institutional, economic, and technical barriers to the use of recovered material or products manufactured using recovered materials;

  (e) Recommendations for actions which may be taken to increase demand for recovered materials or products;

  (f) Recommendations for actions which may be taken to increase the incentives for private individuals and for business and industry to recover materials;

  (g) Recommendations on categories of materials which should be recovered in this Commonwealth, given existing and potential markets for those materials;

  (h) Recommendations for a public education program to be implemented by the Natural Resources and Environmental Protection Cabinet and the Environmental Council to provide information to the public and to business and industry on the benefits of materials recovery and recycling and on the availability of those materials or products; and

  (i) A review of state and local government procurement policies and recommendations for actions which might be taken to encourage waste reduction and recycling.

(11) In subsequent years the authority shall include in its annual report the following:

  (a) Any revisions which the authority determines are necessary to its initial report;

  (b) An analysis of changes that have occurred with markets for recovered material and products manufactured using recovered material since the last report; and

  (c) Any other recommendations to facilitate the development of markets for recovered material and products manufactured using recovered material in this Commonwealth.

Section 73. KRS 224A.011 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Administrative fee" means a fee assessed and collected by the authority from borrowers under assistance agreements, to be used for operational expenses of the authority.

(2) "Applicable interest rate" means the rate of interest which shall be used as part of the repayment criteria for an assistance agreement between a governmental agency and the authority, and shall be determined by the authority pertinent to the source of funds from which the assistance agreement is funded.

(3) "Assistance agreement" means the agreement to be made and entered into by and between a governmental agency and the authority, as authorized by this chapter, providing for a lease, loan, services, or grant to the governmental agency or for the purchase of obligations issued by the governmental agency, and for the repayment thereof to the authority by the governmental agency.

(4) "Authority" means the Kentucky Infrastructure Authority, which is created by this chapter.

(5) "Authority revenues" means the totality of all:

  (a) Service charges;

  (b) Utility tax receipts, to the extent not otherwise committed and budgeted by the authority during any fiscal period of the authority;

  (c) Any gifts, grants, or loans received, to the extent not otherwise required to be applied;

  (d) Any and all appropriations made to the authority by the General Assembly of the Commonwealth of Kentucky, to the extent not otherwise required to be applied;

  (e) All moneys received in repayment of and for interest on any loans made by the authority to a governmental agency, except as provided in KRS 224A.111, 224A.112, 224A.270, and KRS 224A.1115, or as principal of and interest on any obligations issued by a governmental agency and purchased by the authority, or as receipts under any assistance agreement;

(f) The proceeds of bonds or long-term debt obligations of governmental agencies pledged to the payment of bond anticipation notes issued by the authority on behalf of the said governmental agency to provide interim construction financing; and

(g) Payments under agreements with any agencies of the state and federal government.

(6) "Borrower or borrowing entity" means any agency of the state or its political subdivisions, any city, or any special district created under the laws of the state acting individually or jointly under interagency or interlocal cooperative agreements to enter into assistance agreements with the authority.

(7) "Community flood damage abatement project" means any structural or nonstructural study, plan, design, construction, development, improvement, or other activity to provide for flood control.

(8) "Construction" means and includes, but is not limited to:

(a) Preliminary planning to determine the economic and engineering feasibility of infrastructure projects, the engineering, architectural, legal, fiscal, and economic investigations, and studies necessary thereto, and surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary to the construction of infrastructure or solid waste projects;

(b) The erection, building, acquisition, alteration, remodeling, improvement, or extension of infrastructure or solid waste projects; and

(c) The inspection and supervision of the construction of infrastructure or solid waste projects and all costs incidental to the acquisition and financing of same. This term shall also relate to and mean any other physical devices or appurtenances in connection with, or reasonably attendant to, infrastructure or solid waste projects.

(9) "Dams" means any artificial barrier, including appurtenant works, which does or can impound or divert water, and which either:

(a) Is or will be twenty-five (25) feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the natural resources cabinet; or

(b) Has or will have an impounding capacity at maximum water storage elevation of fifty (50) acre feet or more.

(10) "Distribution facilities" means all or any part of any facilities, devices, and systems used and useful in obtaining, pumping, storing, treating, and distributing water for agricultural, industrial, commercial, recreational, public, and domestic use.

(11) "Federal act" means the Federal Clean Water Act (33 U.S.C. sec. 1251 et seq.) as said federal act may be amended from time to time in the future, or any other enactment of the United States Congress providing funds that may assist in carrying out the purposes of the authority.

(12) "Federally assisted wastewater revolving fund" means that fund which will receive federal and state funds or the proceeds from the sale of revenue bonds of the authority for the purpose of providing loans to finance construction of publicly owned treatment works as defined in Section 212 of the federal act and for the implementation of a management program established under Section 319 of the federal act and for the development and implementation of a conservation and management plan under Section 320 of the federal act.

(13) "Governmental agency" means any incorporated city or municipal corporation, or other agency, or unit of government within or a department or a cabinet of the Commonwealth of Kentucky, now having or hereafter granted, the authority and power to finance, acquire, construct, or operate infrastructure or solid waste projects. This definition shall specifically apply, but not by way of limitation, to incorporated cities; counties, including any counties containing a metropolitan sewer district; sanitation districts; water districts; water associations if these associations are permitted to issue interest-bearing obligations which interest would be excludable from gross income under Section 103 of the Internal Revenue Code of 1986 as amended; sewer construction districts; metropolitan sewer districts; sanitation taxing districts; and any other agencies, commissions, districts, or authorities (either acting alone, or in combination with one another ***in accordance with***[~~pursuant to~~] any regional or area compact, or intergovernmental cooperative agreements), now or hereafter established ***in accordance with***[~~pursuant to~~] the laws of the Commonwealth of Kentucky having and possessing the described powers described in this subsection.

(14) "Industrial waste" means any liquid, gaseous, or solid waste substances resulting from any process of industry, manufacture, trade, or business, or from the mining or taking, development, processing, or recovery of any natural resources, including heat and radioactivity, together with any sewage as is present therein, which pollutes the waters of the state, and specifically, but not by way of limitation, means heat or thermal differentials created in the waters of the state by any industrial processing, generating, or manufacturing processes.

(15) "Infrastructure project" means any construction or acquisition of treatment works, distribution facilities, or water resources projects instituted by a governmental agency which is approved by the authority and, if required, by the natural

resources cabinet, Public Service Commission, or other agency; solid waste projects; dams; storm water control and treatment systems; gas or electric utility; or any other public utility or public service project which the authority finds would enhance economic development opportunities in a governmental agency.

(16) "Infrastructure revolving fund" means that fund which will receive state funds, the proceeds from the sale of revenue bonds of the authority or other moneys earmarked for that fund for the purpose of providing loans or grants to finance construction or acquisition of infrastructure projects as defined in this section.

(17) "Loan or grant" means moneys to be made available to governmental agencies by the authority for the purpose of defraying all or any part of the total costs incidental to construction or acquisition of any infrastructure project.

(18) "Market interest rate" means the interest rate determined by the authority under existing market conditions at the time the authority shall provide financial assistance to a governmental agency.

(19) "Natural resources cabinet" means the Kentucky Natural Resources and Environmental Protection Cabinet, or its successor, said term being meant to relate specifically to the state agency which is designated as the water pollution agency for the Commonwealth of Kentucky, for purposes of the federal act.

(20) "Obligation of a governmental agency" means a revenue bond, bond anticipation note, revenue anticipation note, lease or other obligation issued by a governmental agency under KRS 58.010 et seq. or other applicable statutes.

(21) "Person" means any individual, firm, partnership, association, corporation, or governmental agency.

(22) "Pollution" means the placing of any noxious or deleterious substances ("pollutants"), including sewage and industrial wastes, in any waters of the state or affecting the properties of any waters of the state in a manner which renders the waters harmful or inimical to the public health or to animal or aquatic life, or to the use, present or future, of these waters for domestic water supply, industrial, or agricultural purposes, or recreational purposes.

(23) "Prioritization schedules" means the list of wastewater treatment works, distribution facilities and water resources projects which the natural resources cabinet has evaluated and determined to be of priority for receiving financial assistance from the federally assisted wastewater revolving fund, or the list of infrastructure projects which the Department ***for***[~~of~~] Local Government has evaluated and determined to be of priority for receiving financial aid from the infrastructure revolving fund.

(24) "Solid waste project" means construction, renovation, or acquisition of a solid waste facility which shall be instituted and owned by a governmental agency.

(25) "Recovered material" means those materials which have known current use, reuse, or recycling potential, which can be feasibly used, reused, or recycled, and which have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing but does not include materials diverted or removed for purposes of energy recovery or combustion except refuse-derived fuel (RDF), which shall be credited as a recovered material in an amount equal to that percentage of the municipal solid waste received on a daily basis at the processing facility and processed into RDF; but not to exceed fifteen percent (15%) of the total amount of the municipal solid waste received at the processing facility on a daily basis.

(26) "Recovered material processing facility" means a facility engaged solely in the storage, processing, and resale or reuse of recovered material but does not mean a solid waste facility if solid waste generated by a recovered material processing facility is managed ***in accordance with***[~~pursuant to~~] KRS Chapter 224 and administrative regulations adopted by the cabinet.

(27) "Revenue bonds" means special obligation bonds issued by the authority ***as provided by***[~~pursuant to~~] the provisions of this chapter, which are not direct or general obligations of the state, and which are payable only from a pledge of, and lien upon, authority revenues as provided in the resolution authorizing the issuance of the bonds, and shall include revenue bond anticipation notes.

(28) "Service charge" means any monthly, quarterly, semiannual, or annual charge to be imposed by a governmental agency, or by the authority, for any infrastructure project financed by the authority, which service charge arises by reason of the existence of, and requirements of, any assistance agreement.

(29) "Sewage" means any of the waste products or excrements, or other discharges from the bodies of human beings or animals, which pollute the waters of the state.

(30) "Solid waste" means "solid waste" as defined by KRS 224.01-010(31)(a).

(31) "Solid waste facility" means any facility for collection, handling, storage, transportation, transfer, processing, treatment, or disposal of solid waste, whether the facility is associated with facilities generating the waste or otherwise, but does not include a container located on property where the waste is generated and which is used solely for the purpose of collection and temporary storage of that solid waste prior to off-site disposal, or a recovered material processing facility.

(32) "Solid waste revolving fund" means that fund which shall receive state funds, the proceeds from the sale of revenue bonds of the authority, or other moneys earmarked for the purpose of providing loans or grants to finance solid waste projects defined in this section.

(33) "State" means the Commonwealth of Kentucky.

(34) "System" means the system owned and operated by a governmental agency with respect to solid waste projects, treatment works, or infrastructure projects financed ***as provided by***[~~pursuant to~~] the assistance agreement between the governmental agency and the authority.

(35) "Treatment works" or "wastewater treatment works" means all or any part of any facilities, devices, and systems used and useful in the storage, treatment, recycling, and reclamation of wastewater or the abatement of pollution, including facilities for the treatment, neutralization, disposal of, stabilization, collecting, segregating, or holding of wastewater, including without limiting the generality of the foregoing, intercepting sewers, outfall sewers, pumping power stations, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof, and any wastewater treatment works, including site acquisition of the land that will be an integral part of the wastewater treatment process, or is used for ultimate disposal of residues resulting from wastewater treatment, together with any other facilities which are deemed to be treatment works ***in accordance with***[~~pursuant to~~] the federal act.

(36) "Variable rate revenue bonds" means revenue bonds the rate of interest on which fluctuates either automatically by reference to a predetermined formula or index or ***in accordance with***[~~pursuant to~~] the standards set forth in KRS 224A.120.

(37) "Wastewater" means any water or liquid substance containing sewage, industrial waste, or other pollutants or contaminants derived from the prior use of these waters.

(38) "Water resources" means all waters of the state occurring on the surface, in natural or artificial channels, lakes, reservoirs, or impoundments, and in subsurface aquifers, which are available, or which may be made available to agricultural, industrial, commercial, recreational, public, and domestic users.

(39) "Water resources project" means any structural or nonstructural study, plan, design, construction, development, improvement, or any other activity including programs for management, intended to conserve and develop the water resources of the state and shall include all aspects of water supply, flood damage abatement, navigation, water-related recreation, and land conservation facilities and measures.

(40) "Waters of the state" means all streams, lakes, watercourses, waterways, ponds, marshes, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, which are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural, surface, or underground waters.

(41) "Utility tax" means the tax which may be imposed by the authority on every purchase of water or sewer service in the Commonwealth of Kentucky.

Section 74. KRS 224A.030 is amended to read as follows:

(1) There is hereby created the Kentucky Infrastructure Authority, which authority shall be a body corporate and politic, constituting a public corporation and a governmental agency and instrumentality of the state. All powers, duties, and obligations of the Kentucky Pollution Abatement and Water Resources Finance Authority shall be transferred March 31, 1988, to the Kentucky Infrastructure Authority. The affairs of the authority shall be managed and carried out by a board consisting of eight (8) members. The secretaries of the Economic Development, Finance and Administration, and Natural Resources and Environmental Protection Cabinets, the vice chairman of the Kentucky Economic Development Partnership or the vice chairman's designee selected from the membership of the Kentucky Economic Development Partnership or the Kentucky Economic Development Finance Authority, and the commissioner of the Department ***for***[~~of~~] Local Government shall serve as ex officio members of the authority. On or before August 1, 1992, the Governor shall additionally appoint three (3) at large members who shall serve as follows: one (1) shall serve a term ending June 30, 1996; one (1) shall serve a term ending June 30, 1995; and one (1) shall serve a term ending June 30, 1994. As the terms of the at large members expire, the Governor shall appoint successors for terms of four (4) years and until their successors are appointed. The members shall constitute the Kentucky Infrastructure Authority, with power in that name to contract and be contracted with, sue and be sued, have and use a corporate seal, and exercise, in addition to the powers and functions specifically stated in this chapter, all of the usual powers of private corporations to the extent that the same are not inconsistent with specifically enumerated powers of the authority. In the carrying out of its purposes and the exercise by it of the powers conferred by this chapter, the authority is deemed and declared to be performing essential governmental functions and public purposes of the state.

(2) The members of the authority shall receive no compensation for their services in said capacity, but shall be entitled to reimbursement for all reasonable expenses necessarily incurred in connection with performance of their duties and functions as such members.

(3) Five (5) members of the authority shall constitute a quorum for the transaction of business, and in the absence of a quorum, one (1) or more members may adjourn from time to time until a quorum is convened. The secretary of the Finance and Administration Cabinet shall serve as chairperson. The members of the authority shall choose from their ranks a vice chairman. The authority shall elect a secretary and a treasurer who shall not be members of the authority, each of whom shall serve at the pleasure of the authority and shall receive[~~ such~~] compensation as may be determined by

the authority.

(4) The authority shall, for administrative purposes, be attached to the Finance and Administration Cabinet, and shall establish and maintain offices in premises which shall be provided for that purpose by the Finance and Administration Cabinet; and the secretary of the authority shall at all times maintain therein complete records of all of the authority's actions and proceedings which shall constitute public records open to inspection at all reasonable times.

Section 75. KRS 224A.112 is amended to read as follows:

(1) The infrastructure revolving fund shall be established in the State Treasury and shall be administered by the authority.

(2) The fund shall be a dedicated fund and all moneys in the fund shall be dedicated solely to providing financial assistance to governmental agencies for the construction or acquisition of infrastructure projects when a governmental agency is unable to finance the entire infrastructure project for which it is seeking moneys from its own resources, through commercial credit at reasonable rates and under reasonable terms or through other public grant or loan programs, including the federally assisted wastewater revolving fund.

(3) The financial assistance which may be provided to governmental agencies by the revolving fund shall be limited to:

(a) Making loans, on the condition that the loans are made at or below market interest rates, including interest free loans, at terms not to exceed thirty (30) years and that the fund will be credited with all payments of principal and interest on all loans;

(b) Purchasing or guaranteeing, or purchasing insurance for, local or state obligations when the action would improve credit market access or reduce interest rates;

(c) Providing a source of revenue or security for the payment of principal and interest on bonds or notes issued by the authority or other agencies of the state if the proceeds of the sale of the bonds will be deposited in the fund;

(d) Providing moneys with which to carry out the requirements of assistance agreements; and

(e) Making grants as funds specifically appropriated for grants or proceeds from the sale of the authority's revenue bonds are available when the authority finds that both a hardship and an extreme health hazard exist.

(4) The revolving fund shall be established, maintained and credited with repayments and the fund balance shall be available in perpetuity for its stated purposes.

(5) The authority may provide financial assistance from the fund to supplement assistance provided from the federally assisted wastewater revolving fund as created in KRS 224A.111 or for any infrastructure projects on the prioritization schedule prepared by the Department ***for***[~~of~~] Local Government.

(6) The Department ***for***[~~of~~] Local Government shall advise governmental agencies of the availability of the infrastructure revolving fund and how moneys may be obtained from the fund. In establishing its prioritization schedule, the Department ***for***[~~of~~] Local Government shall consult the Cabinet for Economic Development regarding economic development project criteria, shall give funding consideration to economic development projects recommended by the Cabinet for Economic Development, and shall consider the following factors:

(a) Local employment;

(b) The relationship of the infrastructure project to the governmental agency's capital investment plan;

(c) The relationship of the infrastructure project to the governmental agency's economic development;

(d) The reasonableness of the proposed costs;

(e) The probable effectiveness of the infrastructure project as proposed; and

(f) Any other criteria that the Department ***for***[~~of~~] Local Government considers advisable.

(7) The authority may enter into any necessary or required agreement with federal or state agencies or persons to carry out the provisions of this section.

Section 76. KRS 224A.113 is amended to read as follows:

The authority, the Natural Resources Cabinet or the Department ***for***[~~of~~] Local Government may promulgate administrative regulations to implement KRS 224A.111, 224A.112, and KRS 224A.1115.

Section 77. KRS 262.875 is amended to read as follows:

(1) There shall be created a committee to advise the Governor on state activities that may contribute to the conversion of farmland to nonfarm uses. The committee shall be called the Interagency Farmland Advisory Committee and the members shall be appointed by the Governor and shall include one (1) representative for each of the following:

(a) Governor's Cabinet;

(b) Finance and Administration Cabinet;

(c) Revenue Cabinet;

(d) Transportation Cabinet;

(e) Natural Resources and Environmental Protection Cabinet;

(f) Coal Marketing and Export Council;

(g) Department of Agriculture;

(h) Department ***for***[~~of~~] Local Government;

(i) Department of Fish and Wildlife Resources;

(j) Environmental Quality Commission;

(k) Soil and Water Conservation Commission;

(l) Dean, College of Agriculture, University of Kentucky;

(m) Two (2) farmer owners and operators of one hundred fifty (150) acres or less, one (1) selected from a list of three (3) persons recommended by the Kentucky Farm Bureau, and one (1) selected from a list of three (3) persons recommended by the National Farmers Organization;

(n) Two (2) farmer owners and operators of more than one hundred fifty (150) acres, one (1) selected from a list of three (3) persons recommended by the Kentucky Farm Bureau, and one (1) selected from a list of three (3) persons recommended by the National Farmers Organization; and

(o) The joint chairpersons of the Interim Joint Committee on Agriculture and Natural Resources.

(2) The representative of the Natural Resources and Environmental Protection Cabinet shall be the chairperson of the committee, and the representative of the Soil and Water Conservation Commission shall be the vice chairperson of the committee. The staff for the committee shall be provided by the Natural Resources and Environmental Protection Cabinet.

(3) In order to advise the Governor, the committee shall review proposed state projects which will convert farmland to nonfarm use. The review shall consider alternatives to the project proposal in an effort to balance the public purpose to be served by the state project against the public purpose of conserving productive farmland.

(4) The Interagency Farmland Advisory Committee shall review proposed projects of all state agencies, including but not limited to, boards and commissions. The review shall be limited to proposed projects which will require the acquisition of more than fifty (50) acres of farmland.

(5) During the planning stage of the project and before any action is taken to acquire farmland, the state agency shall submit a report to the committee. The report shall explain the project, contain an agricultural impact assessment, highlight the location of land that must be acquired, present the reasons for needing the land, and explain the reasons for rejecting alternatives to the proposed project.

(6) All state projects shall be located to provide minimal interference with the productivity of agricultural lands of statewide importance as identified by KRS 246.065.

(7) The committee shall provide notice of the proposed project to the local community by publishing the notice in the newspaper of greatest local circulation within fifteen (15) days after receiving the report. The notice shall solicit comments on the proposal and state that a public hearing will be held upon a request received within fifteen (15) days of the last published notice. If requested, the public hearing shall be held within fifteen (15) days after receiving the request. No later than ten (10) days after the hearing, the committee shall file its report and any recommendations to the Governor. The committee may recommend to the Governor that action be taken by the Governor to alter the proposed state project if necessary to balance the public interests.

(8) A majority of the members of the committee constitutes a quorum for conducting business, and any action taken in the name of the committee requires an affirmative vote of a majority of the members present and voting.

(9) Members shall receive no compensation but shall be reimbursed for expenses incurred.

Section 78. KRS 424.190 is amended to read as follows:

(1) If a statute gives discretion to a public officer or agency or governmental body as to the method of making an advertisement required by the statute, and if a statute provides that an advertisement may be made either by posting or by newspaper publication, the advertisement shall be made by newspaper publication in accordance with the provisions of this chapter, except as provided in subsection (2) of this section.

(2) Any city may, when the cost of the newspaper publication exceeds the cost of postage, supplies, and reproduction for the alternative method of publication, in lieu of newspaper publication of advertisement, substitute delivery of a copy of the advertisement by first class mail to each residence within the publication area. Any city electing to use the alternative publication methods authorized by this section shall forward three (3) copies of its audit report or one (1) copy of its financial statement, whichever is applicable, to the Kentucky Department ***for***[~~of~~] Local Government ***in accordance with***[~~pursuant to~~] KRS 91A.040 and 424.220.

Section 79. KRS 424.220 is amended to read as follows:

(1) Excepting officers of a city of the first class, a county containing such a city, a public agency of such a city or county, or a

joint agency of such a city and county, or of a school district of such a city or county, and excepting officers of a city of the second class or an urban-county government, every public officer of any school district, city, county, or subdivision, or district less than a county, whose duty it is to collect, receive, have the custody, control or disbursement of public funds, and every officer of any board or commission of a city, county or district whose duty it is to collect, receive, have the custody, control or disbursement of funds collected from the public in the form of rates, charges or assessments for services or benefits, shall at the expiration of each fiscal year prepare an itemized, sworn statement of the funds collected, received, held or disbursed by him during the fiscal year just closed, unless he has complied with KRS 424.230. Pursuant to subsections (2) and (3) of KRS 91A.040, each city of the sixth class shall prepare an itemized, sworn statement of the funds collected, received, held, or disbursed by the city which complies with the provisions of this section.

(2) The statement shall show:

(a) The total amount of funds collected and received during the fiscal year from each individual source; and

(b) The total amount of funds disbursed during the fiscal year to each individual payee and the purpose for which the funds were expended.

(3) Only the totals of amounts paid to each individual as salary or commission and public utility bills shall be shown. The amount of salaries paid to all nonelected county employees shall be shown as lump-sum expenditures by category, including, but not limited to, road department, jails, solid waste, public safety, and administrative personnel.

(4) The amount of salaries paid to all teachers shall be shown as a lump-sum instructional expenditure for the school district and not by amount paid to individual teachers. The amount of salaries paid to all other employees of the board shall be shown as lump-sum expenditures by category, including, but not limited to, administrative, maintenance, transportation and food service. The local board of education and the fiscal court shall have accessible a factual list of individual salaries for public scrutiny and the local board and the fiscal court shall furnish by mail a factual list of individual salaries of its employees to a newspaper qualified under KRS 424.120 to publish advertisements for the district, which newspaper may then publish as a news item the individual salaries of school or county employees.

(5) The officer shall procure and include in or attach to the financial statement, as a part thereof, a certificate from the cashier or other proper officer of the banks in which the funds are or have been deposited during the past year, showing the balance, if any, of funds to the credit of the officer making the statement.

(6) The officer shall, except in a city electing to publish its audit in lieu of the financial statement ***in accordance with***[~~pursuant to~~] KRS 91A.040(6), within sixty (60) days after the close of the fiscal year cause the financial statement to be published in full in a newspaper qualified under KRS 424.120 to publish advertisements for the city, county or district, as the case may be. Promptly after the publication is made, the officer shall file a written or printed copy of the advertisement with proof of publication, in the office of the county clerk of the county and with the Auditor of Public Accounts. Promptly after the publication is made, the officer shall also file one (1) copy of the financial statement with the Kentucky Department ***for***[~~of~~] Local Government.

(7) In lieu of the publication requirements of subsection (6) of this section, the appropriate officer of any municipally-owned electric, gas, or water system may elect to satisfy the requirements of subsection (6) of this section by:

(a) Preparation of a certified audit by a certified public accountant, performed in accordance with generally accepted principles of accounting, for the fiscal year;

(b) Publishing in a newspaper qualified under KRS 424.120 to publish advertisements for the city, county or district as the case may be, the statement of revenue and expenditures from such audit, together with the statement that the audit report is available for inspection at the offices of the utility; and

(c) Making such audit available for inspection on request of anyone during normal working hours of the utility.

(8) In lieu of the publication requirements of subsection (6) of this section, the appropriate officer of a county may elect to satisfy the requirements of subsection (6) of this section by publishing an audit, prepared ***in accordance with***[~~pursuant to~~] KRS 43.070 or 64.810, in the same manner that city audits are published ***in accordance with***[~~pursuant to~~] KRS 91A.040(7).

Section 80. The General Assembly confirms Executive Order 96-737, dated June 11, 1996, which changes the name of the Department of Local Government to the Department for Local Government, to the extent it is not otherwise confirmed by this Act.

SB 190, AN ACT relating to expansion of the Kentucky Horse Park Commission.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 148.260 is amended to read as follows:

(1) There is hereby created and established an agency of state government to be known as the Kentucky Horse Park Commission which shall constitute a separate administrative body of state government within the meaning of KRS

12.010(8) and under the provisions of KRS 12.015 shall be attached to the Tourism Cabinet for administrative purposes.

(2) The commission shall be composed of ***seventeen (17)***[~~thirteen (13)~~] members who possess the ability to provide broad management expertise and direction in the operation of the Kentucky Horse Park and shall, to the extent possible, represent the diverse interest of the Kentucky horse industry. Of these, ***fifteen (15)***[~~eleven (11)~~] members shall be appointed by the Governor. Two (2) of these appointed members of the commission shall represent the equine industry; and two (2) members shall be active in industry and commerce. The secretary of the Cabinet for Economic Development and the secretary of the Tourism Cabinet shall serve as ex officio members with full voting rights. Any vacancy on the commission shall be filled by the Governor for the unexpired term.

(3) The appointed members of the commission shall hold their offices for a term of four (4) years, except that for the initial appointment to the commission, two (2) members shall serve a term of two (2) years, two (2) members shall serve a term of three (3) years, and three (3) members shall serve a term of four (4) years.

(4) The commission shall meet quarterly and shall be headed by a chairman appointed by the Governor. The chairman shall preside over the commission meetings. The chairman may call special meetings of the commission upon a request of the majority of the members of the commission.

(5) Members shall be reimbursed only for expenses incurred in the discharge of official business, subject to regulations established by the Finance and Administration Cabinet. All expenses reimbursed to members shall be paid from operating funds of the Kentucky Horse Park.

(6) The commission shall establish and maintain an office at the Kentucky State Horse Park for the transaction of its business and shall not establish any branch office. The commission may hold meetings at any other place when the convenience of the commission requires.

(7) The commission shall be authorized to adopt bylaws providing for the call of its meetings, which shall be held at least quarterly, and for its operating procedures. A quorum of the commission shall consist of ***eight (8)***[~~six (6)~~] members, and a quorum of members present at any duly-called meeting may act upon any matter before it for consideration. Each member shall have one (1) vote.

(8) The Governor may establish an advisory committee to advise in the administration, development and operation of the horse park or other functions, activities, and programs provided for or authorized by KRS 148.260 to 148.320.

Section 2. Upon passage of this Act, the four (4) members added to the Kentucky Horse Park Commission in Section 1 of this Act shall each serve an initial three (3) year term. Thereafter, members shall serve four (4) year terms.

Section 3. The General Assembly confirms Executive Order 96-998, dated July 15, 1996, to the extent it is not otherwise confirmed or superseded by this Act.

The Committee on Appropriations and Revenue reported **HB 161**, with Committee Amendments attached thereto, **HB 455**, with Committee Substitutes attached thereto with the expression of opinion that the same should pass. Ordered referred to the Committee on Rules

The Committee Amendment No. 3 to the Committee Substitute to **HB 161** is as follows:

On page 19, line 20, By renumbering "***44***" as "***43***";

On page 63, By deleting lines 16 through 27 in their entirety;

On page 64, line 1, By renumbering "SECTION 42" as "SECTION 41";

On page 66, line 6, By renumbering 'SECTION 43" as "SECTION 42";

On page 66, line 16, By renumbering "***49***" as "***48***";

On page 67, line 11, By renumbering "SECTION 44" as "SECTION 43";

On page 67, line 25, By renumbering "SECTION 45" as "SECTION 44";

On page 69, line 24, By renumbering "SECTION 46" as "SECTION 45";

On page 70, line 10, By renumbering "SECTION 47" as "SECTION 46";

On page 70, line 17, By renumbering "SECTION 48" as "SECTION 47";

On page 70, line 22, By renumbering "***44***" as "***43***";

On page 71, line 14, By renumbering "***44***" as "***43***";

On page 71, line 24, By renumbering "***44***" as "***43***";

On page 72, line 10, By renumbering "SECTION 49" as "SECTION 48";

On page 73, line 8, By renumbering "SECTION 50" as "SECTION 49";

On page 74, line 21, By renumbering "SECTION 51" as "SECTION 50";

On page 75, line 2, By renumbering "SECTION 52" as "SECTION 51";
On page 75, line 15, By renumbering "SECTION 53" as "SECTION 52".

The Committee Amendment No. 4 to the Committee Substitute to **HB 161** is as follows:

On page 2, line 26, after "the" by inserting the following "*court where the action is pending or the*"; and
On page 8, line 4, after "*compensation,*" by inserting "*awards attributable to lost wages,*"; and
On page 51, line 2, after "*review*" by inserting "*under subsection (1) of this section*"; and
On page 57, line 11, after "*ratified*" by inserting "*under KRS Chapter 213*"; and
On page 71, line 12, by deleting "*form*" and inserting in lieu thereof "*from*"; and
On page 73, line 14, by deleting "*isolated*" and inserting in lieu thereof "*is located*"; and
On page 74, line 14, by deleting "*for may be*".

The Committee Amendment No. 5 Title to **HB 161** is as follows:

By amending the title to read as follows: AN ACT relating to child support.

The Committee Substitute No. 2 to **HB 455** is as follows:

AN ACT relating to criminal justice matters.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

(1) The Department of Juvenile Justice or a local organization approved by the Department of Juvenile Justice may form local juvenile delinquency prevention councils for the purpose of encouraging the initiation of, or supporting ongoing, interagency cooperation and collaboration in addressing juvenile crime and juvenile status offenses.

(2) The membership of the local council shall be determined by the Department of Juvenile Justice and shall include representatives of law enforcement, the school system, the Department of Social Services, the Court of Justice, the Commonwealth's attorney, the county attorney, a representative of a county juvenile detention facility, and the Department for Public Advocacy. The members of the council shall be appointed as provided by the department by administrative regulation and shall be appointed for not longer than four (4) years, but members may be reappointed for a successive term. A member of the council shall receive no salary for service as a member of the council but may be reimbursed for expenses in the same manner as a state employee.

(3) The duties and responsibilities of a juvenile delinquency prevention council shall include but not be limited to:

(a) Developing a local juvenile justice plan based upon utilization of the resources of law enforcement, the school system, the Department of Juvenile Justice, the Department for Social Services, the Administrative Office of the Courts, and others in a cooperative and collaborative manner to prevent or discourage juvenile delinquency and to develop meaningful alternatives to incarceration;

(b) Entering into a written local interagency agreement specifying the nature and extent of contributions that each signatory agency will make in achieving the goals of the local juvenile justice plan;

(c) Sharing of information as authorized by law to carry out the interagency agreements;

(d) Applying for and receiving public or private grants to be administered by one (1) of the participating cities or counties or other public agencies; and

(e) Providing a forum for the presentation of interagency recommendations and the resolution of disagreements relating to the contents of the interagency agreement or the performance by the parties of their respective obligations under the agreement.

(4) Training of council members shall be the responsibility of the department.

(5) The Department of Juvenile Justice may provide grants to the councils to establish or enhance prevention programs.

(6) The department shall promulgate administrative regulations in accordance with KRS Chapter 13A that relate to:

(a) The formation of councils;

(b) The operation of councils;

(c) The duties of councils; and

(d) The administration and operation of the grant program.

SECTION 2. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

(1) The Department of Juvenile Justice shall, with available funds, develop and administer a statewide detention program and, as each regional facility is constructed and ready for occupancy, shall, within appropriation limitations, provide for:

(a) The operation of pre-adjudication detention facilities for children charged with public offenses; and

(b) The operation of post-adjudication detention facilities for children adjudicated delinquent or found guilty of public offenses.

Funds appropriated for the purposes of this section shall only be used for facilities defined in KRS 15A.200.

(2) In each region in which the Department of Juvenile Justice operates or contracts for the operation of a detention facility, the department shall, within appropriation limitations, develop and administer a program for alternatives to detention that shall provide for:

(a) The operation of or contracting for the operation of pre-adjudication alternatives to detention and follow-up programs for children who are before the court and who enter pretrial diversion or informal adjustment programs; and

(b) The operation of or contracting for the operation of post-adjudication alternatives to detention and follow-up programs, including but not limited to community-based programs, mentoring, counseling, and other programs designed to limit the unnecessary use of secure detention and ensure public safety.

(3) The department shall, except as provided in Section 6 of this Act, charge counties and urban-county governments a per diem not to exceed ninety-four dollars ($94) for lodging juveniles in state-owned or contracted pre-adjudication facilities or post-adjudication facilities.

(4) Detention rates charged by contracting detention facilities shall not exceed the rate in effect on July 1, 1997, subject to increases approved by the department.

(5) The Department of Juvenile Justice shall issue and enforce administrative regulations to govern the following:

(a) Administration;

(b) Intake and classification;

(c) Programs and services;

(d) Record-keeping;

(e) Rules and discipline;

(f) Transfers;

(g) Reimbursement rates and conditions; and

(h) Detention facility rate increases.

Section 3. KRS 15A.067 is amended to read as follows:

(1) As used in this section, "facility" means any of the facilities specified in KRS 15A.200 operated by a political subdivision of the Commonwealth of Kentucky for the care of juveniles alleged to be delinquent, or adjudicated delinquent.

(2) There is established within the Department of Juvenile Justice, a Division of Educational Services, that shall be responsible for the delivery of appropriate educational programs to incarcerated youth. Each facility shall provide educational services to adjudicated delinquents who may be ordered by the court to remain in the juvenile detention facility for an indeterminate period.

(3) *Any other statutes to the contrary notwithstanding, the Department of Juvenile Justice shall have access to all educational records, public or private, of any juvenile in a facility or program or informal adjustment authorized by law.*

(4) The Division of Educational Services shall ensure that all incarcerated youth be provided appropriate screening and educational programs as follows:

(a) For students identified before incarceration as having an educational disability, the Division of Educational Services shall make specially designed instruction and related services available as required by Kentucky Board of Education administrative regulations applicable to students with disabilities.

(b) For students incarcerated for more than fourteen (14) days, the division shall ensure that appropriate screening is provided to all youth. Screening shall include, but not be limited to, seeking the juvenile's educational record.

(c) For students incarcerated for more than thirty (30) days, the division shall ensure that all youth are provided an appropriate education.

(5)[~~(4)~~] The Department of Juvenile Justice shall be responsible for providing, in its contracts with private juvenile detention facilities and county jails, the specific obligations of those entities to provide educational services to incarcerated juveniles consistent with this section, including funding provisions.

(6)[~~(5)~~] The Department of Education and all local school district administrators shall cooperate with officials responsible for the operation of juvenile detention facilities and with the Division of Educational Services to ensure that all documents necessary to establish educational status and need shall follow the students who are being held in these facilities so the students can be afforded educational opportunities.

(7)[~~(6)~~] (a) Upon disposition by the juvenile court that an adjudicated juvenile shall stay in a juvenile detention facility for any period of time, the facility shall notify the juvenile's last resident school district of the student's whereabouts.

(b) Within five (5) days after the juvenile is released, the Division of Educational Services shall notify the district in which the student will reside of the youth's release and educational status and forward any educational records.

(8)[~~(7)~~] The Department of Juvenile Justice shall***, after consultation***[~~collaborate~~] with the Department of Education***,*** ***promulgate***[~~as it promulgates~~] an administrative regulation for the effective implementation of this section.

[~~(8) The Department of Education shall administer this program in cooperation with the Justice Cabinet for the 1996-97 fiscal year. Effective July 1, 1997, the Justice Cabinet shall be responsible for the implementation of this section.~~]

Section 4. KRS 610.265 is amended to read as follows:

(1) Any child who is accused of committing a status or public offense or of being in contempt of court may be detained in a secure juvenile detention facility or juvenile holding facility or, if neither is reasonably available, an intermittent holding facility, for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays.

(2) (a) Within twenty-four (24) hours of the start of the period of detention described in subsection (1) of this section, exclusive of weekends and holidays, a hearing shall be held by the judge or trial commissioner of the court for the purpose of determining whether the child shall be further detained. At the hearing held pursuant to this subsection, the court shall consider the nature of the offense, the child's background and history, and other information relevant to the child's conduct or condition.

(b) If the court orders the child detained further, ***and if the child is charged with a capital offense, Class A felony, or Class B felony,***[~~such~~] detention shall occur in either a secure juvenile detention facility or a juvenile holding facility pending the child's next court appearance subject to the court's review of the detention order prior to that court appearance. ***Any other child, ordered to be detained in a state-operated facility pursuant to the statewide detention plan, shall be referred to the Department of Juvenile Justice for a security assessment and placement in an approved detention facility or program pending the child's next court appearance. The security assessment shall be done at the facility where the juvenile is initially detained.***

(c) If the child is not released, the court designated worker shall notify the parent, person exercising custodial control or supervision, a relative, guardian or other responsible adult.

Section 5. KRS 610.280 is amended to read as follows:

(1) (a) If a child is detained pursuant to KRS 610.265 for the alleged commission of a public offense and not released, a hearing shall be held as soon as practical, but not to exceed twenty-four (24) hours, exclusive of weekends and holidays, of the commencement of detention if the child is detained in an intermittent holding facility. If the child is detained in a secure juvenile detention facility or a juvenile holding facility, then a hearing shall be held as soon as practical, but not to exceed forty-eight (48) hours, exclusive of weekends and holidays, of the commencement of detention.

(b) If a child is detained for the alleged commission of a status offense and not released, a hearing shall be held as soon as practical, but not to exceed twenty-four (24) hours, exclusive of weekends and holidays, of the commencement of detention.

(2) The hearing shall address the following issues:

(a) If there is probable cause to believe that an offense has been committed and that the accused child committed that offense. Probable cause may be established in the same manner as in a preliminary hearing in cases involving adults accused of felonies. The child shall be afforded the right to confront and cross-examine witnesses. The Commonwealth shall bear the burden of proof and if it should fail to establish probable cause, the child shall be released and the complaint or petition dismissed unless the court determines further detention is necessary to assure the appearance of the child in court on another pending case; and

(b) In determining detention, the court shall consider the seriousness of the alleged offense, the possibility that the child would commit an offense dangerous to himself or the community pending disposition of the alleged offense, the child's prior record, if any, and whether there are other charges pending against the child. ***Any child, ordered to be detained in a state-operated facility pursuant to the statewide detention plan, shall be referred to the***

Department of Juvenile Justice for a security assessment and placement in an approved detention facility or program pending the child's next court appearance. The security assessment shall be done at the facility where the juvenile is initially detained.

(3) If, after completion of the detention hearing, the court is of the opinion that detention is necessary, the order shall state on the record the specific reasons for detention.

Section 6. KRS 635.060 is amended to read as follows:

If in its decree the juvenile court finds that the child comes within the purview of this chapter, the court, at the dispositional hearing may:

(1) Order the child or his parents, guardian, or person exercising custodial control to make restitution or reparation to any injured person to the extent, in the sum and upon the conditions as the court determines. However, no parent, guardian, or person exercising custodial control shall be ordered to make restitution or reparation unless the court has provided notice of the hearing, provided opportunity to be heard, and made a finding that the person's failure to exercise reasonable control or supervision was a substantial factor in the child's delinquency; or

(2) Place the child on probation, home incarceration, or under supervision in the child's own home or in a suitable home or boarding home, upon the conditions that the court shall determine. A child placed on probation, home incarceration, or supervision shall be subject to the visitation and supervision of a ***probation officer or an employee***~~[juvenile probation officer]~~ of the Department of Juvenile Justice. Except as provided in KRS 635.083, a child placed on probation, home incarceration, or supervision shall remain subject to the jurisdiction of the court until the child becomes eighteen (18) years of age, unless the child is discharged prior thereto by the court, except that if a person is placed on probation, home incarceration, or supervision after the person reaches the age of seventeen (17) years and six (6) months, the probation, home incarceration, or supervision shall be for a period not to exceed one (1) year; or

(3) Commit ***or recommit*** the child to the custody or guardianship of the Department of Juvenile Justice, a child-caring facility, a child-placing agency authorized to care for the child, or place the child under the custody and supervision of a suitable person. If the child is detained in an approved secure juvenile detention facility, juvenile holding facility, or intermittent holding facility in accordance with KRS 15A.200 to 15A.240 at the time the child is committed ***or recommitted*** to the custody of the Department of Juvenile Justice, the Department of Juvenile Justice shall accept physical custody of the child, remove the child from the approved secure juvenile detention facility or juvenile holding facility, and secure appropriate placement ***as soon as possible but not to exceed thirty-five (35)***~~[within seven (7)]~~ days of the time of commitment ***or recommitment. The Department of Juvenile Justice shall pay for the cost of detention from the date of commitment or recommitment, on the current charge, until the child is removed from the detention facility and placed***. All orders of commitment may include advisory recommendations the court may deem proper in the best interests of the child and of the public. The commitment or placement shall be until the age of eighteen (18), subject to ***KRS 635.070 and to*** the power of the court to terminate the order and discharge the child prior thereto, except that if the commitment or placement is after a person has reached the age of seventeen (17) years and six (6) months, the commitment or placement shall be for an indeterminate period not to exceed one (1) year. The court, in its discretion, upon motion by the child and with the concurrence of the Department of Juvenile Justice, may authorize an extension of commitment up to age twenty-one (21) to permit the Department of Juvenile Justice to assist the child in establishing independent living arrangements; or

(4) ~~[Effective July 1, 1997,]~~If the child is fourteen (14) years of age but less than sixteen (16) years of age, order that the child be confined in an approved secure juvenile detention facility***,***~~[or]~~ juvenile holding facility***, or approved detention program as authorized by the Department of Juvenile Justice*** in accordance with KRS ***Chapter*** 15A~~[.200]~~ for a period of time not to exceed forty-five (45) days; or

(5) ~~[Effective July 1, 1997,]~~If the child is sixteen (16) years of age or older, order that the child be confined in an approved secure juvenile detention facility***,***~~[or]~~ juvenile holding facility***, or approved detention program as authorized by the Department of Juvenile Justice*** in accordance with KRS ***Chapter*** 15A~~[.200]~~ for a period of time not to exceed ninety (90) days; or

(6) Any combination of the dispositions listed above.

The Department of Juvenile Justice shall pay for the confinement of children confined pursuant to subsections (4) or (5) of this section ***in accordance with the statewide detention plan and administrative regulations implementing the plan***.~~[The requirement that the Department of Juvenile Justice pay for confinement of persons confined pursuant to subsections (4) and (5) of this section shall apply only to juveniles confined on or after July 1, 1997.]~~

SECTION 7. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

(1) The Department of Juvenile Justice, the Cabinet for Human Resources, the Department of Corrections, the Administrative Office of the Courts, and the Kentucky State Police shall be responsible for the recording of those data elements for juveniles that are needed for the development of the centralized criminal history record information system.

(2) The database shall at a minimum contain the information required in KRS 27A.310 to 27A.440; and

(3) The Department of Juvenile Justice shall provide access to Commonwealth's attorneys, county attorneys, law enforcement agencies, the Kentucky State Police, the Department of Corrections, the Cabinet for Human Resources, and the Administrative Office of the Courts to its database.

SECTION 8. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

The Department of Juvenile Justice shall update its database within thirty (30) days of receipt of information. The update shall include information from the:

(1) Offender records;

(2) Institutional records; and

(3) Administrative records.

SECTION 9. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall update its database within thirty (30) days of receipt of information. The update shall include information from:

(1) Offender records;

(2) Institutional records; and

(3) Administrative records.

SECTION 10. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

(1) The following agencies shall, subject to restrictions imposed by state or federal law, disclose and share with each other all information they maintain on a juvenile in a facility or program or informal adjustment authorized by law:

  (a) All sheriff's offices, police departments, and any other law enforcement agency;

  (b) All Commonwealth's attorneys and county attorneys;

  (c) The Attorney General;

  (d) All jails and juvenile detention facilities, public and private;

  (e) All courts and clerks of courts;

  (f) The Administrative Office of the Courts;

  (g) All departments within the Justice Cabinet; and

  (h) All departments within the Cabinet for Human Resources.

(2) Except as provided in this section, all information shared by agencies specified above shall be subject to applicable confidentiality disclosure, redisclosure, and access restrictions imposed by federal or state law.

(3) All public or private elementary or secondary schools, vocational or business schools, or institutions of higher education shall provide all records specifically requested to any of the agencies listed in subsection (1) of this section upon written request. The records or information provided pursuant to this subsection shall be subject to:

  (a) Access or other restrictions imposed by federal or state law;

  (b) All confidentiality restrictions imposed by federal or state law; and

  (c) All disclosure and redisclosure restrictions imposed by federal or state law.

(4) Any request for records, the provision of records, the sharing of records, the disclosure of records, or the redisclosure of records shall be done for official purposes only, on a bona fide need to know basis, and only in connection with a legitimate investigation, prosecution, treatment program, or educational program.

(5) Information and records relating to pending litigation in Circuit Court, District Court, or a federal court and information and records relating to an ongoing investigation are not subject to disclosure or sharing under this section.

(6) Obtaining or attempting to obtain a record relating to a minor or by sharing or attempting to share a record relating to a minor with an unauthorized person is a violation of this section.

Section 11. KRS 7.111 is amended to read as follows:

(1) The Kentucky State Police, Department of Corrections, *the Department of Juvenile Justice, the Cabinet for Human Resources,* and the Administrative Office of the Courts shall provide access to their databases and the centralized criminal history record information system and the data contained therein to other criminal justice agencies, including criminal justice statistical analysis centers, and to the Legislative Research Commission. The right of access granted herein shall not include the right to add to, delete, or alter data without permission of the agency holding the data.

(2) Criminal justice agencies and the Legislative Research Commission shall not make public information on an individual

person's criminal history record where such record is protected by state or federal law or regulation.

(3) The Legislative Research Commission shall have access to information which does not identify an individual person when determined by the director of the Legislative Research Commission to be necessary for a legislative purpose.

(4) The Legislative Research Commission shall have access to individual persons' criminal history records subject to the following provisions:

(a) Access shall not include information on federal offenses or convictions;

(b) Access shall not include information on out-of-state convictions; and

(c) Requests for the release of the information shall be approved by the Legislative Research Commission by vote at a meeting of the Commission.

Section 12. KRS 17.151 is amended to read as follows:

The Kentucky State Police shall, in cooperation with the Administrative Office of the Courts***, the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Department of Corrections, be responsible for the recording of those data elements that are needed for development of the centralized criminal history record information system:

(1) The database shall at a minimum contain the information required in KRS 27A.310 to 27A.440;

(2) The Kentucky State Police shall provide access to the Administrative Office of the Courts***, the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Department of Corrections to its database; and

(3) The Kentucky State Police***, the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Department of Corrections shall assign the same identification number or other variable to each person whose name appears in the database.

Section 13. KRS 17.152 is amended to read as follows:

All data supplied to the centralized criminal history record information system by the Kentucky State Police, Administrative Office of the Courts, ***the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Department of Corrections shall be compatible with the system and shall contain both citation and personal identification numbers.

Section 14. KRS 17.150 is amended to read as follows:

(1) Every sheriff, chief of police, coroner, jailer, prosecuting attorney, probation officer, parole officer; warden or superintendent of a prison, reformatory, correctional school, mental hospital or institution for the retarded; State Police, state fire marshal, Board of Alcoholic Beverage Control; Cabinet for Human Resources; Transportation Cabinet; Department of Corrections; ***Department of Juvenile Justice;*** and every other person or criminal justice agency, except the Court of Justice, public or private, dealing with crimes or criminals or with delinquency or delinquents, when requested by the cabinet, shall:

(a) Install and maintain records needed for reporting data required by the cabinet;

(b) Report to the cabinet as and when the cabinet requests all data demanded by it, except that the reports concerning a juvenile delinquent shall not reveal his or his parents' identity;

(c) Give the cabinet or its accredited agent access for purpose of inspection; and

(d) Cooperate with the cabinet to the end that its duties may be properly performed.

(2) Intelligence and investigative reports maintained by criminal justice agencies are subject to public inspection if prosecution is completed or a determination not to prosecute has been made. However, portions of the records may be withheld from inspection if the inspection would disclose:

(a) The name or identity of any confidential informant or information which may lead to the identity of any confidential informant;

(b) Information of a personal nature, the disclosure of which will not tend to advance a wholesome public interest or a legitimate private interest;

(c) Information which may endanger the life or physical safety of law enforcement personnel; or

(d) Information contained in the records to be used in a prospective law enforcement action.

(3) When a demand for the inspection of the records is refused by the custodian of the record, the burden shall be upon the custodian to justify the refusal of inspection with specificity. Exemptions provided by this section shall not be used by the custodian of the records to delay or impede the exercise of rights granted by this section.

(4) Centralized criminal history records are not subject to public inspection. Centralized history records mean information on individuals collected and compiled by the Justice Cabinet from criminal justice agencies and maintained in a central location consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges and any disposition arising therefrom, including sentencing, correctional supervision and release. The information shall be restricted to that recorded as the result of the initiation of criminal proceedings or any proceeding related thereto. Nothing in this subsection shall apply to documents maintained by criminal justice agencies

which are the source of information collected by the Justice Cabinet. Criminal justice agencies shall retain the documents and no official thereof shall willfully conceal or destroy any record with intent to violate the provisions of this section.

(5) The provisions of KRS Chapter 61 dealing with administrative and judicial remedies for inspection of public records and penalties for violations thereof shall be applicable to this section.

(6) The secretary of justice shall adopt the administrative regulations necessary to carry out the provisions of the criminal history record information system and to insure the accuracy of the information based upon recommendations submitted by the commissioner, Department of State Police.

(7) The Administrative Office of the Courts may, upon suitable agreement between the Chief Justice and the secretary of justice, supply criminal justice information and data to the cabinet. No information, other than that required by KRS 27A.350 to 27A.420 and 27A.440, shall be solicited from a circuit clerk, justice or judge, court, or agency of the Court of Justice unless the solicitation or request for information is made pursuant to an agreement which may have been reached between the Chief Justice and the secretary of justice.

SECTION 15. A NEW SECTION OF KRS CHAPTER 27A IS CREATED TO READ AS FOLLOWS:

The Department of Juvenile Justice shall have access to all court records, active and closed, relating to or in the custody of the juvenile session of the District Court or the Administrative Office of the Courts, or both.

Section 16. KRS 27A.300 is amended to read as follows:

The Administrative Office of the Courts shall, in cooperation with the Kentucky State Police***, the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Department of Corrections, be responsible for the recording of those data elements that are needed for development of the centralized criminal history record information system:

(1) The database shall at a minimum contain the information contained in KRS 27A.310 to 27A.440;

(2) The Administrative Office of the Courts shall provide access to the Kentucky State Police***, the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Department of Corrections to its database; and

(3) The Administrative Office of the Courts shall, where the number is known, assign the same identification number or other variable to each person whose name appears in the database.

Section 17. KRS 164.283 is amended to read as follows:

(1) As used in this section unless the context otherwise requires:

(a) "Academic" means a student's official record of academic performance, including, but not limited to transcript of grades or other action taken by the institution directly related to academic performance. The term "academic" does not include any nonacademically-related action the institution may take.

(b) "Universities and colleges" means all state supported postsecondary educational institutions in Kentucky.

(c) "Institution" means all public supported institutions of higher learning in Kentucky.

(2) All student academic records shall be confidential and shall not require a student's Social Security number to identify the student, with the exception of the exemptions stated in subsections (3) to (9) of this section, and shall not be released by any public supported institution of higher education in Kentucky, to any person, organization, institution, group or agency, except with the express consent of the individual student. This confidentiality shall apply only to student academic records, including, but not limited to official transcript of grades.

(3) All student academic records shall be made available upon request to any agency of the federal or state government for the purpose of determining a student's eligibility for military service, and shall include making such records available to local draft boards. This authority shall be limited only to determining the student's eligibility for military service and shall not be extended, except with the individual student's consent as specified in subsection (2) of this section.

(4) Any institution may provide the legal parents of any student under twenty-one (21) years of age with a copy of the student's academic record.

(5) All student academic records shall be made available to any federal, state, or local law enforcement agency***, the Department of Juvenile Justice,*** and any court of law upon ***written*** request[~~ or issuance of a subpoena~~].

(6) All student academic records shall be made available upon request to any grantor of scholarships or loans based upon the maintenance of a satisfactory level of scholarship, but shall be for the official use of the grantors only.

(7) All student academic records shall be made available upon request to a public or private junior college from which the individual student was graduated or to a public or private secondary school from which the individual student was graduated.

(8) All student academic records shall be made available upon request to the Council on Postsecondary Education for professional academic research.

(9) All student academic records shall be made available upon request to any official of the university or college in which the student is enrolled who is directly concerned with the student's academic progress. This authority shall include but is not limited to the individual student's academic adviser.

(10) This section shall be applicable to all academic records maintained by all public postsecondary educational institutions in Kentucky.

SECTION 18. A NEW SECTION OF KRS CHAPTER 194 IS CREATED TO READ AS FOLLOWS:

(1) The Cabinet for Human Resources, the Department of Juvenile Justice, the Department of Corrections, the Administrative Office of the Courts, and the Kentucky State Police, shall be responsible for the recording of those data elements that are needed for the development of the centralized criminal history record information system.

(2) The database shall at a minimum contain the information required in KRS 27A.310 to 27A.440.

(3) The Cabinet for Human Resources shall provide access to the Kentucky State Police, the Department of Corrections, the Department of Juvenile Justice, and the Administrative Office of the Courts to its database.

Section 19. KRS 196.093 is amended to read as follows:

The Department of Corrections shall, in cooperation with the Kentucky State Police***, the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Administrative Office of the Courts, be responsible for the recording of those data elements that are needed for the development of the centralized criminal history record information system:

(1) The database shall at a minimum contain the information required in KRS 27A.310 to 27A.440;

(2) The Department of Corrections shall provide access to the Kentucky State Police***, the Department of Juvenile Justice, the Cabinet for Human Resources,*** and the Administrative Office of the Courts to its database; and

(3) The Department of Corrections shall assign the same identification number or other variable to each person whose name appears in the database.

Section 20. KRS 605.090 is amended to read as follows:

(1) Unless precluded by law, any child committed to the Department of Juvenile Justice or the cabinet may by the decision of the Department of Juvenile Justice or the cabinet or its designee, at any time during the period of his commitment, be:

(a) Upon fourteen (14) days' prior written notice to the court, discharged from commitment. Written notice of discharge shall be given to the committing court and to any other parties as may be required by law;

(b) Placed in the home of his parents, a suitable foster home, or boarding home, upon such conditions as the Department of Juvenile Justice or the cabinet may prescribe and subject to visitation and supervision by a family service worker or juvenile probation and parole officer. At the time a committed child is placed in the home of his parents by the Department of Juvenile Justice or the cabinet, the parents shall be informed in writing of the conditions of the placement and the criteria that will be used to determine whether removal is necessary;

(c) Placed in one (1) of the facilities or programs operated by the Department of Juvenile Justice or the cabinet, except that***:*** No child committed under the provisions of KRS 610.010(1)(b), (c), or (d) ***shall be placed in a facility operated by the Department of Juvenile Justice for children adjudicated as a public offender unless the cabinet and the department agree, and the court consents, that the placement is in the best interest of the child and that the placement does not exceed a group home level;***

(d) Placed in a child-caring facility operated by a local governmental unit or by a private organization willing to receive the child, upon such conditions as the cabinet may prescribe;

(e) Treated as provided in KRS Chapter 645;

(f) Following the transfer or placement of a child pursuant to subsections (b), (c), (d), or (e) of this section, the Department of Juvenile Justice or the cabinet shall, within fourteen (14) days, excluding weekends and holidays, give written notice to the court of the transfer, the placement, and the reasons therefor.

(2) ***No***~~[or any]~~ child ten (10) years of age or under shall be placed in a facility operated by the Department of Juvenile Justice for children adjudicated as public offenders;

(3) If a child committed to the cabinet as dependent, neglected, or abused is placed in the home of his parents, the child shall not be removed except in accordance with the following standards and procedures:

(a) If the family service worker believes that the committed child continues to be dependent, neglected, or abused, but immediate removal is unnecessary to protect the child from imminent death or serious physical injury, the casework situation and evidence shall be reviewed with his supervisor to determine whether to continue work with the family intact or to remove the child. There shall be documentation that the family service worker, prior to the court hearing, made an effort to contact the parents to inform them of the specific problems that could lead to removal so they have an opportunity to take corrective action. If the parents are unavailable or do not respond to attempts to communicate, the specific circumstances shall be documented;

(b) If it appears that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm and there is not reasonably available an alternative less drastic than removal of the child from the home, the cabinet shall petition the District Court to review the commitment pursuant to KRS 610.120 in relation to the cabinet's intention to remove the child from the parent's home. The petition shall set forth the facts which constitute the need for removal of the child. The court shall serve notice of the petition and the time and place of the hearing on the parents; however, the family service worker shall also contact the parents to ensure that they received the notice and are aware of the right to be represented by counsel. If the parents' whereabouts are unknown, notice may be mailed to the last known address of an adult who is a near relative. If the court fails to find that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall not be removed from the parents' home;

(c) If a family service worker finds a committed, unattended child who is too young to take care of himself, the family service worker shall make reasonable efforts to arrange for an emergency caretaker in the child's home until the parents return or fail to return within a reasonable time. If no in-home caretaker is available for the child, the family service worker shall request any appropriate law enforcement officer to take the child into protective custody. If, after a reasonable time, it appears the child has been abandoned, the cabinet shall petition the District Court to review the case; or

(d) If there exist reasonable grounds to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents are unable or unwilling to protect the child, the family service worker shall, with the assistance of a law enforcement officer, immediately remove the child prior to filing a petition for review. Within seventy-two (72) hours after the removal, the cabinet shall file a petition for review in District Court pursuant to KRS 610.120 with a request for an expeditious hearing. If the court fails to find that the child's health or welfare or physical, mental or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall be returned to the parents' home.

(4)[~~(3)~~] The cabinet or the Department of Juvenile Justice, as appropriate, shall notify the juvenile court of the county of placement with the conditions of supervised placement of each child placed in that county from one (1) of the residential treatment facilities operated by the Department of Juvenile Justice or the cabinet. Notice of the conditions of such placement may be made available by the court to any law enforcement agency.

(5)[~~(4)~~] The person in charge of any home to which a child is probated, and the governing authority of any private facility or agency to which a child is committed, shall make such reports to the court as the court may require, and such reports as the Department of Juvenile Justice or the cabinet may require in the performance of its functions under the law. The Department of Juvenile Justice or the cabinet shall have the power to make such visitations and inspections of the homes, facilities, and agencies in which children who have committed public offenses have been placed as it deems necessary to carry out its functions under the law.

(6)[~~(5)~~] The Department of Juvenile Justice may assist the courts in placing children who have committed public offenses in boarding homes, and, under agreements with the individual courts, may assume responsibility for making such placements. Counties may pay or contribute towards the expenses of maintaining such children and, to the extent authorized by the fiscal court, the Department of Juvenile Justice may incur obligations chargeable to the county for such expenses.

Section 21. KRS 610.110 is amended to read as follows:

(1) The disposition shall determine the action to be taken by the court on behalf of, and in the best interest of, the child under the provisions of KRS Chapter 630 or 635.

(2) At the disposition, all information helpful in making a proper disposition, including oral and written reports, shall be received by the court in compliance with subsection (1) of this section and relied upon to the extent of their probative value, provided that the parties or their counsel shall be afforded an opportunity to examine and controvert the reports.

(3) The court shall***, and the Department of Juvenile Justice may upon request,*** notify the law enforcement agency of the child's ***city,*** county***, or urban-county*** of residence ***as appropriate*** and the law enforcement agencies where any offense was committed of the disposition of each case and of each child committed by the court who is placed in a residential treatment facility by the Department of Juvenile Justice or the cabinet.

(4) If any court commits a child to the Department of Juvenile Justice or the cabinet, a child-caring facility, or child-placing agency, the court shall cause to be transmitted to the Department of Juvenile Justice or the cabinet, facility, or agency, as appropriate, a certified copy of the commitment order, together with a summary of the court's information concerning the child. A certified copy of the court order shall be proof of the authority of the Department of Juvenile Justice or the cabinet, facility, or agency to hold the child. Such certified order shall be sufficient authority for any law enforcement officer to take into custody any person named therein and deliver him to such a place as shall be directed by the Department of Juvenile Justice or the cabinet, facility, or agency given custody of him in the order.

(5) In placing a child on probation in a home or boarding home, or in committing a child to a child-caring facility or child-placing agency, the court shall as far as practicable select a home, facility, or agency operated or governed by persons of a similar religious faith as the parents of the child.

(6) Upon motion of the child and agreement of the Department of Juvenile Justice or the cabinet, as appropriate, the court

may authorize an extension of commitment up to age twenty-one (21) for the purpose of permitting the Department of Juvenile Justice or the cabinet, as appropriate, to assist the child in establishing independent living arrangements if a return to the child's home is not in his best interest.

Section 22. KRS 610.320 is amended to read as follows:

(1) A special record book shall be kept by the court for all cases, to be known as the "juvenile record," and the docket or calendar of such cases shall be called the "juvenile docket."

(2) No probation officer, nor employee of a probation officer, shall, without the consent of the District Judge sitting in juvenile session, divulge or communicate to any persons other than the court, ***law enforcement, the Department of Juvenile Justice,*** an officer of the court interested in the case, a member of the advisory board of the court, or a representative of the cabinet, any information obtained pursuant to the discharge of his duties, nor shall any record of the action of the probation officer be made public except by leave of the District Judge; provided, that nothing in this subsection shall prohibit the probation officer from divulging or communicating such information to the court, to his colleagues or superiors in his own department, or to another probation officer having a direct interest in the record or social history of the child.

(3) All law enforcement and court records regarding children who have not reached their eighteenth birthday shall not be opened to scrutiny by the public, except court records, limited to the petition, order of the adjudication, and disposition in juvenile delinquency proceedings concerning a child who is adjudicated a juvenile delinquent for the commission of an offense that would constitute a capital offense or a Class A, B, or C felony if the juvenile were an adult, or any offense involving a deadly weapon, or an offense wherein a deadly weapon is used or displayed. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Release of any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the Federal Social Security Act is also prohibited. Otherwise, the law enforcement records shall be made available to the child, family, guardian, or legal representative of the child involved. The records shall also be made available to the court, probation officers, ***prosecutors, the Department of Juvenile Justice, and law enforcement agencies*** or representatives of the cabinet. Records, limited to the child's adjudication of delinquency, and disposition of a criminal activity covered by KRS 610.345, shall also be made available to public or private elementary and secondary school administrative and counseling personnel, and to any teacher to whose class the student has been assigned for instruction, subject to the provisions of KRS 610.340 and 610.345.

(4) Subject to the Kentucky Rules of Evidence, juvenile court records of adjudications of guilt of a child for an offense which would be a felony if committed by an adult shall be admissible in court at any time the child is tried as an adult, or after the child becomes an adult, at any subsequent criminal trial relating to that same person. Juvenile court records made available pursuant to this section may be used for impeachment purposes during a criminal trial, and may be used during the sentencing phase of a criminal trial. However, the fact that a juvenile has been adjudicated delinquent of an offense which would be a felony if the child had been an adult shall not be used in finding the child to be a persistent felony offender based upon that adjudication.

(5) This section shall not relieve the probation officer or peace officer from divulging such facts as a witness in a trial or hearing involving any cases falling under KRS Chapters 600 to 645 or the production of juvenile records for use in the trial or proceedings.

(6) This section shall not prohibit release of information regarding juvenile proceedings in the District Court which do not reveal the identity of the child or its parents or guardians, or which relate to the child's eligibility for services under Title IV-E or IV-B of the Federal Social Security Act. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court.

Section 23. KRS 610.340 is amended to read as follows:

(1) Unless a specific provision of KRS Chapters 600 to 645 specifies otherwise, all juvenile court records of any nature generated pursuant to KRS Chapters 600 to 645 by any agency or instrumentality, public or private, shall be deemed to be confidential and shall not be disclosed except to the child, parent, and to the extent necessary at the proceeding to victims, or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070 unless ordered by the court for good cause. Juvenile court records which contain information pertaining to arrests, petitions, adjudications, and dispositions of a child may be disclosed to victims or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the Federal Social Security Act shall not be disclosed to victims or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070.

(2) The provisions of this section shall not apply to public officers or employees engaged ***in the investigation of and*** in the prosecution of cases under KRS Chapters 600 to 645 or other portions of the Kentucky Revised Statutes[~~, provided that the inspection of the records and the disclosure of the information contained therein is limited to that required in the investigation and the prosecution of the case~~].

(3) The provisions of this section shall not apply to employees of the ***Department of Juvenile Justice or*** cabinet or its designees responsible for any services under KRS Chapters 600 to 645 or to attorneys for parties involved in actions relating to KRS Chapters 600 to 645 or other prosecutions authorized by the Kentucky Revised Statutes[~~, provided that the inspection of the records and the disclosure of the information contained therein is limited to that required in the investigation and the representation of the client in the case~~].

(4) The provisions of this section shall not apply to records disclosed pursuant to KRS 610.320 or to public or private elementary and secondary school administrative and counseling personnel, to any teacher to whose class the student has been assigned for instruction, or to persons entitled to have juvenile records under KRS 610.345, if the possession and use of the records is in compliance with the provisions of KRS 610.345 and this section.

(5) No person, including school personnel, shall disclose any record or any information contained therein except as permitted by this section or other specific section of KRS Chapters 600 to 645, or except as permitted by specific order of the court.

(6) No person, including school personnel, authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain records to which he is not entitled or for purposes for which he is not permitted to obtain them pursuant to KRS Chapters 600 to 645.

(7) No person, including school personnel, not authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain records which are made confidential pursuant to KRS Chapters 600 to 645 except upon proper motion to a court of competent jurisdiction.

(8) No person shall destroy or attempt to destroy any record required to be kept pursuant to KRS Chapters 600 to 645 unless the destruction is permitted pursuant to KRS Chapters 600 to 645 and is authorized by the court upon proper motion and good cause for the destruction being shown.

(9) As used in this section the term "KRS Chapters 600 to 645" includes any administrative regulations which are lawfully promulgated pursuant to KRS Chapters 600 to 645.

Section 24. KRS 197.045 is amended to read as follows:

(1) Any person convicted and sentenced to a state penal institution may receive a credit on his sentence of not exceeding ten (10) days for each month served, except as otherwise provided in this section, to be determined by the department from the conduct of the prisoner. In addition, the department shall provide an educational good time credit of sixty (60) days to any prisoner who successfully receives a graduate equivalency diploma or a high school diploma, a two (2) or four (4) year college degree, or a two (2) year or four (4) year certification in applied sciences, or who receives a technical education diploma as provided and defined by the department; prisoners may earn additional credit for each program completed. The department may forfeit any good time previously earned by the prisoner, or deny the prisoner the right to earn good time in any amount, if, during the term of imprisonment, a prisoner commits any offense or violates the rules of the institution.

(2) When two (2) or more consecutive sentences are to be served, the several sentences shall be merged and served in the aggregate for the purposes of the good time credit computation or in computing dates of expiration of sentence.

(3) An inmate may, at the discretion of the commissioner, be allowed a deduction from a sentence not to exceed five (5) days per month for performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations and programs. The allowance shall be an addition to commutation of time for good conduct and under the same terms and conditions and without regard to length of sentence.

(4) ***Until successful completion of the sex offender treatment program, a sex offender may earn good time. However, the good time shall not be credited to the sex offender's sentence. Upon the successful completion of the sex offender treatment program, as determined by the program director, the offender shall be eligible for all good time earned but not otherwise forfeited under administrative regulations promulgated by the Department of Corrections. After successful completion of the sex offender treatment program, a sex offender may continue to earn good time in the manner provided by administrative regulations promulgated by the Department of Corrections. Any sex offender, as defined in KRS 197.410, who has not successfully completed the sex offender treatment program as determined by the program director shall not be entitled to the benefit of any credit on his sentence. The provisions of this section shall not apply to any sex offender convicted before the effective date of this section or to any mentally retarded sex offender.***

(5) (a) The Department of Corrections shall, by administrative regulation, specify the length of forfeiture of good time and the ability to earn good time in the future for those inmates who have civil actions dismissed because the court found the action to be malicious or harassing, or if satisfied that the action is legally without merit or factually frivolous.

(b) Penalties set by administrative regulation pursuant to this subsection shall be as uniform as practicable throughout all institutions operated by, under contract to, or under the control of the department and shall specify a specific number of days or months of good time forfeited as well as any prohibition imposed on the future earning of good time.

SECTION 25. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

(1) In addition to the penalties authorized by law, any person convicted of, pleading guilty to, or entering an Alford plea to a felony offense under KRS Chapter 510, 530.020, 530.064, or 531.310 shall be sentenced to a period of conditional discharge following release from:

(a) Incarceration upon expiration of sentence; or

(b) Completion of parole.

(2) The period of conditional discharge shall be three (3) years.

(3) During the period of conditional discharge, the defendant shall:

(a) Be subject to all orders specified by the Department of Corrections; and

(b) Comply with all education, treatment, testing, or combination thereof required by the Department of Corrections.

(4) Persons under conditional discharge pursuant to this section shall be subject to the supervision of the Division of Probation and Parole.

(5) If a person violates a provision specified in subsection (3) of this section, the violation shall be reported in writing to the Commonwealth's attorney in the county of conviction. The Commonwealth's attorney may petition the court to revoke the defendant's conditional discharge and reincarcerate the defendant for no longer than the time remaining on the conditional discharge.

(6) The provisions of this section shall apply only to persons convicted, pleading guilty, or entering an Alford plea after the effective date of this Act.

Section 26. KRS 15A.030 is amended to read as follows:

The Justice Cabinet, in addition to the departments set forth in KRS 15A.020, shall consist of the following organizational units which are hereby created or reestablished:

(1) Office of secretary of justice comprised of the secretary of justice, the Commission on Correction and Community Service, the Kentucky State Corrections Commission, and the ***Criminal Justice Council***[~~Kentucky Crime Commission~~]. The Parole Board shall be attached to the Office of the Secretary for administrative ***and support*** purposes only.

(2) Offices of deputy secretaries of justice.

(3) Office of the general counsel.

(4) Medical examiner service program.

Section 27. KRS 15A.040 is amended to read as follows:

(1) The ***Criminal Justice Council***[~~Kentucky Crime Commission~~] shall advise and recommend to the ***Governor and the General Assembly***[~~secretary~~] policies and direction for[~~ departmental~~] long-range planning regarding all elements of the criminal justice system***. The council shall review and make written recommendations on subjects including but not limited to administration of the criminal justice system, the rights of crime victims, sentencing issues, capital litigation, and the Penal Code. Recommendations for these and all other issues shall be submitted to the Governor and the Legislative Research Commission at least six (6) months prior to every regular session of the Kentucky General Assembly. The council shall:***

(a) Make recommendations to the justice secretary with respect to the award of state and federal grants and ensure that the grants are consistent with the priorities adopted by the Governor, the General Assembly, and the council;

(b) Conduct comprehensive planning to promote the maximum benefits of grants;

(c) Develop model criminal justice programs;

(d) Disseminate information on criminal justice issues and crime trends;

(e) Provide technical assistance to all criminal justice agencies; and

(f) Review and evaluate proposed legislation effecting criminal justice[~~and shall exercise supervisory authority with respect to federal and state grants as required by federal or state law~~].

(2) [~~Total ~~]Membership of the ***Criminal Justice Council shall consist of the following:***

(a) The secretary of the Justice Cabinet or his designee;

(b) The director of the Administrative Office of the Courts;

(c) The Attorney General or his designee;

(d) Two (2) members of the House of Representatives as designated by the Speaker of the House;

(e) Two (2) members of the Senate as designated by the President of the Senate;

(f) A crime victim, as defined in KRS Chapter 346, to be selected and appointed by the Governor;

(g) A victim advocate, as defined in KRS 421.570, to be selected and appointed by the Governor;

(h) A Kentucky college or university professor specializing in law, criminology, corrections, or a similar discipline to be selected and appointed by the Governor;

(i) The public advocate or his designee;

(j) The president of the Kentucky Sheriffs Association;

(k) The commissioner of state police or his designee;

(l) A person selected by the Kentucky State Lodge of the Fraternal Order of Police;

(m) The president of the Kentucky Association of Chiefs of Police;

(n) A member of the Prosecutors Advisory Council as chosen by the council;

(o) The Chief Justice or a justice or judge designated by him;

(p) One (1) member of the Kentucky Association of Criminal Defense Lawyers, appointed by the president of the organization; and

(q) One (1) member of the Kentucky Jailer's Association appointed by the president of the organization[~~Kentucky Crime Commission and the appointment of members thereto shall be determined and made by the Governor~~].

(3) The secretary of justice shall serve ex officio as chairman of the ***council***[~~commission~~]. ***Each member of the council shall have one (1) vote.*** Members of the ***council***[~~commission~~] shall serve without compensation, but shall be reimbursed for their expenses actually and necessarily incurred in the performance of their duties.

(4) The council shall meet at least once every three (3) months.

(5) The council may hold additional meetings:

(a) On the call of the chairman;

(b) At the request of the Governor to the chairman; or

(c) At the written request of the members to the chairman, signed by a majority of the members.

(6) Two-thirds (2/3) members of the council shall constitute a quorum for the conduct of business at a meeting.

(7) Failure of any member to attend two (2) meetings within a six (6) month period shall be deemed a resignation from the council and a new member shall be named by the appointing authority.

(8) The council is authorized to establish committees and appoint additional persons who may not be members of the council as necessary to effectuate its purposes, including but not limited to:

(a) Uniform Criminal Justice Information System committee;

(b) Committee on sentencing; and

(c) Penal Code committee.

(9) The council's administrative functions shall be performed by a full-time executive director appointed by the secretary of the Justice Cabinet and supported by the administrative, clerical, and other staff as allowed by budgetary limitations and as needed to fulfill the council's role and mission and to coordinate its activities.

SECTION 28. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby established the Kentucky Unified Criminal Justice Information System, referred to in this chapter as the "system." The system shall be a joint effort of the criminal justice agencies and the courts. The administrative regulations promulgated by the secretary of justice relating to the system shall be exempt from other statutes and administrative regulations relating to information systems. Nothing in this section shall be construed to hamper any public officer or official, agency, or organization of state or local government from furnishing information or data that they are required or requested to furnish and which they are allowed to procure by law, to the General Assembly, the Legislative Research Commission, or a committee of either. These administrative regulations may include, but shall not be limited to, enterprise standards or specifications set forth for the procurement, maintenance, operation, and development of the system. For the purposes of this section, "criminal justice agencies" include all departments of the Justice Cabinet, the Unified Prosecutorial System, Commonwealth's attorneys, county attorneys, the Transportation Cabinet, the Cabinet for Human Resources, and any agency with the authority to issue a citation or make an arrest.

(2) The program to design, implement, and maintain the system shall be under the supervision of the uniform criminal justice information system committee of the Criminal Justice Council. The membership of this committee shall be determined by the council, upon the recommendation of the Governor's chief information officer, who shall chair the committee.

(3) The committee shall be responsible for recommending standards, policies, and other matters to the secretary of justice for promulgation of administrative regulations in accordance with KRS Chapter 13A to implement the

policies, standards, and other matters relating to the system and its operation.

(4) The committee shall submit recommendations to the Criminal Justice Council and the secretary of justice for administrative regulations to implement the uniform policy required to operate the system. The committee shall implement the uniform policy.

(5) The uniform policy shall include a system to enable the criminal justice agencies and the courts to share data stored in each other's information systems. Initially, the uniform policy shall maximize the use of existing databases and platforms through the use of a virtual database created by network linking of existing databases and platforms among the various departments. The uniform policy shall also develop plans for the new open system platforms before the existing platforms become obsolete.

(6) The committee shall be responsible for recommending to the Criminal Justice Council and the secretary of justice any necessary changes in administrative regulations necessary to implement the system. The committee shall also recommend to the Criminal Justice Council, the Chief Justice, and the secretary of justice recommendations for statutory additions or changes necessary to implement and maintain the system. The secretary shall be responsible for reporting approved statutory recommendations to the Governor, the Chief Justice, the Legislative Research Commission, and appropriate committees of the General Assembly.

(7) The chair of the committee shall report annually to the Criminal Justice Council on the status of the system.

(8) All criminal justice agencies shall follow the policies established by administrative regulation for the exchange of data and connection to the system.

(9) The committee shall review how changes to existing criminal justice agency applications impact the new integrated network. Changes to criminal justice agency applications that have an impact on the integrated network shall be coordinated through and approved by the committee.

(10) Any future state-funded expenditures by a criminal justice agency for computer platforms in support of criminal justice applications shall be reviewed by the committee.

(11) Any criminal justice agency or officer that does not participate in the criminal justice information system may be denied access to state and federal grant funds.

SECTION 29. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky State Police shall design, implement, and maintain an automated fingerprint identification system.

(2) The automated fingerprint identification system shall be compatible with any similar system required by the federal government for inclusion of state information in federal criminal justice databases.

(3) The Commonwealth shall provide and maintain in every detention center the automated fingerprint identification system equipment and programs required by the Kentucky State Police through administrative regulation.

SECTION 30. A NEW SECTION OF KRS CHAPTER 441 IS CREATED TO READ AS FOLLOWS:

(1) All persons arrested or detained in any adult or juvenile detention facility shall be fingerprinted.

(2) The jailer may fingerprint persons for other law enforcement agencies.

(3) The jailer shall submit the fingerprints to the Kentucky State Police in the manner and at the time required by the Kentucky State Police through administrative regulation.

Section 31. KRS 610.300 is amended to read as follows:

(1) Physical evidence shall be obtained and utilized in the investigation of public offenses involving children in the same manner as it is obtained and utilized in the investigation of public offenses involving adults.

(2) ***Except for fingerprint records,*** all records and physical evidence so obtained shall be surrendered to the court upon motion for good cause shown[~~ or upon elimination of the child as a suspect in the case~~]. ***All records, including fingerprint records, shall be subject to expungement in the manner provided in KRS 431.076 for circumstances specified therein.***

(3) The court shall, upon receipt of physical evidence, return any evidence, which is not contraband and is not needed for further prosecution, to its lawful owner. ***The fingerprint cards created pursuant to KRS Chapters 600 to 645 shall be transferred pursuant to KRS 17.110.***

Section 32. KRS 431.520 is amended to read as follows:

Any person charged with an offense shall be ordered released by a court of competent jurisdiction pending trial on his personal recognizance or upon the execution of an unsecured bail bond in an amount set by the court or as fixed by the Supreme Court as provided by KRS 431.540, unless the court determines, in the exercise of its discretion that such a release will not reasonably assure the appearance of the person as required. When such a determination is made, the court shall, either in lieu of or in addition to the above methods of release, impose any of the following conditions of release:

(1) Place the person in the custody of a designated person or organization agreeing to supervise him;

(2) Place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) Require the execution of a bail bond:

(a) With sufficient personal surety or sureties acceptable to the court; in determining the sufficiency of such surety, or sureties, the court shall consider his character, his place of residence, his relationship with the defendant and his financial and employment circumstances; or

(b) With the 10% deposit as provided in KRS 431.530; or

(c) With the deposit of cash equal to the amount of the bond or in lieu thereof acceptable security as provided in KRS 431.535;

(4) ***If the person's record indicates a history of controlled substance or alcohol abuse, order the person to submit to periodic testing for use of controlled substances or alcohol and pay a reasonable fee, not to exceed the actual cost of the test and analysis, as determined by the court with the fee to be collected by the circuit clerk, held in an agency account, and disbursed, on court order, solely to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis performed under this subsection. If the person is declared indigent, the testing fee may be waived by the court. The Administrative Office of the Courts shall establish pilot projects to implement the provisions of this subsection;***

(5) Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours;

(6)[~~(5)~~] A court authorizing the release of a person pursuant to this section shall cause the issuance of an appropriate order containing a statement of the conditions imposed, if any, shall cause such person to be informed of the penalties applicable to violations of the conditions of his release, and shall cause him to be informed that a warrant for his arrest will be issued immediately upon any such violation;

(7)[~~(6)~~] A person for whom conditions of release are imposed and who after twenty-four (24) hours from the time of the imposition of said conditions continues to be detained as a result of his inability to meet the conditions of release, shall, upon written application or upon the court's own motion, be entitled to have the conditions reviewed by the court which imposed them. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon written application or upon the court's own motion, be entitled to a review by the court which imposed the condition;

(8)[~~(7)~~] If at any time following release of a defendant and before he is required to appear for trial, the court is advised of a material change in the defendant's circumstances or that he has not complied with all conditions imposed upon his release, the court having jurisdiction may: (a) order the arrest of the defendant, (b) enter an order requiring the defendant, his surety or sureties to appear and show cause why the bail bond should not be forfeited or the conditions of his release be changed, or (c) both. A copy of said order shall be served upon the defendant, his surety or sureties. If the defendant fails to appear before the court as ordered or if, after hearing, the court finds the conditions of release have not been complied with, the court may change the conditions imposed or forfeit the bail bond or any portion thereof and enter a judgment for the Commonwealth against the defendant and his surety or sureties for the amount of the bail bond or any portion thereof and cost of the proceedings.

Section 33. KRS 431.525 is amended to read as follows:

(1) The amount of the bail shall be:

(a) Sufficient to insure compliance with the conditions of release set by the court;

(b) Not oppressive;

(c) Commensurate with the nature of the offense charged;

(d) Considerate of the past criminal acts and the reasonably anticipated conduct of the defendant if released; and

(e) Considerate of the financial ability of the defendant.

(2) When a person is charged with an offense punishable by fine only***,*** the amount of the bail bond set shall not exceed the amount of the maximum penalty and costs***.***[~~;~~]

(3) When a person has been convicted of an offense and only a fine has been imposed***,*** the amount of the bail shall not exceed double the amount of the fine.

(4) The Administrative Office of the Courts shall establish pilot projects to implement controlled substance or alcohol abuse testing as specified under this subsection. If the person's record indicates a history of controlled substance or alcohol abuse, the court may order the person to submit to periodic testing for use of controlled substances or alcohol and to pay a reasonable fee, not to exceed the actual cost of the test and analysis, as determined by the court, with the fee to be collected by the circuit clerk, held in an agency account, and disbursed, on court order, solely to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis performed under this subsection. If the person is declared indigent, the testing fee may be waived by the court. If the

court finds the conditions of release have not been complied with, the court may change the conditions imposed or forfeit the bail bond or any portion thereof and enter a judgment for the Commonwealth against the person and his surety or sureties for the amount of the bail bond or any portion thereof and the cost of the proceedings.

SECTION 34. A NEW SECTION OF KRS CHAPTER 30A IS CREATED TO READ AS FOLLOWS:

(1) The council shall direct the design of, and the Kentucky State Police shall operate and maintain, an automated warrant system.

(2) The automated warrant system shall be compatible with any similar system required by the federal government for inclusion of state information in federal criminal justice databases.

(3) When a warrant is issued and sent to the circuit clerk, the circuit clerk shall enter the data into the automated warrant system equipment and programs required by the council by administrative regulation of the Justice Cabinet.

(4) When a warrant is issued to a peace officer or other public officer, that officer shall enter, or cause to be entered, the data into the automated warrant system equipment and programs required by the council by administrative regulation of the Justice Cabinet.

(5) When a warrant is served, the officer serving the warrant shall forthwith enter the fact that the warrant was served and other required data into the automated warrant system equipment and programs required by the council by administrative regulation of the Justice Cabinet.

(6) When the conditions for which a warrant has been issued to the circuit clerk have been satisfied, the circuit clerk shall enter that fact and other required data into the automated warrant equipment and programs required by the council by administrative regulation of the Justice Cabinet.

(7) As used in this section and Section 35 of this Act, a "warrant" means an arrest warrant, a juvenile pickup order, a probation or parole violation warrant, or a warden's warrant for escape.

Section 35. KRS 30A.080 is amended to read as follows:

(1) Every clerk shall maintain ***all warrants,***[~~such~~] records, files, dockets***,*** and indexes as are prescribed by statute or rule.

(2) All necessary record books and all necessary supplies required by the clerk's office shall be procured through the Administrative Office of the Courts and paid for by the Court of Justice.

(3) No clerk shall permit the records or papers of his office to be taken out of his office except in case of invasion or insurrection, or other catastrophe, or pursuant to rule or order of court, and then he shall cause them to be returned as soon as the necessity for the removal ceases to exist.

(4) Records may be permanently transferred from the clerk's office by rule or order of the Supreme Court.

Section 36. KRS 346.030 is amended to read as follows:

(1) There is hereby created a board, to be known as the Crime Victims Compensation Board. ***The***[~~Such~~] board shall consist of five (5) members not all of whom shall be engaged in the same occupation or profession***, at least one (1) of whom shall be a victim as defined in KRS 421.500(1) or a victim advocate as defined in KRS 421.570(1),*** and the[~~ said~~] board shall be appointed by the Governor.

(2) The term of office of each such member shall be four (4) years, except that of the members first appointed two (2) shall serve for terms of four (4) years, two (2) shall serve for terms of three (3) years and one (1) shall serve for a term of two (2) years, respectively. Any member appointed to fill a vacancy occurring otherwise than by expiration of a term shall be appointed for the remainder of the unexpired term.

(3) The Governor shall designate one (1) member of the board as chairman thereof, to serve as such at the pleasure of the Governor.

(4) The Governor shall establish the compensation of the members of the board pursuant to the provisions of KRS 64.640.

(5) Each new board member shall receive training on the dynamics of domestic violence, child abuse, sexual assault, homicide, and other violent crimes and the criminal justice process.

Section 37. KRS 346.060 is amended to read as follows:

(1) A claim form may be filed by a person eligible to receive an award, as provided in KRS 346.050, or, if such person is a minor, by his parent or guardian.

(2) A claim form must be filed by the claimant not later than ***five (5) years***[~~one (1) year~~] after the occurrence of the criminally injurious conduct upon which such claim is based, or not later than ***five (5) years***[~~one (1) year~~] after the death of the victim, provided, however, that upon good cause shown, the board may extend the time for filing if, in a particular case, the interest of justice so requires.

(3) Claims shall be filed in the office of the board in person or by mail. Only printed claim forms supplied by the board shall be accepted. The board shall accept for filing all claims submitted by persons eligible under subsection (1) of this section and alleging the jurisdiction requirements set forth in this chapter and meeting the requirements as to form in the rules

and regulations of the board.

(4) Upon filing of a claim pursuant to this chapter, the board shall promptly notify the United States attorney (if a federal offense is involved), the Commonwealth's attorney or county attorney of the county wherein the crime is alleged to have occurred. If, within ten (10) days after such notification, such United States attorney, Commonwealth's attorney or county attorney advises the board that a criminal prosecution is pending upon the same alleged crime and requests that action by the board be deferred, the board shall defer all proceedings under this chapter until such time as such criminal prosecution has been concluded and shall so notify such United States attorney, Commonwealth's or county attorney, and the claimant. When such criminal prosecution has been concluded such United States attorney, Commonwealth's or county attorney shall promptly so notify the board. Nothing in this section shall limit the authority of the board to grant emergency awards pursuant to KRS 346.120.

Section 38. KRS 346.130 is amended to read as follows:

(1) No award shall be made unless the board or board member, as the case may be, finds that:

(a) Criminally injurious conduct occurred;

(b) Such criminally injurious conduct resulted in personal physical or psychological injury to, or death of, the victim; and

(c) Police records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the police records show that such report was made more than forty-eight (48) hours after the occurrence of such crime unless the board, for good cause shown, finds the delay to have been justified.

(2) The board upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies shall deny, reconsider, or reduce an award.

(3) Any award made pursuant to this chapter shall be in an amount not exceeding out-of-pocket expenses, including indebtedness reasonably incurred for medical or other services, including mental health counseling, necessary as a result of the injury upon which the claim is based, together with loss of earnings or support resulting from such injury. Mental health counseling shall be paid for a maximum of two (2) years, but only after proper documentation is submitted to the board stating what treatment is planned and for what period of time.[~~ A six (6) months' progress report will also be required by the board.~~] The board shall have the power to discontinue mental health counseling at any time within the two (2) year period. Replacement of eyeglasses and other corrective lenses shall be included in an award, provided they were broken or damaged during the crime.

(4) Any award made for loss of earnings or support shall, unless reduced pursuant to other provisions of this chapter be in an amount equal to the actual loss sustained; provided, however, that no such award shall exceed one hundred fifty dollars ($150) for each week of lost earnings or support. The claimant or victim must have been employed at the time the crime occurred. Said employment shall be verified by the staff of the board after information is provided by the claimant or victim. Should the claimant or victim fail to supply the board with the information requested, the portion of the claim for lost wages or support shall be denied. If there are two (2) or more persons entitled to an award as a result of the injury or death of a person which is the direct result of criminally injurious conduct, the award shall be apportioned by the board among the claimants.

(5) The board is authorized to set a reasonable limit for the payment of funeral and burial expenses which shall include funeral costs, a monument, and grave plot. In no event shall an award for funeral expenses exceed ***five thousand***[~~thirty-five hundred~~] dollars ***($5,000)***[~~($3,500)~~].

(6) Any award made under this chapter shall not exceed twenty-five thousand dollars ($25,000).

(7) No award shall be made for any type of property loss or damage.

SECTION 39. A NEW SECTION OF KRS 421.500 TO 421.575 IS CREATED TO READ AS FOLLOWS:

(1) In order to establish the minimum conduct of criminal justice professionals with respect to crime victims and to communicate the intent of the General Assembly that victims of crime play an integral role in the criminal justice process, KRS 421.500 to 421.575 is hereby named the Kentucky Crime Victim Bill of Rights.

(2) The rights established by KRS 421.500 to 421.575 shall apply in all felony and misdemeanor proceedings in a District or Circuit Court of the Commonwealth.

(3) Nothing in KRS 421.500 to 421.575 shall provide grounds for the victim to challenge a charging decision or a conviction, to obtain a stay of trial, or to compel a new trial. Law enforcement agencies, county attorneys, and Commonwealth's attorneys and courts shall make every reasonable effort to ensure that victims of crime receive the benefits of the rights set out in KRS 421.500 to 421.575.

Section 40. KRS 421.500 is amended to read as follows:

(1) As used in KRS ***421.500 to 421.575***[~~421.510 to 421.550~~], "victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime classified as ***stalking, unlawful imprisonment, use of a minor in a sexual performance, unlawful transaction with a minor in the first degree,***

terroristic threatening, menacing, harassing communications, intimidating a witness, criminal homicide, robbery, rape, assault, sodomy, kidnapping, burglary in the first or second degree, sexual abuse, wanton endangerment, criminal abuse, or incest. If the victim is a minor or legally incapacitated, "victim" means a parent, guardian, custodian or court-appointed special advocate. If the victim is deceased and the relation is not the defendant, the following relations shall be designated as "victim" for the purpose of exercising those rights contained in KRS ***421.500 to 421.575***[~~421.510 to 421.540~~]:

(a) The spouse;

(b) An adult child if paragraph (a) of this subsection does not apply;

(c) A parent if paragraphs (a) and (b) of this subsection do not apply;

(d) A sibling if paragraphs (a) through (c) of this subsection do not apply; and

(e) A grandparent if paragraphs (a) through (d) of this subsection do not apply.

(2) If any court believes that the health, safety, or welfare of a victim who is a minor or is legally incapacitated would not otherwise adequately be protected, the court may appoint a special advocate to represent the interest of the victim and to exercise those rights provided for by KRS ***421.500 to 421.575***[~~421.510 to 421.540~~]. Communication between the victim and the special advocate shall be privileged.

(3) Law enforcement personnel shall ensure that victims receive information on available ***protective,*** emergency, social, and medical services upon initial contact with the victim and are given information on the following as soon as possible:

(a) Availability of crime victim compensation where applicable;

(b) Community based treatment programs;

(c) The criminal justice process as it involves the participation of the victim or witness;

(d) The arrest of the accused; and

(e) How to ***register to be notified when***[~~find out if~~] a person has been released from ***prison,*** jail***,***[~~ or~~] a juvenile detention facility***, or a psychiatric facility or forensic psychiatric facility if the case involves a violent crime as defined in KRS 439.3401 and the person charged with or convicted of the offense has been involuntarily hospitalized pursuant to KRS Chapter 202A***.

(4) Law enforcement officers and attorneys for the Commonwealth shall provide information to victims and witnesses on how they may be protected from intimidation, harassment, and retaliation as defined in KRS 524.040, 524.045 or 524.055.

(5) Attorneys for the Commonwealth shall make a reasonable effort to insure that:

(a) All victims and witnesses who are required to attend criminal justice proceedings are notified promptly of any scheduling changes that affect their appearances;

(b) If victims so desire and if they provide the attorney for the Commonwealth with a current address and telephone number, they shall receive prompt notification, if possible, of judicial proceedings relating to their case, including the defendant's release on bond ***and any special conditions of release***; of the charges against the defendant, the defendant's pleading to the charges, and the date set for the trial; of notification of changes in the custody of the defendant and changes in trial dates; of the verdict, the victim's right to make an impact statement for consideration by the court at the time of sentencing of the defendant, the date of sentencing, the victim's right to receive notice of any parole board hearing held for the defendant, and that the office of Attorney General will notify the victim if an appeal of the conviction is pursued by the defendant; and

(c) The victim knows how to ***register to be notified when***[~~find out if~~] a person has been released from ***a prison,*** jail***,***[~~ or~~] a juvenile detention facility***, or a psychiatric facility or forensic psychiatric facility if the case involves a violent crime as defined in KRS 439.3401 and the person charged with or convicted of the offense has been involuntarily hospitalized pursuant to KRS Chapter 202A;***

(d) The victim receives information on available:

1. Protective, emergency, social, and medical services;

2. Crime victim compensation, where applicable;

3. Restitution, where applicable;

4. Assistance from a victim advocate; and

5. Community-based treatment programs; and

(e) The victim of crime may pursuant to Section 50 of this Act receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts.

(6) The victim shall be consulted by the attorney for the Commonwealth on the disposition of the case including dismissal, release of the defendant pending judicial proceedings, ***any conditions of release,*** a negotiated plea, and entry into a

pretrial diversion program.

(7) In prosecution for offenses listed in this section for the purpose of defining "victim," law enforcement agencies and attorneys for the Commonwealth shall promptly return a victim's property held for evidentiary purposes unless there is a compelling reason for retaining it. Photographs of such property shall be received by the court as competent evidence in accordance with the provisions of KRS 422.350.

(8) A victim or witness who so requests shall be assisted by law enforcement agencies and attorneys for the Commonwealth in informing employers that the need for victim or witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work.

(9) The Attorney General, where possible, shall provide technical assistance to law enforcement agencies and attorneys for the Commonwealth if such assistance is requested for establishing a victim assistance program.

(10) If a defendant seeks appellate review of a conviction and the Commonwealth is represented by the Attorney General, the Attorney General shall make a reasonable effort to notify victims promptly of the appeal, the status of the case, and the decision of the appellate court.

Section 41. KRS 421.510 is amended to read as follows:

(1) Where the victim is less than sixteen (16) years old and the crime is a sexual offense including violations of KRS 510.040 to 510.150, 530.020, ***530.064***~~[530.065]~~, 530.070, 531.310, 531.320, and 531.370, a speedy trial may be scheduled as provided in subsection (2) of this section.

(2) The court, upon motion by the attorney for the Commonwealth for a speedy trial, shall set a hearing date on the motion within ten (10) days of the date of the motion. If the motion is granted, the trial shall be scheduled within ninety (90) days from the hearing date.

(3) In ruling on any motion or other request for a delay or continuance of the proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

Section 42. KRS 346.185 is amended to read as follows:

(1) There is established in the State Treasury the "Crime Victims' Compensation Fund," hereinafter referred to as the "fund," to be administered by the Crime Victims' Compensation Board. In all cases in which defendants plead or are found guilty of a crime as defined in KRS 500.080(2), there shall be imposed as an additional cost the sum of ***twenty***~~[ten]~~ dollars ***($20)***~~[($10)]~~. This sum shall not be suspended or probated. This sum shall be collected in its entirety and shall not be prorated. The clerk of the court shall collect the cost and forward it monthly to the State Treasurer, to be deposited in the fund. Nothing herein shall be construed to limit the power of the court to order additional forms of restitution including public or charitable work or reparation to the victim, to the fund, or otherwise as authorized by law.

(2) The fund shall consist of moneys from the following: appropriations by the General Assembly; the federal government; payments by the defendant pursuant to subsection (1) of this section and any other public or private source. Any unexpended balance remaining in the fund at the end of the biennium shall not lapse and be transferred to the general fund, but shall remain in the crime victims' compensation fund. Any funds not utilized by the board shall be used to provide assistance to programs for victims and the board shall allocate such funds to any agency providing services to victims. In the event there are insufficient funds in the fund to pay all claims in full, all claims shall be paid at seventy percent (70%). If there are no moneys in the fund, then no claim shall be paid until moneys have again accumulated. In addition to payment of claims, moneys in the fund shall be used to pay all the necessary and proper expenses of the Crime Victims' Compensation Board.

(3) When judgment is entered against a defendant as provided in this section and each sum, or any part thereof, remains unpaid, there shall be withheld from any disbursement, payment, benefit, compensation, salary, or other transfer of money from the State of Kentucky to such defendant an amount equal to the unpaid amount of the judgment. The amount shall be paid to the crime victims' compensation fund and satisfaction of the judgment shall be entered on the court record. Under no circumstances shall the general revenue fund be used to reimburse court costs or pay for judgment.

Section 43. KRS 23A.205 is amended to read as follows:

(1) Court costs for a criminal case in the Circuit Court shall be ***seventy-five***~~[fifty-five]~~ dollars ***($75), which shall include the fee mandated in KRS 346.185***~~[($55)]~~.

(2) ***Except as provided in KRS 346.185,*** taxation of costs against a defendant, upon conviction, may be probated or suspended at the discretion of the court.

(3) Additional fees shall be charged in Circuit Court criminal matters as follows:

(a) Preparing a certification $1.00

(b) Preparing a copy of a document (per page) . $0.15

(4) The additional fees required by subsection (3) of this section shall be paid to the clerk at the time the service is requested.

(5) The circuit clerk shall monthly pay five dollars ($5) from each court cost collected pursuant to subsection (1) of this

section to the sheriff for use by the sheriff for providing security services and related activities to the court as provided for in KRS 64.092. The clerk shall include among his reports to the Administrative Office of the Courts the amounts paid to the sheriff.

SECTION 44. A NEW SECTION OF KRS CHAPTER 26A IS CREATED TO READ AS FOLLOWS:

(1) The Court shall collect the crime victim compensation fee specified in KRS 346.185 when court costs are collected. The fee shall be forwarded by the Circuit Clerk to the State Treasurer at the time costs are transferred to the State Treasurer.

(2) The collection of crime victim compensation fees shall be accounted for as a separate item to the State Treasurer and the Administrative Office of the Courts.

SECTION 45. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

(1) Restitution to a named victim, if there is a named victim, shall be ordered in a manner consistent, insofar as possible, with the provisions of this section and Sections 46, 47, 48, and 49 of this Act in addition to any other part of the penalty for any offense under this chapter. The provisions of this section shall not be subject to suspension or nonimposition.

(2) If pretrial diversion is granted, restitution shall be a part of the diversion agreement.

(3) If probation, shock probation, conditional discharge, or other alternative sentence is granted, restitution shall be a condition of the sentence.

(4) If a person is sentenced to incarceration and paroled, restitution shall be made a condition of parole.

SECTION 46. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

When a judge orders restitution, the judge shall:

(1) Order the restitution to be paid to a specific person or organization through the circuit clerk, who shall disburse the moneys as ordered by the court;

(2) Be responsible for overseeing the collection of restitution;

(3) Set the amount of restitution to be paid;

(4) Set the amount and frequency of each restitution payment or require the payment to be made in a lump sum;

(5) Monitor the payment of the restitution to assure that payment is being made;

(6) If restitution is not being paid as ordered, hold a hearing to determine why the restitution is not being paid;

(7) If the restitution is not being paid and no good reason exists therefore institute sanctions against the defendant; and

(8) Not release the defendant from probation supervision until restitution has been paid in full and all other aspects of the probation order have been successfully completed.

SECTION 47. A NEW SECTION OF KRS CHAPTER 439 IS CREATED TO READ AS FOLLOWS:

(1) When there is an identified victim of a defendant's crime to whom restitution has been ordered but not yet paid in full, or restitution has been ordered paid to a government agency and has not yet been paid in full, the Parole Board shall order the defendant to pay restitution as a condition of parole.

(2) When the Parole Board orders restitution, the board shall:

  (a) Order the restitution to be paid to a specific person or organization through the Division of Probation and Parole, which shall disburse the moneys as ordered by the board;

  (b) The Division of Probation and Parole shall be responsible for overseeing the collection of the restitution;

  (c) Set the amount of restitution to be paid, if not already set;

  (d) Set the amount and frequency of each restitution payment or require the payment to be made in a lump sum;

  (e) Monitor the payment of the restitution to assure that payment is being made;

  (f) If restitution is not being paid as ordered, institute parole violation proceedings to determine why the restitution is not being paid;

  (g) If the restitution is not being paid and no good reason exists therefor, institute sanctions against the defendant; and

  (h) Not release the defendant from parole supervision until restitution has been paid in full.

(3) The board, in addition to any other sanctions which may be imposed on the defendant, ask a court to hold a defendant who is not paying restitution in the manner or amount prescribed in contempt of court.

(4) Any statute relating to the length of parole supervision notwithstanding, the parole for a person owing restitution shall be until the restitution is paid in full, even if this would lengthen the period of supervision beyond the statutory limit of parole supervision or the statutory limit for serving out the sentence imposed.

(5) Payment of restitution in full prior to the end of the period of parole supervision shall not shorten the period of parole supervision.

Section 48. KRS 533.020 is amended to read as follows:

(1) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court shall place him on probation if he is in need of the supervision, guidance, assistance, or direction that the probation service can provide. Conditions of probation shall be imposed as provided in KRS 533.030, but the court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the period of probation.

(2) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court may sentence him to probation with an alternative sentence if it is of the opinion that the defendant should conduct himself according to conditions determined by the court and that probationary supervision alone is insufficient. The court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the alternative sentence.

(3) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court may sentence him to conditional discharge if it is of the opinion that the defendant should conduct himself according to conditions determined by the court but that probationary supervision is inappropriate. Conditions of conditional discharge shall be imposed as provided in KRS 533.030, but the court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the period of conditional discharge.

(4) The period of probation, probation with an alternative sentence, or conditional discharge shall be fixed by the court and at any time may be extended or shortened by duly entered court order. Such period, with extensions thereof, shall not exceed five (5) years***, or the time necessary to complete restitution, whichever is longer,*** upon conviction of a felony nor two (2) years***, or the time necessary to complete restitution, whichever is longer,*** upon conviction of a misdemeanor. Upon completion of the probationary period, probation with an alternative sentence, or the period of conditional discharge, the defendant shall be deemed finally discharged, provided no warrant issued by the court is pending against him, and probation, probation with an alternative sentence, or conditional discharge has not been revoked.

(5) Notwithstanding the fact that a sentence to probation, probation with an alternative sentence, or conditional discharge can subsequently be modified or revoked, a judgment which includes such a sentence shall constitute a final judgment for purposes of appeal.

Section 49. KRS 533.030 is amended to read as follows:

(1) The conditions of probation and conditional discharge shall be such as the court, in its discretion, deems reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so. The court shall provide as an explicit condition of every sentence to probation or conditional discharge that the defendant not commit another offense during the period for which the sentence remains subject to revocation.

(2) When imposing a sentence of probation or conditional discharge, the court may, in addition to any other reasonable condition, require that the defendant:

- (a) Avoid injurious or vicious habits;
- (b) Avoid persons or places of disreputable or harmful character;
- (c) Work faithfully at suitable employment as far as possible;
- (d) Undergo available medical or psychiatric treatment and remain in a specific institution as required for that purpose;
- (e) Post a bond, without surety, conditioned on performance of any of the prescribed conditions;
- (f) Support his dependents and meet other family responsibilities;
- (g) Pay the cost of the proceeding as set by the court;
- (h) Remain within a specified area;
- (i) Report to the probation officer as directed;
- (j) Permit the probation officer to visit him at his home or elsewhere;
- (k) Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment; and
- (l) If the defendant's record indicates a controlled substance or alcohol problem, submit to periodic testing for use of controlled substances or alcohol and pay a reasonable fee, not to exceed the actual cost of the test and analysis, as determined by the court, said fee to be collected by the circuit clerk, held in an agency account, and disbursed, on court order, solely to the agency or agencies responsible for testing and analysis as compensation for the cost of

the testing and analysis performed under this subsection. For good cause shown, the testing fee may be waived by the court.

(3) When imposing a sentence of probation or conditional discharge in a case where a victim of a crime has suffered monetary damage as a result of the crime due to his property having been converted, stolen, or unlawfully obtained, or its value substantially decreased as a result of the crime, or where the victim suffered actual medical expenses, direct out-of-pocket losses, or loss of earning as a direct result of the crime, or if as a direct result of the crime the victim incurred medical expenses that were paid by the Cabinet for Human Resources, the Crime Victims Compensation Board, or any other governmental entity, the court shall order the defendant to make restitution in addition to any other penalty provided for the commission of the offense. Payment of restitution to the victim shall have priority over payment of restitution to any government agency. Restitution shall be ordered in the full amount of the damages, unless the damages exceed one hundred thousand dollars ($100,000) or twice the amount of the gain from the commission of the offense, whichever is greater, in which case the higher of these two (2) amounts shall be awarded. The court may, in lieu of ordering monetary restitution, order the defendant to make restitution by working for or on behalf of the victim. The court shall determine the number of hours of work necessary by applying the then prevailing federal minimum wage to the total amount of monetary damage caused by or incidental to the commission of the crime. The court may, with the consent of the agency, order the defendant to work as specified in KRS 533.070. Any work ordered pursuant to this section shall not be deemed employment for any purpose, nor shall the person performing the work be deemed an employee for any purpose. Where there is more than one (1) defendant or more than one (1) victim, restitution may be apportioned. Restitution shall be subject to the following additional terms and conditions:

(a)[~~ Restitution by payment may be ordered in a lump sum or in specified payments;~~

~~(b) Restitution by payment may be ordered paid through the circuit clerk who shall disburse the moneys as ordered by the court;~~

~~(c)~~] Where property which is unlawfully in the possession of the defendant is in substantially undamaged condition from its condition at the time of the taking, return of the property shall be ordered in lieu of monetary restitution;

[~~(d) Restitution by payment to governmental agencies shall be made through payments to and disbursement by the circuit clerk;~~]

(b)[~~(e)~~]The circuit clerk shall assess an additional fee of ***five***[~~two~~] percent ***(5%)***[~~(2%)~~] to defray the administrative costs of collection of payments or property. This fee shall be paid by the defendant and shall enure to ***a trust and agency account which shall not lapse and which shall be used to hire additional deputy clerks and office personnel or increase deputy clerk and office personnel salaries, or combination thereof***[~~the general fund of the State Treasury~~];

(c)[~~(f)~~] When a defendant fails to make restitution ordered to be paid through the circuit clerk, the circuit clerk shall notify the court.[~~ The court shall hold a hearing to determine if the defendant is in contempt of the court or has violated the terms of his probation~~]; and

(d)[~~(g)~~] An order of restitution shall not preclude the owner of property or the victim who suffered personal physical or mental injury or out-of-pocket loss of earnings or support or other damages from proceeding in a civil action to recover damages from the defendant. A civil verdict shall be reduced by the amount paid under the criminal restitution order.

(4) In addition to any other terms and conditions imposed under this section, the court may require the probationer, as a condition of his probation, to make one (1) payment to a crime stoppers organization in an amount not to exceed the amount of the reward paid by a crime stoppers organization, as defined by KRS 431.570, relative to the probationer.

(5) When a defendant is sentenced to probation or conditional discharge, he shall be given a written statement explicitly setting forth the conditions under which he is being released.

(6) When imposing a sentence of probation or conditional discharge, the court, in addition to conditions imposed under this section, may require as a condition of the sentence that the defendant submit to a period of imprisonment in the county jail or to a period of home incarceration at whatever time or intervals, consecutive or nonconsecutive, the court shall determine. The time actually spent in confinement or home incarceration pursuant to this provision shall not exceed six (6) months or the maximum term of imprisonment assessed pursuant to KRS Chapter 532, whichever is the shorter. Time spent in confinement or home incarceration under this subsection shall be credited against the maximum term of imprisonment assessed for the defendant pursuant to KRS Chapter 532, if probation or conditional discharge is revoked and the defendant is sentenced to imprisonment. Any prohibitions against probation, shock probation, or conditional discharge under KRS 533.060(2), or 532.045 shall not apply to persons convicted of a misdemeanor or Class D felony and sentenced to a period of confinement or home incarceration under this section.

SECTION 50. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

(1) The Attorney General shall develop and administer a program for the protection of crime victims and witnesses and their immediate families.

(2) Within the limits of the administrative regulations, guidelines, and appropriations for this purpose, the program shall provide funding to the State Police or to a sheriff's office or city or county police department agreeing to provide protection to crime victims and witnesses and their families.

(3) Any Commonwealth's attorney or county attorney may apply to the Attorney General for funding for protection of crime victims, witnesses, and their families.

(4) No protective service shall be rendered to the same person for more than six (6) months.

(5) Protective services funded by this program shall be limited to:

(a) Physical protection of the person;

(b) Physical security measures for the person's residence, vehicle, workplace, or combination thereof; or

(c) Short-term relocation.

(6) The Attorney General shall promulgate administrative regulations under KRS Chapter 73A for the operation of the program.

(7) Nothing in this statute shall be construed to create a cause of action for money damages against the state, a county, a municipality, or any of their agencies, public officials, or employees.

(8) No court shall order a law enforcement agency to protect crime victim witnesses or their immediate families.

(9) No record that may lead to the identity of a person seeking or given protection under this section shall be an open record. This protection shall extend even to the question of whether such a record exists.

SECTION 51. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of ethnic intimidation who intentionally because of race, color, religion, or national origin of another individual or group of individuals, violates a provision of any one (1) of the following:

(a) KRS 508.010, 508.020, or 508.025;

(b) KRS 508.050 or 508.060;

(c) KRS 508.100 or 508.110;

(d) KRS 509.020;

(e) KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.100, or 510.110;

(f) KRS 512.020, 512.050, or 512.060;

(g) KRS 513.020, 513.030, or 513.040; or

(h) KRS 525.020, 525.050, 525.060, 525.070, or 525.080.

(2) Unless the underlying offense is a Class A felony, the range of punishment for the crime of ethnic intimidation shall be determined by the underlying statutory violation referenced in subsection (1) of this section, with the punishment being set at one (1) degree higher than that for the underlying statutory violation. If the underlying offense is a Class A felony, the punishment shall be the same as that for a Class A felony.

SECTION 52. A NEW SECTION OF KRS CHAPTER 525 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of institutional vandalism when he, because of race, color, religion, or national origin of another individual or group of individuals, knowingly vandalizes, defaces, damages, or desecrates objects defined in KRS 525.110.

(2) Institutional vandalism is a Class D felony.

SECTION 53. A NEW SECTION OF KRS CHAPTER 346 IS CREATED TO READ AS FOLLOWS:

A person who suffers personal injury as a result of conduct in violation of Section 51 of this Act is a victim of criminally injurious conduct as defined in KRS 346.020 and is eligible for awards pursuant to KRS Chapter 346.

SECTION 54. A NEW SECTION OF KRS CHAPTER 434 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of filing an illegal lien when he files a document or lien that he knows or should have known was forged, groundless, contained a material misstatement, or was a false claim. It shall be an affirmative defense that any material misstatement was not intentional.

(2) Filing an illegal lien is a Class D felony for the first offense, a Class C felony for any second offense, and a Class B felony for any subsequent offense.

Section 55. KRS 15.420 is amended to read as follows:

As used in KRS 15.410 to 15.510, unless the context otherwise requires:

(1) "Local unit of government" means any city or county, or any combination of cities and counties, of the Commonwealth.

(2) "Police officer" means a full-time member of a lawfully organized police *or sheriff's* department of county*, urban-*

county or city government ***or state university safety and security department*** who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of the state, but does not include Kentucky State Police, any elected officer ***except the***[~~,~~] sheriff,[~~ deputy sheriff~~], constable, deputy constable, district detective, deputy district detective, special local peace officer, auxiliary police officer or any other peace officer not specifically authorized in KRS 15.410 to 15.510.

(3) "Council" means the Kentucky Law Enforcement Council.

Section 56. KRS 15.460 is amended to read as follows:

(1) Beginning July ***15***[~~1~~], ***1998***[~~1982~~], an eligible local unit of government shall be entitled to receive annually a supplement of two thousand ***seven***[~~five~~] hundred ***fifty*** dollars ***($2,750)***[~~($2,500)~~] for each qualified police officer it employs, plus an amount equal to the required employer's contribution on the supplement to the defined benefit pension plan to which the officer belongs, but no more than the required employer's contribution to the County Employees Retirement System hazardous duty category. ***Beginning July 1, 1999, an eligible local unit of government shall be entitled to receive annually a supplement of three thousand dollars ($3,000) for each qualified police officer it employs, plus an amount equal to the required employer's contribution on the supplement to the defined benefit pension plan to which the officer belongs but no more than the required employer's contribution to the County Employees Retirement System hazardous duty category.*** In the case of County Employees Retirement System membership, the pension contribution on the supplement shall be paid whether the officer enters the system under hazardous duty coverage or nonhazardous coverage. The local unit of government shall pay the amount received for retirement coverage to the appropriate retirement system to cover the required employer contribution on the pay supplement. Should the foundation program funds be insufficient to pay employer contributions to the system, then the total amount available for pension payments shall be prorated to each eligible government so that each receives the same percentage of required pension costs attributable to the cash salary supplement.

(2) Each qualified police officer, whose local government receives a supplement pursuant to subsection (1) of this section, shall be paid by the local government the supplement which his qualifications brought to the local government. The supplement paid each police officer shall be in addition to his regular salary.

Section 57. KRS 70.030 is amended to read as follows:

(1) The sheriff may appoint his own deputies, and may revoke the appointment at his pleasure except where that revocation is prohibited by the provisions of KRS 70.260 to 70.273. In a county containing a city of the first class with a deputy sheriff merit board, the term of office of a deputy shall continue from sheriff to sheriff unless a deputy is removed according to the provisions of KRS 70.260 to 70.273. Before any deputy executes the duties of his office, he shall take the oath required to be taken by the sheriff.

(2) The sheriff may appoint nonsworn clerical, technical, professional, and support personnel to assist him in the performance of the duties of his office. All nonsworn personnel shall serve at the pleasure of the sheriff.

(3) No sheriff whose county has adopted a deputy sheriff merit board under KRS 70.260 shall appoint a deputy who is a member of the immediate family of the sheriff. The term "member of the immediate family" has the meaning given in KRS 70.260.

(4) Upon the request of a sheriff to participate in the Kentucky Law Enforcement Foundation Program fund authorized by KRS 15.410 to 15.510, the county shall establish a deputy sheriffs' merit board as provided in this statute.

SECTION 58. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

As used in Sections 58 to 61 of this Act, the following definitions apply:

(1) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of methamphetamine, or possession with intent to manufacture, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, except that this term does not include activities:

(a) By a practitioner incident to administering or dispensing of a controlled substance in the course of his professional practice; or

(b) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or incident to, research, teaching, or chemical analysis; or

(c) By a pharmacist incident to dispensing of a controlled substance in the course of his professional practice.

(2) "Methamphetamine" means any substance that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

(3) "Traffic" means to distribute, dispense, sell, transfer, or possess with intent to distribute, dispense, or sell methamphetamine.

SECTION 59. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of manufacturing methamphetamine when he knowingly and unlawfully:

(a) Manufactures methamphetamine; or

(b) Possesses the chemicals or equipment for the manufacture of methamphetamine with the intent to manufacture methamphetamine.

(2) Manufacture of methamphetamine is a Class B felony for the first offense and a Class A felony for a second or subsequent offense.

SECTION 60. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of trafficking in methamphetamine when he knowingly and unlawfully sells, transfers, distributes, dispenses, or possesses with intent to distribute methamphetamine.

(2) Trafficking in methamphetamine is a Class C felony for the first offense and a Class B felony for a second or subsequent offense.

SECTION 61. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

Any person convicted of, pleading guilty to, or entering an Alford plea to any offense involving trafficking in a controlled substance or trafficking in marijuana shall, in addition to any other penalty authorized by law, be sentenced to:

(1) Pay the costs of disposal of the controlled substances;

(2) Pay the costs of disposal of all equipment, chemicals, materials, or other items used in or in furtherance of the trafficking offense;

(3) Pay the costs involved with environmental clean-up and remediation required for the real property and personal property used for or in furtherance of the trafficking offenses; and

(4) Pay the costs of protecting the public from dangers from chemicals, materials, and other items used for or in furtherance of the trafficking offense from the time of the arrest until the time that the clean-up or remediation of the real and personal property is concluded. The Commonwealth shall have a lien on all of the assets of the defendant until the amount specified by the court under this subsection is paid in full. The Commonwealth's attorney shall file the lien.

Section 62. KRS 218A.010 is amended to read as follows:

As used in this chapter:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) A practitioner or by his authorized agent under his immediate supervision and pursuant to his order; or

(b) The patient or research subject at the direction and in the presence of the practitioner.

(2) "Anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone that promotes muscle growth and includes those substances listed in KRS 218A.090(5) but does not include estrogens, progestins, and anticosteroids.

(3) "Controlled substance" means ***methamphetamine, or*** a drug, substance, or immediate precursor in Schedules I through V and includes a controlled substance analogue.

(4) (a) "Controlled substance analogue", except as provided in subparagraph (b), means a substance:

1. The chemical structure of which is substantially similar to the structure of a controlled substance in Schedule I or II; and

2. Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or

3. With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.

(b) Such term does not include:

1. Any substance for which there is an approved new drug application;

2. With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent conduct with respect to such substance is pursuant to such exemption; or

3. Any substance to the extent not intended for human consumption before the exemption described in subparagraph 2. of this paragraph takes effect with respect to that substance.

(5) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(6) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery.

(7) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(8) "Drug" means:

   (a) Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

   (b) Substances intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man or animals;

   (c) Substances (other than food) intended to affect the structure or any function of the body of man or animals; and

   (d) Substances intended for use as a component of any article specified in this subsection.

   It does not include devices or their components, parts, or accessories.

(9) "Immediate precursor" means a substance which is the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(10) "Isomer" means the optical isomer, except as used in KRS 218A.050(3) and 218A.070(1)(d). As used in KRS 218A.050(3), the term "isomer" means the optical, positional, or geometric isomer. As used in KRS 218A.070(1)(d), the term "isomer" means the optical or geometric isomer.

(11) "Manufacture"***, except as provided in Section 58 of this Act,*** means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include activities:

   (a) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

   (b) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or

   (c) By a pharmacist as an incident to his dispensing of a controlled substance in the course of his professional practice.

(12) "Marijuana" means all parts of the plant Cannabis sp., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin or any compound, mixture, or preparation which contains any quantity of these substances.

(13) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

   (a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

   (b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subsection (13)(a) of this section, but not including the isoquinoline alkaloids of opium;

   (c) Opium poppy and poppy straw;

   (d) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.

   (e) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

   (f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

   (g) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (a) to (f).

(14) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under KRS 218A.030, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(15) "Opium poppy" means the plant of the species papaver somniferum L., except its seeds.

(16) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(17) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(18) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy.

(19) "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific investigator, optometrist as authorized in KRS 320.240, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

(20) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(21) "Second or subsequent offense" means that for the purposes of this chapter an offense is considered as a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter, or under any statute of the United States, or of any state relating to substances classified as controlled substances or counterfeit substances, except that a prior conviction for a nontrafficking offense shall be treated as a prior offense only when the subsequent offense is a nontrafficking offense. For the purposes of this section, a conviction voided under KRS 218A.275 or 218A.276 shall not constitute a conviction under this chapter.

(22) "Sell" means to dispose of a controlled substance to another person for consideration or in furtherance of commercial distribution.

(23) "Tetrahydrocannabinols" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the plant Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

1. Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;
2. Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers;
3. Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers.

(24) "Traffic"***, except as provided in Section 58 of this Act,*** means to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, or sell a controlled substance.

(25) "Transfer" means to dispose of a controlled substance to another person without consideration and not in furtherance of commercial distribution.

(26) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

Section 63. KRS 218A.1412 is amended to read as follows:

(1) A person is guilty of trafficking in a controlled substance in the first degree when he knowingly and unlawfully traffics in: a controlled substance***, except a substance that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers or, that is*** classified in Schedules I or II which is a narcotic drug; a controlled substance analogue; lysergic acid diethylamide; or phencyclidine.

(2) Any person who violates the provisions of subsection (1) of this section shall:

(a) For the first offense be guilty of a Class C felony.

(b) For a second or subsequent offense be guilty of a Class B felony.

Section 64. KRS 218A.1413 is amended to read as follows:

(1) A person is guilty of trafficking in a controlled substance in the second degree when:

(a) He knowingly and unlawfully traffics in a controlled substance classified in Schedules I and II which is not a narcotic drug; ***or specified in KRS 218A.1412;*** or a controlled substance classified in Schedule III; but not lysergic acid diethylamide, phencyclidine, or marijuana; or

(b) He knowingly and unlawfully prescribes, orders, distributes, supplies, or sells an anabolic steroid for:

1. Enhancing performance in an exercise, sport, or game; or
2. Hormonal manipulation intended to increase muscle mass, strength, or weight in the human species without a medical necessity.

(2) Any person who violates the provisions of subsection (1) of this section shall:

(a) For the first offense be guilty of a Class D felony.

(b) For a second or subsequent offense be guilty of a Class C felony.

Section 65. KRS 218A.1415 is amended to read as follows:

(1) A person is guilty of possession of a controlled substance in the first degree when he knowingly and unlawfully possesses: a controlled substance ***that contains any quantity of methamphetamine, including its salts, isomers, and***

salts of isomers or, that is classified in Schedules I or II which is a narcotic drug; a controlled substance analogue; lysergic acid diethylamide; or phencyclidine.

(2) Possession of a controlled substance in the first degree is:

(a) For a first offense a Class D felony.

(b) For a second or subsequent offense a Class C felony.

Section 66. KRS 218A.1416 is amended to read as follows:

(1) A person is guilty of possession of a controlled substance in the second degree when he knowingly and unlawfully possesses: a controlled substance classified in Schedules I or II which is not a narcotic drug; ***or specified in KRS 218A.1415;*** or, a controlled substance classified in Schedule III; but not lysergic acid diethylamide, phencyclidine, or marijuana.

(2) Possession of a controlled substance in the second degree is:

(a) For a first offense a Class A misdemeanor.

(b) For a second or subsequent offense a Class D felony.

Section 67. KRS 218A.070 is amended to read as follows:

Unless otherwise rescheduled by regulation of the Cabinet for Human Resources, the controlled substances listed in this section are included in Schedule II:

(1) Any material, compound, mixture, or preparation which contains any quantity of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (a), but not including the isoquinoline alkaloids of opium;

(c) Opium poppy and poppy straw;

(d) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(2) Any material, compound, mixture, or preparation which contains any quantity of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation: Alphaprodine; Anileridine; Bezitramide; Dihydrocodeine; Diphenoxylate; Fentanyl; Isomethadone; Levomethorphan; Levorphanol; Metazocine; Methadone; Methadone-Intermediate; 4-cyano-2-dimethylamino-4; 4-diphenyl butane; Moramide-Intermediate; 2-methyl-3-morpholino-1; 1-diphenyl-propane-carboxylic acid; Pethidine; Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine, Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate; Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid; Phenazocine; Piminodine; Racemethorphan; Racemorphan.

(3) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(a) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(b) [~~Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;~~

~~(c)~~] Phenmetrazine and its salts;

(c)[~~(d)~~]Methylphenidate.

Section 68. KRS 218A.180 is amended to read as follows:

(1) Except when dispensed directly by a practitioner to an ultimate user, no ***methamphetamine or*** controlled substance in Schedule II may be dispensed without the written prescription of a practitioner. No controlled substance in Schedule II shall be refilled. All prescriptions for controlled substances classified in Schedule II shall be maintained in a separate prescription file.

(2) Except when dispensed directly by a practitioner to an ultimate user, a controlled substance included in Schedules III, IV, and V, which is a prescription drug, shall not be dispensed without a written or oral prescription by a practitioner. All oral prescriptions shall be dated and signed by the pharmacist. A pharmacist refilling any prescription shall record on the prescription the date, the quantity and his initials. The maintenance of prescription records under the federal controlled substances laws and regulations, containing substantially the same information as specified herein, shall constitute

compliance with this subsection. The prescription shall not be filled or refilled more than six (6) months after the date thereof or be refilled more than five (5) times, unless renewed by the practitioner and a new prescription, written or oral shall be required.

(3) All written prescriptions for controlled substances shall be dated as of and signed by the practitioner on the date when issued and shall bear the full name and address of the patient and the name, address and registration number of the practitioner. All prescriptions for controlled substances shall be retained for a period of two (2) years.

(4) The pharmacist filling a written or oral prescription for a controlled substance shall affix to the package a label showing the date of filling, the pharmacy name and address, the serial number of the prescription, the name of the patient, the name of the prescribing practitioner and directions for use and cautionary statements, if any, contained in such prescription or required by law.

Section 69. KRS 189.990 is amended to read as follows:

(1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456 and 189.960, shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense. Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars ($20) nor more than two thousand dollars ($2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars ($11) nor more than thirty dollars ($30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.

(2) (a) Any person who violates the weight provisions of KRS 189.221, 189.222, 189.226, 189.230, 189.270, or 189.271 shall be fined two cents (2¢) per pound for each pound of excess load when the excess is two thousand (2,000) pounds or less, three cents (3¢) per pound when the excess exceeds two thousand (2,000) pounds and is three thousand (3,000) pounds or less, five cents (5¢) per pound when the excess exceeds three thousand (3,000) pounds and is four thousand (4,000) pounds or less, seven cents (7¢) per pound when the excess exceeds four thousand (4,000) pounds and is five thousand (5,000) pounds or less, and nine cents (9¢) per pound when the excess exceeds five thousand (5,000) pounds but in no case shall the fine be less than sixty dollars ($60) nor more than five hundred dollars ($500).

(b) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, or 189.490, for which another penalty is not specifically provided, shall be guilty of a misdemeanor and shall be fined not less than ten dollars ($10) nor more than five hundred dollars ($500).

(c) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.

(3) (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars ($15).

(b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars ($35) nor more than two hundred dollars ($200).

(4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.

(5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars ($100) nor more than two hundred dollars ($200) or imprisoned not less than thirty (30) days nor more than sixty (60) days or both. For each subsequent offense occurring within three (3) years, such person shall be fined not less than three hundred dollars ($300) nor more than five hundred dollars ($500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.

(6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars ($15) in excess of the cost of the repair of the road.

(7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars ($20) nor more than fifty dollars ($50).

(8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100).

(9) Any person who violates KRS 189.530 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.

(10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.

(11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars ($30) nor more than one hundred dollars ($100) for each offense.

(12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and in case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.

(13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars ($20) nor more than twenty-five dollars ($25).

(15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars ($100), and upon subsequent convictions, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or imprisoned for thirty (30) days, or both.

(17) (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.

(b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name such vehicle used in the transportation of inflammable liquids or explosives is licensed, such person shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500). Each violation shall constitute a separate offense.

(18) Any person who abandons a vehicle upon the right-of-way of a state highway for seven (7) consecutive days shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.

(19) Every person violating KRS 189.393 shall be ***guilty of a Class B misdemeanor, unless the offense is being committed by a defendant fleeing the commission of a felony offense which the defendant was also charged with violating and was subsequently convicted of that felony, in which case it is a Class A misdemeanor***~~[punished upon a first conviction by imprisonment for a period of not less than five (5) days nor more than ninety (90) days, or by fine of not less than thirty-five dollars ($35) nor more than five hundred dollars ($500), or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than ten (10) days nor more than six (6) months, or by a fine of not less than sixty dollars ($60) nor more than one thousand dollars ($1,000), or by both such fine and imprisonment]~~.

(20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.

(21) A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of such a regulation shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.

(22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars ($500) or imprisoned for not more than six (6) months, or both.

(23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars ($25) nor more than three hundred dollars ($300).

(24) Any person who violates the provisions of KRS 189.125(3) shall be fined fifty dollars ($50).

(25) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars ($25).

(26) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.

(27) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle, may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:

(a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and

(b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.

Section 70. KRS 532.060 is amended to read as follows:

(1) A sentence of imprisonment for a felony shall be an indeterminate sentence, the maximum of which shall be fixed within the limits provided by subsection (2), and subject to modification by the trial judge pursuant to KRS 532.070.

(2) The authorized maximum terms of imprisonment for felonies are:

(a) For a Class A felony, not less than twenty (20) years nor more than ***fifty (50) years, or*** life imprisonment;

(b) For a Class B felony, not less than ten (10) years nor more than twenty (20) years;

(c) For a Class C felony, not less than five (5) years nor more than ten (10) years; and

(d) For a Class D felony, not less than one (1) year nor more than five (5) years.

(3) ***For any felony specified in KRS Chapter 510, KRS 530.020, 530.064, or 531.310 the sentence shall include an additional three (3) year period of conditional discharge which shall be added to the maximum sentence rendered for the offense. During this period of conditional discharge, if a defendant violates the provisions of conditional discharge, the defendant may be reincarcerated for:***

(a) The remaining period of his initial sentence, if any is remaining; and

(b) The entire period of conditional discharge, or if the initial sentence has been served, for the remaining period of conditional discharge.

(4) The actual time of release within the maximum established by subsection (1), or as modified pursuant to KRS 532.070, shall be determined under procedures established elsewhere by law.

Section 71. KRS 532.030 is amended to read as follows:

(1) When a person is convicted of a capital offense he shall have his punishment fixed at death, ***or at a term of imprisonment for life without benefit of probation or parole,*** or at a term of imprisonment for life without benefit of probation or parole until he has served a minimum of twenty-five (25) years of his sentence, or to a sentence of life, or to a term of not less than twenty (20) years ***nor more than fifty (50) years***.

(2) When a person is convicted of a Class A felony he shall have his punishment fixed at imprisonment in accordance with KRS 532.060.

(3) When a person is convicted of an offense other than a capital offense or Class A felony, he shall have his punishment fixed at:

(a) A term of imprisonment authorized by this chapter; or

(b) A fine authorized by KRS Chapter 534; or

(c) Both imprisonment and a fine unless precluded by the provisions of KRS Chapter 534.

(4) In all cases in which the death penalty may be authorized the judge shall instruct the jury in accordance with subsection (1) of this section. The instructions shall state, subject to the aggravating and mitigating limitations and requirements of KRS 532.025, that the jury may recommend upon a conviction for a capital offense a sentence of death, ***or at a term of imprisonment for life without benefit of probation or parole,*** or a term of imprisonment for life without benefit of probation or parole until the defendant has served a minimum of twenty-five (25) years of his sentence, or a sentence of life, or to a term of not less than twenty (20) years ***nor more than fifty (50) years***.

Section 72. KRS 532.025 is amended to read as follows:

(1) (a) Upon conviction of a defendant in cases where the death penalty may be imposed, a hearing shall be conducted. In such hearing, the judge shall hear additional evidence in extenuation, mitigation, and aggravation of punishment, including the record of any prior criminal convictions and pleas of guilty or pleas of nolo contendere of the defendant, or the absence of any prior conviction and pleas; provided, however, that only such evidence in aggravation as the state has made known to the defendant prior to his trial shall be admissible. Subject to the Kentucky Rules of Evidence, juvenile court records of adjudications of guilt of a child for an offense that would be a felony if committed by an adult shall be admissible in court at any time the child is tried as an adult, or after the child becomes an adult, at any subsequent criminal trial relating to that same person. Juvenile court records made available pursuant to this section may be used for impeachment purposes during a criminal trial and may be used during the sentencing phase of a criminal trial; however, the fact that a juvenile has been adjudicated delinquent of an offense that would be a felony if the child had been an adult shall not be used in finding the child to be a persistent felony offender based upon that adjudication. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Release of any records resulting from the child's prior abuse and neglect under Title IV-E or IV-B of the Federal Social Security

Act is also prohibited. The judge shall also hear argument by the defendant or his counsel and the prosecuting attorney, as provided by law, regarding the punishment to be imposed. The prosecuting attorney shall open and the defendant shall conclude the argument. In cases in which the death penalty may be imposed, the judge when sitting without a jury shall follow the additional procedure provided in subsection (2) of this section. Upon the conclusion of the evidence and arguments, the judge shall impose the sentence or shall recess the trial for the purpose of taking the sentence within the limits prescribed by law. If the trial court is reversed on appeal because of error only in the presentence hearing, the new trial which may be ordered shall apply only to the issue of punishment;

(b) In all cases in which the death penalty may be imposed and which are tried by a jury, upon a return of a verdict of guilty by the jury, the court shall resume the trial and conduct a presentence hearing before the jury. Such hearing shall be conducted in the same manner as presentence hearings conducted before the judge as provided in paragraph (a) of this subsection, including the record of any prior criminal convictions and pleas of guilty or pleas of nolo contendere of the defendant. Upon the conclusion of the evidence and arguments, the judge shall give the jury appropriate instructions, and the jury shall retire to determine whether any mitigating or aggravating circumstances, as defined in subsection (2) of this section, exist and to recommend a sentence for the defendant. Upon the findings of the jury, the judge shall fix a sentence within the limits prescribed by law.

(2) In all cases of offenses for which the death penalty may be authorized, the judge shall consider, or he shall include in his instructions to the jury for it to consider, any mitigating circumstances or aggravating circumstances otherwise authorized by law and any of the following statutory aggravating or mitigating circumstances which may be supported by the evidence:

(a) Aggravating circumstances:

1. The offense of murder or kidnapping was committed by a person with a prior record of conviction for a capital offense, or the offense of murder was committed by a person who has a substantial history of serious assaultive criminal convictions;
2. The offense of murder or kidnapping was committed while the offender was engaged in the commission of arson in the first degree, robbery in the first degree, burglary in the first degree, rape in the first degree, or sodomy in the first degree;
3. The offender by his act of murder, armed robbery, or kidnapping knowingly created a great risk of death to more than one (1) person in a public place by means of a destructive device, weapon, or other device which would normally be hazardous to the lives of more than one (1) person;
4. The offender committed the offense of murder for himself or another, for the purpose of receiving money or any other thing of monetary value, or for other profit;
5. The offense of murder was committed by a person who was a prisoner and the victim was a prison employee engaged at the time of the act in the performance of his duties;
6. The offender's act or acts of killing were intentional and resulted in multiple deaths; and
7. The offender's act of killing was intentional and the victim was a state or local public official or police officer, sheriff, or deputy sheriff engaged at the time of the act in the lawful performance of his duties;

(b) Mitigating circumstances:

1. The defendant has no significant history of prior criminal activity;
2. The capital offense was committed while the defendant was under the influence of extreme mental or emotional disturbance even though the influence of extreme mental or emotional disturbance is not sufficient to constitute a defense to the crime;
3. The victim was a participant in the defendant's criminal conduct or consented to the criminal act;
4. The capital offense was committed under circumstances which the defendant believed to provide a moral justification or extenuation for his conduct even though the circumstances which the defendant believed to provide a moral justification or extenuation for his conduct are not sufficient to constitute a defense to the crime;
5. The defendant was an accomplice in a capital offense committed by another person and his participation in the capital offense was relatively minor;
6. The defendant acted under duress or under the domination of another person even though the duress or the domination of another person is not sufficient to constitute a defense to the crime;
7. At the time of the capital offense, the capacity of the defendant to appreciate the criminality of his conduct to the requirements of law was impaired as a result of mental illness or retardation or intoxication even though the impairment of the capacity of the defendant to appreciate the criminality of his conduct or to conform the conduct to the requirements of law is insufficient to constitute a defense to the crime; and

8. The youth of the defendant at the time of the crime.

(3) The instructions as determined by the trial judge to be warranted by the evidence or as required by KRS 532.030(4) shall be given in charge and in writing to the jury for its deliberation. The jury, if its verdict be a recommendation of death, ***or imprisonment for life without benefit of probation or parole,*** or imprisonment for life without benefit of probation or parole until the defendant has served a minimum of twenty-five (25) years of his sentence, shall designate in writing, signed by the foreman of the jury, the aggravating circumstance or circumstances which it found beyond a reasonable doubt. In nonjury cases, the judge shall make such designation. In all cases unless at least one (1) of the statutory aggravating circumstances enumerated in subsection (2) of this section is so found, the death penalty***, or imprisonment for life without benefit of probation or parole,*** or the sentence to imprisonment for life without benefit of probation or parole until the defendant has served a minimum of twenty-five (25) years of his sentence, shall not be imposed.

Section 73. KRS 533.010 is amended to read as follows:

(1) Any person who has been convicted of a crime and who has not been sentenced to death may be sentenced to probation, probation with an alternative sentencing plan, or conditional discharge as provided in this chapter.

(2) Before imposition of a sentence of imprisonment, the court shall consider~~[the possibility of]~~ probation, probation with an alternative sentencing plan, or conditional discharge. ***Unless the defendant is a violent felon as defined in KRS 439.3401 or a statute prohibits probation, shock probation, or conditional discharge,*** after due consideration of the nature and circumstances of the crime and the history, character, and condition of the defendant, probation~~[, probation with an alternative sentencing plan,]~~ or conditional discharge ***shall***~~[should]~~ be granted, unless the court is of the opinion that imprisonment is necessary for protection of the public because:

(a) There is substantial risk that during a period of probation~~[, probation with an alternative sentencing plan,]~~ or conditional discharge the defendant will commit another crime;

(b) The defendant is in need of correctional treatment that can be provided most effectively by his commitment to a correctional institution; or

(c) A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.

(3) ***In the event the court determines that probation is not appropriate after due consideration of the nature and circumstances of the crime, and the history, character, and condition of the defendant, probation with an alternative sentencing plan shall be granted unless the court is of the opinion that imprisonment is necessary for the protection of the public because:***

(a) There is a likelihood that during a period of probation with an alternative sentencing plan or conditional discharge the defendant will commit a Class D or Class C felony or a substantial risk that the defendant will commit a Class B or Class A felony;

(b) The defendant is in need of correctional treatment that can be provided most effectively by commitment to a correctional institution; or

(c) A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.

(4) The court shall not determine that there is a likelihood that the defendant will commit a Class C or Class D felony based upon the fact that:

(a) The defendant has never been convicted of, pled guilty to, or entered an Alford plea to a felony offense;

(b) If convicted of, having pled guilty to, or entered an Alford plea to a felony offense, the defendant successfully completed probation more than ten (10) years immediately prior to the date of the commission of the felony for which the defendant is now being sentenced and has had no intervening convictions, pleas of guilty, or Alford pleas to any criminal offense during that period; or

(c) The defendant has been released from incarceration for the commission of a felony offense more than ten (10) years immediately prior to the date of the commission of the felony for which the defendant is now being sentenced and has had no intervening convictions, pleas of guilty, or Alford pleas to any criminal offense during that period.

(5) In making a determination under subsection (4) of this section, the court may determine that the greater weight of the evidence indicates that there is a likelihood that the defendant will commit a Class C or Class D felony.

(6) Upon initial sentencing of a defendant or upon modification or revocation of probation, when the court deems it in the best interest of the public and the defendant, the court may order probation with the defendant to serve one (1) of the following alternative sentences:

(a) To a halfway house for no more than twelve (12) months;

(b) To home incarceration with or without work release for no more than twelve (12) months;

(c) To jail for a period not to exceed twelve (12) months with or without community service and other programs as required by the court;

(d) To a residential treatment program for the abuse of alcohol or controlled substances; or

(e) To any other specified counseling program, rehabilitation or treatment program, or facility.

(7) If during the term of the alternative sentence the defendant fails to adhere to and complete the conditions of the alternative sentence, the court may modify the terms of the alternative sentence or may modify or revoke probation and alternative sentence, and commit the defendant to an institution.

(8) In addition to those conditions that the court may impose, the conditions of alternative sentence shall include the following and, if the court determines that the defendant cannot comply with them, then they shall not be made available:

(a) A defendant sentenced to a halfway house shall:

1. Be working or pursuing his or her education, or be enrolled in a full-time treatment program;

2. Pay restitution during the term of probation; and

3. Have no contact with the victim of the defendant's crime;

(b) A defendant sentenced to home incarceration shall:

1. Be employed by another person or self-employed at the time of sentencing to home incarceration and continue the employment throughout the period of home incarceration, unless the court determines that there is a compelling reason to allow home incarceration while the defendant is unemployed;

2. Pay restitution during the term of home incarceration;

3. Enter a treatment program, if appropriate;

4. Pay all or some portion of the cost of home incarceration as determined by the court;

5. Comply with other conditions as specified; and

6. Have no contact with the victim of the defendant's crime;

(c) A defendant sentenced to jail with community service shall:

1. Pay restitution during all or some part of the defendant's term of probation; and

2. Have no contact with the victim of the defendant's crime; or

(d) A defendant sentenced to a residential treatment program for drug and alcohol abuse shall:

1. Undergo mandatory drug screening during term of probation;

2. Be subject to active, supervised probation for a term of five (5) years;

3. Undergo aftercare as required by the treatment program;

4. Pay restitution during the term of probation; and

5. Have no contact with the victim of the defendant's crime.

(9) When the court deems it in the best interest of the defendant and the public, the court may order the person to work at community service related projects under the terms and conditions specified in KRS 533.070. Work at community service related projects shall be considered as a form of conditional discharge.

(10) Probation with alternative sentence shall not be available as set out in KRS 532.045 and 533.060, except as provided in KRS 533.030(6).

(11) The court may utilize a community corrections program authorized or funded under KRS Chapter 196 to provide services to any person released under this section.

(12) When the court deems it in the best interest of the defendant and the public, the court may order the defendant to placement for probation monitoring by a private agency. The private agency shall report to the court on the defendant's compliance with his terms of probation or conditional discharge. The defendant shall be responsible for any reasonable charges which the private agency charges.

Section 74. KRS 532.020 is amended to read as follows:

(1) Any offense defined outside this code for which a law outside this code provides a sentence to a term of imprisonment in the state[~~ penitentiary or reformatory~~] for:

(a) At least one (1) but not more than five (5) years shall be deemed a Class D felony;

(b) At least five (5) but not more than ten (10) years shall be deemed a Class C felony;

(c) At least ten (10) but not more than twenty (20) years shall be deemed a Class B felony;

(d) For ***at least*** twenty (20) ***but not***[~~or~~] more ***than fifty (50)*** years ***or for life*** shall be deemed a Class A felony.

(2) Any offense defined outside this code for which a law outside this code provides a sentence to a definite term of imprisonment with a maximum which falls between ninety (90) days and twelve (12) months shall be deemed a Class A

misdemeanor.

(3) Any offense defined outside this code for which a law outside this code provides a sentence to a definite term of imprisonment with a maximum of less than ninety (90) days shall be deemed a Class B misdemeanor.

(4) Any offense defined outside this code for which a law outside this code provides a sentence to a fine only or to any other punishment, whether in combination with a fine or not, other than death or imprisonment shall be deemed a violation.

Section 75. KRS 532.050 is amended to read as follows:

(1) No court shall impose sentence for conviction of a felony, other than a capital offense, without first ordering a presentence investigation after conviction and giving due consideration to a written report of the investigation. The presentence investigation report shall not be waived; however, the completion of the presentence investigation report may be delayed until after sentencing upon the written request of the defendant if the defendant is in custody and is ineligible for probation or conditional discharge.

(2) The report shall be prepared and presented by a probation officer and shall include an analysis of the defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, personal habits, and any other matters that the court directs to be included.

(3) Before imposing sentence for a felony conviction, the court may order the defendant to submit to psychiatric observation and examination for a period not exceeding sixty (60) days. The defendant may be remanded for this purpose to any available clinic or mental hospital or the court may appoint a qualified psychiatrist to make the examination.

(4) If the defendant has been convicted of any felony offense under KRS Chapter 510, 530.020, 530.064, 531.310, any sexual offense under KRS 506.010 or 506.030, or any other felony offense committed in conjunction with a misdemeanor under KRS Chapter 510, the court shall, prior to determining the sentence, order an evaluation of the defendant to be conducted by the sexual offender treatment program operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services. The evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment, and shall be considered by the court in determining the appropriate sentence. ***A copy of the evaluation shall be furnished to the Commonwealth and to the defendant.*** If the defendant is eligible and the court suspends the sentence and places the defendant on probation or conditional discharge, the provisions of KRS 532.045(3) to (8) shall apply. All communications relative to the evaluation and treatment of the sex offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings. The defendant shall pay for any evaluation or treatment required pursuant to this section up to the defendant's ability to pay but no more than the actual cost of the evaluation or treatment.

(5) ***The presentence investigation report shall identify the counseling treatment, educational, and rehabilitation needs of the defendant and identify community-based and correctional-institutional-based programs and resources available to meet those needs or shall identify the lack of programs and resources to meet those needs.***

(6) Before imposing sentence, the court shall advise the defendant or his counsel of the factual contents and conclusions of any presentence investigation or psychiatric examinations and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the presentence investigation report. It shall not be necessary to disclose the sources of confidential information.

Section 76. KRS 532.080 is amended to read as follows:

(1) When a defendant is found to be a persistent felony offender, the jury, in lieu of the sentence of imprisonment assessed under KRS 532.060 for the crime of which such person presently stands convicted, shall fix a sentence of imprisonment as authorized by subsection (5) or (6) of this section. When a defendant is charged with being a persistent felony offender, the determination of whether or not he is such an offender and the punishment to be imposed pursuant to subsection (5) or (6) of this section shall be determined in a separate proceeding from that proceeding which resulted in his last conviction. Such proceeding shall be conducted before the court sitting with the jury that found the defendant guilty of his most recent offense unless the court for good cause discharges that jury and impanels a new jury for that purpose.

(2) A persistent felony offender in the second degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of one (1) previous felony. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:

(a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and

(b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and

(c) That the offender:

1. Completed service of the sentence imposed on the previous felony conviction within five (5) years prior to the date of commission of the felony for which he now stands convicted; or

2. Was on probation, parole, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or

3. Was discharged from probation, parole, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or

4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or

5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.

(3) A persistent felony offender in the first degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of two (2) or more felonies. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:

(a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and

(b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and

(c) That the offender:

1. Completed service of the sentence imposed on any of the previous felony convictions within five (5) years prior to the date of the commission of the felony for which he now stands convicted; or

2. Was on probation, parole, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or

3. Was discharged from probation, parole, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or

4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or

5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.

(4) For the purpose of determining whether a person has two (2) or more previous felony convictions, two (2) or more convictions of crime for which that person served concurrent or uninterrupted consecutive terms of imprisonment shall be deemed to be only one (1) conviction, unless one (1) of the convictions was for an offense committed while that person was imprisoned.

(5) A person who is found to be a persistent felony offender in the second degree shall be sentenced to an indeterminate term of imprisonment pursuant to the sentencing provisions of KRS 532.060(2) for the next highest degree than the offense for which convicted. A person who is found to be a persistent felony offender in the second degree shall not be eligible for probation, shock probation, or conditional discharge.

(6) A person who is found to be a persistent felony offender in the first degree shall be sentenced to imprisonment as follows:

(a) If the offense for which he presently stands convicted is a Class A or Class B felony, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than twenty (20) years nor more than ***fifty (50) years, or*** life imprisonment; or

(b) If the offense for which he presently stands convicted is a Class C or Class D felony, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than ten (10) years nor more than twenty (20) years.

(7) [~~If the offense the person presently stands convicted of is a Class A, B, or C felony,~~]A person who is found to be a persistent felony offender in the first degree shall not be eligible for probation, shock probation, or conditional discharge, ***and if the offense the person presently stands convicted of is a Class A, B, or C felony, shall not be eligible***[~~nor~~] for parole until having served a minimum term of incarceration of not less than ten (10) years.

(8) ***No conviction, plea of guilty, or Alford plea to a violation of KRS 218A.500 shall bring a defendant within the purview of or be used as a conviction eligible for making a person a persistent felony offender under this section.***

(9) The provisions of this section amended by 1994 Ky. Acts ch. 396, sec. 11, shall be retroactive.

Section 77. KRS 439.3401 is amended to read as follows:

(1) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to the commission

of a capital offense, Class A felony, or Class B felony involving the death of the victim ***or serious physical injury to a victim***, or rape in the first degree or sodomy in the first degree of the victim[~~, or serious physical injury to a victim~~]. ***The court shall designate in its judgment if the victim suffered death or serious physical injury.***

(2) A violent offender who has been convicted of a capital offense and who has received a life sentence (and has not been sentenced to twenty-five (25) years without parole), or a Class A felony and receives a life sentence, or to death and his sentence is commuted to a life sentence shall not be released on parole until he has served at least ***twenty (20)***[~~twelve (12)~~] years in the penitentiary. ***Violent offenders may have a greater minimum parole eligibility date than other offenders who receive longer sentences, including a sentence of life imprisonment.***

(3) A violent offender who has been convicted of a capital offense or Class A felony with a sentence of a term of years or Class B felony who is a violent offender shall not be released on parole until he has served at least ***eighty-five percent (85%)***[~~fifty percent (50%)~~] of the sentence imposed.

(4) ***A violent offender may not be awarded any credit on his sentence authorized by KRS 197.045(1), except the educational credit. A violent offender may, at the discretion of the commissioner, receive credit on his sentence authorized by KRS 197.045(3). In no event shall a violent offender be given credit on his sentence if the credit reduces the term of imprisonment to less than eighty-five percent (85%) of the sentence.***

(5) This section shall not apply to a person who has been determined by a court to have been a victim of domestic violence or abuse pursuant to KRS 533.060 with regard to the offenses involving the death of the victim or serious physical injury to the victim. The provisions of this subsection shall not extend to rape in the first degree or sodomy in the first degree by the defendant.

(6)[~~(5)~~] This section shall apply only to those persons who commit offenses after July 15, ***1998***[~~1986~~].

Section 78. KRS 439.3405 is amended to read as follows:

(1) Notwithstanding any statute eliminating ***parole*** or establishing minimum time for parole eligibility for a certain class or status of offender, including KRS 439.340(10), 439.3401, 532.080(7), and 533.060, the board, with the written consent of a majority of the full board, may review the case of any prisoner and release that prisoner on parole despite any elimination of or minimum time for parole eligibility, when the prisoner has a documented terminal medical condition likely to result in death within one (1) year ***or severe chronic lung disease, end-stage heart disease, severe neuro-muscular disease such as multiple sclerosis; or has severely limited mobility due to paralysis as a result of stroke or trauma; or is dependent on external life support systems*** and would not pose a threat to society if paroled.

(2) Medical information considered under this section shall be limited to the medical findings supplied by Department of Corrections medical staff. The medical staff shall provide in writing the prisoner's diagnosis and prognosis in support of the conclusion that the prisoner suffers from a terminal medical condition likely to result in death within one (1) year ***or because of the conditions set forth in subsection (1) of this section he is totally dependent on others for the activities of daily living***.

(3) The medical information prepared by the Department of Corrections medical staff under this section shall be forwarded to the warden of the institution who shall submit that information and a recommendation for or against parole review under this section to the commissioner of the Department of Corrections or his designee. With the approval of the commissioner of the Department of Corrections, a request for parole review under this section, along with the medical information and warden's recommendation, shall be submitted to the board.

(4) Medical information presented under this section shall be considered along with other information relevant to a decision regarding the granting of parole and shall not constitute the only reason for granting parole.

Section 79. KRS 15.315 is amended to read as follows:

The Kentucky Law Enforcement Council is hereby established as an independent administrative body of state government to be made up as follows:

(1) The Attorney General of Kentucky, the commissioner of the Department of State Police, ***directors of the Southern Police Institute***[~~the dean of the School of Police Administration~~] of the University of Louisville, the dean of the ***College***[~~School~~] of Law Enforcement of Eastern Kentucky University, the president of the Kentucky Peace Officers Association, the president of the Kentucky Association of Chiefs of Police, and the Kentucky president of the Fraternal Order of Police, shall be ex officio members of the council, as full voting members of the council by reason of their office. The Kentucky special agent in charge of the Federal Bureau of Investigation shall serve on the council in an advisory capacity only without voting privileges. Each ex officio member may designate in writing a person to represent him and vote on his behalf.

(2) Nine (9) members shall be appointed by the Governor for terms of four (4) years from the following classifications: a city manager or mayor, one (1) Kentucky sheriff, a member of the Kentucky State Bar Association, five (5) chiefs of police, and a citizen of Kentucky not coming within the foregoing classifications. No person shall serve beyond the time he holds the office or employment by reason of which he was initially eligible for appointment. Vacancies shall be filled in the same manner as the original appointment and the successor shall be appointed for the unexpired term. Any member may

be appointed for additional terms.

(3) No member may serve on the council with the dual membership as the representative of more than one (1) of the aforementioned groups or the holder of more than one (1) of the aforementioned positions. In the event that an existing member of the council assumes a position entitling him to serve on the council in another capacity the Governor shall appoint an additional member from the group concerned to prevent dual membership.

(4) Membership on the council does not constitute a public office and no member shall be disqualified from holding public office by reason of his membership.

SECTION 80. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

(1) When a patient who has been involuntarily committed to a psychiatric facility or forensic psychiatric facility and who has been charged with or convicted of a violent crime as defined in KRS 439.3401 is discharged or transferred from the facility, the administrator shall notify the law enforcement agency in the county to which the person is to be released, the prosecutor in the county where the violent crime was committed, and the Department of Corrections.

(2) If a patient who has been involuntarily committed to a psychiatric facility or forensic psychiatric facility and who has been charged with or convicted of a violent crime as defined in KRS 439.3401 escapes from the facility, the administrator shall notify the law enforcement agency in the county in which the facility is located, the prosecutor in the county where the violent crime was committed, and the Department of Corrections.

(3) The administrator of a psychiatric facility or forensic psychiatric facility, or the administrator's designee, who acts in good faith in making the notifications required in this section or is unable to provide the release information required, is immune from any civil liability.

(4) The Department of Corrections shall notify, or contract with a private entity to notify, victims of crime who have made a notification request of the discharge or escape of a patient from a psychiatric facility or forensic psychiatric facility.

(5) The Department of Corrections and the Cabinet for Human Resources shall each promulgate administrative regulations under KRS Chapter 13A to carry out the duties set forth in this statute.

Section 81. KRS 532.210 is amended to read as follows:

(1) Any misdemeanant ***or a felon who has not been convicted of, pled guilty to, or entered an Alford plea to a violent felony offense*** may petition the sentencing court for an order directing that all or a portion of a sentence of imprisonment in the county jail be served under conditions of home incarceration. Such petitions may be considered and ruled upon by the sentencing court prior to and throughout the term of the ***defendant's***~~[misdemeanant's]~~ sentence.

(2) The sentencing judge shall study the record of all persons petitioning for home incarceration and, in his discretion, may:

 (a) Cause additional background or character information to be collected or reduced to writing by the county jailer or misdemeanor supervision department;

 (b) Conduct hearings on the desirability of granting home incarceration;

 (c) Impose on the home incarceree such conditions as are fit, including restitution;

 (d) Order that all or a portion of a sentence of imprisonment in the county jail be served under conditions of home incarceration at whatever time or intervals, consecutive or nonconsecutive, as the court shall determine. The time actually spent in home incarceration pursuant to this provision shall not exceed six (6) months or the maximum term of imprisonment assessed pursuant to this chapter whichever is the shorter;

 (e) Issue warrants for persons when there is reason to believe they have violated the conditions of home incarceration, conduct hearings on such matters, and order reimprisonment in the county jail upon proof of violation; and

 (f) Grant final discharge from incarceration.

(3) All home incarcerees shall execute a written agreement with the court setting forth all of the conditions of home incarceration. The order of home incarceration shall incorporate that agreement and order compliance with its terms. The order and agreement shall be transmitted to the supervising authority and to the appropriate jail official.

(4) Time spent in home incarceration under this subsection shall be credited against the maximum term of imprisonment assessed for the defendant pursuant to this chapter.

(5) Home incarcerees shall be under the supervision of the county jailer except in counties establishing misdemeanor supervision departments, wherein they shall be under the supervision of such departments. Home incarcerees shall be subject to the decisions of such authorities during the period of supervision. Fees for supervision or equipment usage shall be paid directly to the supervising authority.

SECTION 82. A NEW SECTION OF KRS CHAPTER 506 IS CREATED TO READ AS FOLLOWS:

(1) No person, who at the time of the commission of the offense was acting in furtherance of criminal gang activity, shall commit any of the following offenses:

(a) Any felony offense in violation of KRS Chapter 500 to 534;

(b) Any felony offense in violation of KRS Chapter 218A;

(c) Any misdemeanor assault offense in violation of KRS Chapter 508;

(d) Any violation of KRS 527.030 or 527.050;

(e) Any violation of KRS 276.280 or 276.310;

(f) Any gambling offense as defined in KRS 411.090, KRS Chapter 528, or Section 226 of the Constitution;

(g) Any illegal trafficking in destructive devices or booby traps as defined in KRS Chapter 237; or

(h) Lending at usurious interest and enforcing repayment by illegal means in violation of KRS Chapter 360.

(2) Other provisions of law notwithstanding, any person who is convicted of any of the offenses enumerated in subsection 1(a) to (h) of this section who was acting in furtherance of criminal gang activity at the time of the commission of the offense shall:

(a) Be penalized one (1) class more severely than provided in the penalty provision pertaining to that offense, if it is a felony; or

(b) Be penalized as a Class D felon, if the offense would otherwise be a misdemeanor, except for violation of Section 83 of this Act.

(3) As used in this section, "criminal gang activity" means a group of five (5) or more persons:

(a) Having four (4) or more of the following:

1. A common name;

2. A common identifying sign or signs;

3. A common identifying mode, style, or color of dress;

4. An identifying tattoo or body marking;

5. An organizational structure, overt or covert;

6. A de facto claim of territory or jurisdiction; or

7. An initiation ritual; and

(b) Collaborating to engage in any of the following on a continuing basis:

1. Any felony offense in violation of KRS Chapter 500 to 534;

2. Any felony offense in violation of KRS Chapter 218A;

3. Any misdemeanor assault offense in violation of KRS Chapter 508;

4. Any misdemeanor offense in violation of KRS Chapter 514;

5. Any violation of KRS 527.030 or 527.050;

6. Any violation of KRS 276.280 or 276.310;

7. Any gambling offense as defined in KRS 411.090, KRS Chapter 528, or Section 226 of the Constitution;

8. Any illegal trafficking in destructive devices or booby traps as defined in KRS Chapter 237; or

9. Lending at usurious interest and enforcing repayment by illegal means in violation of KRS Chapter 360.

(4) As used in this section, "continuing basis" means the commission, attempted commission, solicitation, or conviction of at least two (2) crimes, one (1) of which occurred after the effective date of this chapter and the last of which occurred within five (5) years, excluding any period of imprisonment, after the commission of a prior criminal act.

SECTION 83. A NEW SECTION OF KRS CHAPTER 506 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of criminal gang intimidation when he threatens another person because the other person:

(a) Refuses to join a criminal gang;

(b) Has withdrawn or is attempting to withdraw from a criminal gang; or

(c) Refuses to submit to a demand made by a criminal gang.

(2) Criminal gang intimidation is a Class A misdemeanor.

SECTION 84. A NEW SECTION OF KRS CHAPTER 506 IS CREATED TO READ AS FOLLOWS:

(1) It is no defense to prosecution under Section 82 or 83 of this Act that:

(a) One (1) or more members of the gang are not criminally responsible for the offense;

(b) One (1) or more members of the gang have been acquitted, have not been prosecuted or convicted, have been convicted of a different offense, or are under prosecution;

(c) A person has been charged with, acquitted, or convicted of any offense under Section 82 or 83 of this Act;

(d) The participants may not know each other's identity;

(e) The membership in the criminal gang may change from time to time; or

(f) The participants may stand in a wholesaler-retailer or other arm's length arrangement in the conduct of illicit distribution or other operations.

(2) Once the initial combination of five (5) or more persons is formed, the number or identity of persons remaining in the gang is immaterial as long as four (4) or more persons in the gang, excluding the defendant, are involved in a continuing course of conduct constituting a violation of Section 82 or 83 of this Act.

Section 85. KRS 635.020 is amended to read as follows:

(1) If, prior to an adjudicatory hearing, there is a reasonable cause to believe that a child before the court has committed a felony other than those described in subsections (2) and (3) of this section, a misdemeanor, or a violation, the court shall initially proceed in accordance with the provisions of this chapter.

(2) If a child charged with a capital offense, Class A felony, or Class B felony, had attained age fourteen (14) at the time of the alleged commission of the offense, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.

(3) If a child charged with a Class C or Class D felony has on one (1) prior separate occasion been adjudicated a public offender for a felony offense and had attained the age of sixteen (16) at the time of the alleged commission of the offense, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.

(4) Any other provision of KRS Chapters ***600***[~~610~~] to 645 to the contrary notwithstanding, if a child charged with a felony in which a firearm was used in the commission of the offense or had attained the age of fourteen (14) years at the time of the commission of the alleged offense, he shall be transferred to the Circuit Court for trial as an adult if, following a preliminary hearing, the District Court finds probable cause to believe that the child committed a felony, that a firearm was used in the commission of that felony, and that the child was fourteen (14) years of age or older at the time of the commission of the alleged felony.

If convicted in the Circuit Court***,*** he shall be subject to the same penalties as an adult offender, except that until he reaches the age of eighteen (18) years, he shall be confined in a secure detention facility for juveniles or for youthful offenders, unless released pursuant to expiration of sentence or parole, and at age eighteen (18) he shall be transferred to an adult facility operated by the Department of Corrections to serve any time remaining on his sentence.

(5) ***Except for youth before the court under the purview of subsection (4) of this section, and any other provision of KRS Chapter 600 to 645 to the contrary notwithstanding, if a child charged with the commission of an offense, as set out in Section 82 or 83 of this Act, had attained the age of fourteen (14) years at the time of the commission of the alleged offense and the child was acting in furtherance of criminal gang activity, he shall be transferred to the Circuit Court for trial as a youthful offender, if following a preliminary hearing, the District Court finds probable cause to believe that the child committed an offense, as set out in Section 82 or 83 of this Act, that the child was fourteen (14) years of age or older at the time of the alleged commission of the offense, and that the child was acting in furtherance of criminal gang activity. If convicted in the Circuit Court, he shall be subject to the same sentencing procedures as provided in KRS 640.030.***

(6) If a child previously convicted as a youthful offender under the provisions of KRS Chapter 640 is charged with a felony allegedly committed prior to his eighteenth birthday, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.

(7)[~~(6)~~] A child who is charged as is provided in subsection (2) of this section and is also charged with a Class C or D felony, a misdemeanor, or a violation arising from the same course of conduct shall have all charges included in the same proceedings; and the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.

(8)[~~(7)~~] If a person who is eighteen (18) or older and before the court is charged with a felony that occurred prior to his eighteenth birthday, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.

(9)[~~(8)~~] All offenses arising out of the same course of conduct shall be tried with the felony arising from that course of conduct, whether the charges are adjudicated under this chapter or under KRS Chapter 640 and transferred to Circuit Court.

SECTION 86. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

(1) A pretrial diversion program shall be operated in each Circuit Court and each District Court by the Administrative Office of the Courts. The chief judge of each circuit or district, as appropriate, shall submit a plan for the pretrial diversion program to the Supreme Court for approval on or before December 1, 1999. The pretrial diversion program shall contain the following elements:

(a) The program may be utilized for a person charged with a Class D felony offense who has not, within ten (10) years immediately preceding the commission of this offense, been convicted of a felony under the laws of this state, another state, or of the United States, or has not been on probation or parole or who has not been released from the service of any felony sentence within ten (10) years immediately preceding the commission of the offense.

(b) The program shall not be utilized for persons charged with offenses for which probation, parole, or conditional discharge is prohibited under KRS 532.045.

(c) No person shall be eligible for pretrial diversion more than once in a five (5) year period.

(d) Any person charged with an offense not specified as precluding a person from pretrial diversion under paragraph (b) of this subsection may apply in writing to the county or Commonwealth's attorney, as appropriate, for entry into a pretrial diversion program.

(e) A minor shall be required to enter a plea of guilty as a condition of pretrial diversion or as a condition of an application for pretrial diversion.

(2) The county or Commonwealth's attorney shall make a recommendation upon each application for pretrial diversion to the District Judge or Circuit Judge in the court in which the case would be tried. If the attorney for the Commonwealth has recommended pretrial diversion and the judge approves pretrial diversion, it shall be granted according to the terms agreed upon. If the attorney for the Commonwealth recommends against pretrial diversion, it shall not be granted. The decision of the attorney for the Commonwealth to recommend against pretrial diversion shall only be reviewable by the court on the grounds that it discriminates against an applicant on the basis of race, religious belief, or sex.

(3) The court shall assess a diversion supervision fee of a sufficient amount to defray all or part of the cost of participating in the diversion program. Unless the fee is waived by the court in the case of indigency, the fee shall be assessed against each person placed in the diversion program. The fee may be based upon ability to pay. All fees collected shall be placed in a trust and agency account that shall not lapse and that shall be expended by the Administrative Office of the Courts for the purpose of administering and supervising the pretrial diversion program.

SECTION 87. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

When considering an application for pretrial diversion the attorney for the Commonwealth shall:

(1) Have a criminal record check made to ascertain if the person is eligible for pretrial diversion.

(2) Interview the victim of the crime, if there is an identified victim, and, when the victim of the crime is deceased or the attorney for the Commonwealth deems it necessary, interview a member of the family of the victim of the crime. The attorney for the Commonwealth shall explain to the victim the diversion program, the proposed diversion conditions, and any other matters that the attorney for the Commonwealth deems to be appropriate. The results of the interview and recommendations of the victim may be presented to the court when it is considering the application for pretrial diversion. If the application for diversion is approved by the court, the approval shall be in open court and may be attended by the victim and the victim's family. The attorney for the Commonwealth shall attempt to notify them of this fact and the time, date, and place of the hearing.

(3) Conduct any other investigation that the attorney for the Commonwealth determines may be necessary with regard to the defendant and the circumstances of the crime so as to enable him or her to set proper conditions of pretrial diversion, or to make a decision whether to recommend pretrial diversion.

SECTION 88. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

(1) The provisions of KRS 533.020 relating to the period of probation shall, in so far as possible, be applicable to the period of pretrial diversion except that supervision of the participants in the programs shall be done by the Administrative Office of the Courts.

(2) The provisions of KRS 533.030 relating to conditions of probation and restitution shall, in so far as possible, be applicable to pretrial diversion. Restitution shall be ordered in all cases where a victim has suffered monetary damage as a result of the alleged crime. Restitution to the state, or the victim, or both, may be ordered in any pretrial diversion program.

SECTION 89. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

(1) If the defendant fails to complete the provisions of the pretrial diversion agreement within the time specified, or is not making satisfactory progress toward the completion of the provisions of the agreement, the Administrative Office of the Courts, the victim, or a peace officer may inform the attorney for the Commonwealth of the alleged violation or noncompliance, and the attorney for the Commonwealth, may apply to the court for a hearing to determine whether or not the pretrial diversion agreement should be voided and the defendant stand trial as charged.

(2) In making a determination as to whether or not a pretrial diversion agreement should be voided, the court shall use the same criteria as for the revocation of probation, and the defendant shall have the same rights as he or she would if probation revocation was sought.

(3) Making application for a pretrial diversion agreement tolls any statute of limitations relative to the criminal offenses for which the application is made for the period until the application is granted or denied. Approval of the application for pretrial diversion by the court tolls any statute of limitations relative to criminal offenses diverted for the period of the diversion agreement.

(4) If the court voids the pretrial diversion agreement, the court shall notify the applicable prosecutor, in writing, that the pretrial diversion agreement has been voided and the reasons for the action. The prosecutor shall decide whether or not the defendant should be tried and for what charges. If the decision is made to try the defendant the court shall order the defendant to stand trial. The defendant may be arrested and jailed pending pretrial release. The order voiding the pretrial diversion agreement is subject to appeal in the same manner as any probation revocation under the statutes and the Rules of Criminal Procedure.

SECTION 90. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

(1) If the defendant successfully completes the provisions of the pretrial diversion agreement, the charges against the defendant shall be listed as "dismissed-diverted" and shall not constitute a criminal conviction.

(2) The defendant shall not be required to list this disposition on any application for employment, licensure, or otherwise unless required to do so by federal law.

(3) Pretrial diversion records shall not be introduced as evidence in any court in a civil, criminal, or other matter without the consent of the defendant.

SECTION 91. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

The Supreme Court of Kentucky shall, by rule, determine all forms and other matters necessary for the proper administration of the pretrial diversion program.

SECTION 92. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

(1) The pretrial diversion program authorized by Sections 86 to 91 of this Act shall be the sole program utilized in the Commonwealth.

(2) As of the effective date of this section, no other pretrial diversion program shall be permitted, except to supervise persons granted pretrial diversion prior to the effective date of this section. No new persons shall be admitted to these programs.

(3) A person who is in a pretrial diversion program as of the effective date of this section may continue in that program until he or she successfully completes the program or is removed from the program for other reasons, whichever occurs earlier.

Section 93. KRS 197.500 is amended to read as follows:

As used in KRS 197.505 to 197.525, unless the context otherwise requires:

(1) "Department" means the Department of Corrections;

(2) "Adult correctional facility" means *any minimum or medium adult penal or correctional facility operated for the purpose of housing convicted felons for the department*[~~an adult penal or correctional facility for the exclusive confinement of sentenced adult felons who have been classified by the department to be minimum security and restricted custody inmates and shall include any prison, reformatory, farm center, forestry camp, or similar institution which houses minimum security sentenced adult felons. For purposes of KRS 197.505 to 197.525, a county or regional jail shall not be considered an adult correctional facility~~]; and

(3) "Private provider" means a private legal entity authorized to do business in the Commonwealth and which is in the business of establishing, operating, and managing adult correctional facilities.

SECTION 94. A NEW SECTION OF KRS CHAPTER 197 IS CREATED TO READ AS FOLLOWS:

All persons, while acting for a private provider pursuant to the provisions of KRS 197.505 to 197.525 in any capacity entailing the maintenance of custody over any prisoners, shall have the power and authority of peace officers, including the authority granted to Department of Corrections employees pursuant to KRS 196.037(2).

SECTION 95. A NEW SECTION OF KRS CHAPTER 197 IS CREATED TO READ AS FOLLOWS:

(1) When KRS 197.510 or any other statute relating to contracting for the private operation of prisons requires a performance bond, an irrevocable letter of credit or a performance bond in a form satisfactory to the Commonwealth may be substituted.

(2) The contract shall also protect the state's interest in providing a continual level of prison beds available without a sudden drop in the number of prison beds available or the need to release inmates or provide for their transfer to other facilities.

Section 96. KRS 197.170 is amended to read as follows:

(1) The wardens of the state penitentiaries upon the release of any prisoner or inmate from confinement, shall immediately notify the Circuit Court, the Commonwealth's attorney of the district, the county attorney and sheriff of the county, the chief of police of the city and county, to which the inmate is released, and any victim, as defined in KRS 421.500, who has requested that he be notified on release of a particular inmate who victimized him and who has forwarded a current address and telephone number to the Department of Corrections, giving the residence of the person released and the name of the person to whom he was released. The provisions of KRS Chapter 202A notwithstanding, the Department of Corrections may release to the public the information that a petition to involuntarily hospitalize a prisoner has been filed concerning any inmate who is scheduled to be released from custody.

(2) If the Circuit Court notified pursuant to subsection (1) of this section is a court other than the court which sentenced the inmate, the warden shall also notify the sentencing court.

(3) Notices received by sheriffs and chiefs of police shall be posted in a conspicuous location where personnel employed by the department may see it. ***Notices posted pursuant to this subsection shall remain posted for not less than seven (7) days.***

SECTION 97. A NEW SECTION OF KRS CHAPTER 455 IS CREATED TO READ AS FOLLOWS:

In the event of a charge for a violation of KRS 514.040 with an amount of one hundred dollars ($100) or less, a summons shall be issued prior to an arrest warrant. An arrest warrant shall not be issued until the person charged fails to respond to the summons; unless the issuing judge determines that, based upon previous offenses or charges, an arrest of the person is necessary in order to reasonably assure his or her appearance in court.

Section 98. KRS 15.310 is amended to read as follows:

As used in KRS 15.315 to 15.510, 15.990 and 15.992, unless the context otherwise requires:

(1) ***"Basic training course" means the peace officer basic training course provided by the Department of Criminal Justice Training or a course approved and recognized by the Kentucky Law Enforcement Council pursuant to KRS 15.440;***

(2) "Certified peace officer" means a peace officer who is certified under Sections 99 to 110 of this Act;

(3) "Certification" means the act by the council of issuing certification to a peace officer who successfully completes the training requirements established or approved by the Kentucky Law Enforcement Council pursuant to KRS 15.440 and the requirements set forth within this chapter;

(4) "Council" means the Kentucky Law Enforcement Council established by KRS 15.315 to 15.510, 15.990 and 15.992;

(5)[~~(2)~~] "Department" means the Department of Criminal Justice Training of the Justice Cabinet;

(6)[~~(3)~~] "Law enforcement officer" means a member of a lawfully organized police unit or police force of county, city or metropolitan government who is responsible for the detection of crime and the enforcement of the general criminal laws of the state, as well as sheriffs, sworn deputy sheriffs, campus security officers, law enforcement support personnel, public airport authority security officers, other public and federal peace officers responsible for law enforcement, and special local peace officers licensed pursuant to KRS 61.360;[~~and~~]

(7) "Peace officer" means a person defined in KRS 446.010;

(8)[~~(4)~~] "Secretary" means the secretary of the Justice Cabinet***; and***

(9) "Validated job task analysis" means the minimum entry level qualifications and training requirements for peace officers in the Commonwealth based upon an actual survey and study of police officer duties and responsibilities conducted by an entity recognized by the Kentucky Law Enforcement Council as being competent to conduct such a study.

SECTION 99. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

(1) The following officers employed or appointed as full-time, part-time, or auxiliary officers, whether paid or unpaid, shall be certified:

  (a) State Police officers;

  (b) City, county, and urban-county police officers;

(c) Deputy sheriffs, except those identified in KRS 70.045 and 70.263(3);

(d) State or public university safety and security officers appointed pursuant to KRS 164.950;

(e) School security officers employed by local boards of education who are special law enforcement officers appointed under KRS 61.902;

(f) Airport safety and security officers appointed under KRS 183.880;

(g) Department of Alcoholic Beverage Control field representatives and investigators appointed under KRS 241.090; and

(h) Division of Insurance Fraud Investigators appointed under KRS 304.47-040.

(2) The requirements of Sections 99 to 110 of this Act for certification may apply to all state peace officers employed pursuant to KRS Chapter 18A and shall, if adopted, be incorporated by the Department of Personnel for job specifications.

(3) Additional training in excess of the standards set forth in Sections 99 to 110 of this Act for all peace officers possessing arrest powers who have specialized law enforcement responsibilities shall be the responsibility of the employing agency.

(4) The following officers may, upon request of the employing agency, be certified by the council:

(a) Deputy coroners;

(b) Deputy constables;

(c) Deputy jailers;

(d) Deputy sheriffs under KRS 70.045 and 70.263(3);

(e) Officers appointed under KRS 61.360;

(f) Officers appointed under KRS 61.902, except those who are school security officers employed by local boards of education;

(g) Private security officers; and

(h) Employees of a correctional services division created pursuant to KRS 67A.028 and employees of a metropolitan correctional services department created pursuant to KRS 67B.010 to 67B.080.

(5) The following officers shall be exempted from the certification requirements but may upon their request be certified by the council:

(a) Sheriffs;

(b) Coroners;

(c) Constables; and

(d) Jailers.

(6) Federal peace officers cannot be certified under Sections 99 to 110 of this Act.

SECTION 100. A NEW SECTION OF KRS 15.310 TO 15.510 IS CREATED TO READ AS FOLLOWS:

A person certified after December 1, 1998, under Sections 99 to 110 of this Act shall, at the time of becoming certified, meet the following minimum qualifications:

(1) Be a citizen of the United States;

(2) Be at least twenty-one (21) years of age;

(3) Be a high school graduate or have successfully completed a General Education Development (G.E.D.) examination;

(4) Possess a valid license to operate a motor vehicle;

(5) Be fingerprinted for a criminal background check;

(6) Not have been convicted of any felony;

(7) Not be prohibited by federal or state law from possessing a firearm;

(8) Have received and read the Kentucky Law Enforcement Officers Code of Ethics as established by the council;

(9) Have received an honorable discharge if having served in any branch of the armed forces of the United States;

(10) Have passed a medical examination by the council to determine if he can perform peace officer duties as determined by a validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall pass the medical examination, appropriate to the agency's job task analysis, of the employing agency. All agencies shall certify passing medical examination results to the council which shall accept them as complying with KRS 15.315 to 15.510;

(11) Have passed a drug screening test administered or approved by the council by administrative regulation. A person shall be deemed to have passed a drug screening test if the results of the test are negative for the use of an illegal controlled substance or prescription drug abuse. Any agency that administers its own test that meets or exceeds this standard shall certify passing test results to the council which shall accept them as complying with KRS 15.315 to 15.510;

(12) Have undergone a background investigation established or approved by the council by administrative regulation to determine suitability for the position of a peace officer. If the employing agency has established its own background investigation that meets or exceeds the standards of the council, as set forth by administrative regulation, the agency shall conduct the background investigation and shall certify background investigation results to the council, which shall accept them as complying with KRS 15.315 to 15.510;

(13) Have been interviewed by the employing agency;

(14) Not have had certification as a peace officer permanently revoked in another state;

(15) Have taken a psychological examination administered or approved by the council by administrative regulation to determine the person's suitability to perform peace officer duties as determined by a council validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall take that agency's psychological examination, appropriate to the agency's job task analysis. All agencies shall certify psychological examination results to the council which shall accept them as complying with KRS 15.315 to 15.510;

(16) Have passed a physical agility test administered or approved by the council by administrative regulation to determine his suitability to perform peace officer duties as determined by a council validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall take the physical agility examination of the employing agency. All agencies shall certify physical agility examination results to the council, which shall accept them as demonstrating compliance with KRS 15.315 to 15.510; and

(17) Have taken a polygraph examination administered or approved by the council by administrative regulation to determine his suitability to perform peace officer duties. Any agency that administers its own polygraph examination as approved by the council shall certify the results that indicate whether a person is suitable for employment as a peace officer to the council, which shall accept them as complying with KRS 15.315 to 15.510.

SECTION 101. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

(1) The council shall administer the physical agility, polygraph, psychological, and drug screen tests at cost for those agencies requesting council-administered tests. Agencies may petition the council for waiver of the costs of these tests upon a showing of undue financial hardship.

(2) An agency may, at its own expense, administer its own physical agility, polygraph, psychological, medical, and drug screen tests, as well as additional tests.

SECTION 102. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

The following certification categories shall exist:

(1) Precertification status. The officer is currently employed or appointed by an agency and meets or exceeds all those minimum qualifications set forth in Section 100 of this Act, but has not successfully completed a basic training course, except those officers covered by Section 109 of this Act. The officer shall have full peace officer powers as authorized under the statute under which he was appointed or employed. If an officer fails to successfully complete a basic training course within one (1) year of employment, his enforcement powers shall automatically terminate, and he shall not exercise peace officer powers in the Commonwealth until he has successfully completed a basic training course.

(2) Certification status. Unless the certification is in revoked status or inactive status, the officer is currently employed or appointed by an agency and has met all training requirements. The officer shall have full peace officer powers as authorized under the statute under which he was appointed or employed.

(3) Inactive status.

(a) The person has been separated from the agency by which he was employed or appointed and has no peace officer powers;

(b) The person has been employed by another agency in a non-peace officer position; or

(c) The person is on military active duty for a period exceeding three hundred sixty-five (365) days.

The person may remain on inactive status. A person who is on inactive status and who returns to a peace officer position shall have certification status restored if he has not committed an act for which his certified status may be revoked pursuant to Sections 99 to 110 of this Act and by successfully completing forty (40) hours of in-service training as prescribed by the council.

(4) Revoked or denied status. The officer has no enforcement powers and has been separated from an enforcement

agency for any one (1) of the following reasons:

(a) Failure to meet or maintain training requirements;

(b) Willful falsification of information to obtain or maintain certified status;

(c) Certification was the result of an administrative error;

(d) Plea of guilty to, conviction of, or entering of an Alford plea to any felony;

(e) Prohibition by federal or state law from possessing a firearm.

(5) The design of a certificate may be changed periodically. When a new certificate is produced, it shall be distributed free of charge to each currently certified peace officer.

SECTION 103. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

(1) Within five (5) working days of employment or appointment, the chief executive officer of the employing agency, or his designee, shall file a report with the council certifying that the newly employed officer is certified or meets or exceeds the precertification qualifications of Section 100 of this Act.

(2) If the person is certified, the council shall continue certified status.

(3) If the person is on inactive status, the council shall upgrade to certified status unless the certification is revoked as provided by Sections 99 to 110 of this Act.

(4) If the person is not certified and not on inactive status, the council shall designate the person as being in precertification status.

(5) A person who is in precertification status shall, upon successful completion of the required basic training, be certified unless he has committed an act that would result in revocation of his certificate in which case he shall be denied certification.

(6) A person who is denied certified status under this section shall have the same right of appeal as a person who has been revoked under Sections 99 to 110 of this Act.

(7) If the certified officer has successfully completed the basic training required by KRS 95.955 and transfers from a peace officer position from a current employer to a peace officer position for another employer, and both employers have, at least ten (10) working days prior to the effective date of the transfer, notified the council in writing of the transfer, the council shall maintain the officer in certified status.

SECTION 104. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

Any person who is aggrieved by a determination by the employing agency or by the council that he fails to meet the requirements for precertification status may:

(1) If the determination was made by the employing agency, appeal the decision in the same manner as other employment appeals within the agency, if an appeals procedure has been established by the employing agency; or

(2) If the determination was made by the council, appeal the decision to the local Circuit Court having jurisdiction over the employing agency.

SECTION 105. A NEW SECTION OF KRS CHAPTER 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

(1) Within ten (10) working days from separation from service, the chief executive officer of the employing agency, or his designee, shall file with the council a summary report that provides the relevant information about the person's separation from service.

(2) If the person has been separated for having pled guilty to, been convicted of, or entered an Alford plea to a felony, the council shall revoke the person's certification.

(3) If the person has been separated for any other reason other than death, the council shall place the certification on inactive status. If the person has been separated due to death, the certification shall be retired.

(4) The employing agency's findings of fact and evidentiary conclusions shall be deemed final. The council shall be limited only to revoking the certification.

(5) The council shall not accept or hear complaints.

SECTION 106. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

(1) If the council believes an agency's job task analysis to be insufficient or erroneous, the council shall file a declaratory action in Franklin Circuit Court to declare the job task analysis invalid.

(2) Until the job task analysis has been declared invalid and all appeals have been exhausted, the council shall accept the agency's job task analysis.

SECTION 107. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

(1) An agency may be required to pay for all training received by a person from the Department of Criminal Justice

Training or any other facility approved by the Kentucky Law Enforcement Council if the agency knowingly employs or appoints a person to be an officer of any type as enumerated in Section 99 of this Act and if that person fails to achieve certified status as required by Sections 99 to 110 of this Act.

(2) The agency shall be denied participation in the Kentucky Law Enforcement Foundation Program Fund if the agency knowingly employs or appoints a person to be an officer of any type as enumerated in Section 99 of this Act and if that person:

(a) Fails to meet those minimum qualifications set forth in Section 110 of this Act;

(b) Fails to achieve certified status as required by Sections 99 to 110 of this Act; or

(c) Fails to maintain the minimum training requirements set forth in KRS 95.955.

SECTION 108. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

(1) The following Kentucky Revised Statutes and any administrative regulations promulgated thereunder affecting those peace officers required to be certified pursuant to Sections 99 to 110 of this Act shall not be superseded by the provisions of Sections 99 to 110 of this Act, and in all instances the provisions of all statutes specified below shall prevail:

(a) KRS Chapter 16, relating to Kentucky State Police Officers;

(b) KRS Chapter 70, relating to sheriffs, and deputy sheriffs;

(c) KRS Chapter 78, relating to county police;

(d) KRS Chapters 15 and 95, relating to city and urban-county police;

(e) KRS Chapter 183, relating to airport safety and security officers;

(f) KRS Chapter 164, relating to State Universities and Colleges; Regional Education and Archaeology officers;

(g) KRS Chapter 18A, relating to all state peace officers;

(h) KRS 241.090, relating to Department of Alcoholic Beverage Control field representatives and investigators;

(i) KRS 304.47-040, relating to Division of Insurance Fraud Investigators; and

(j) Any other statutes affecting peace officers not specifically cited herein.

SECTION 109. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

(1) The effective date of Sections 99 to 110 of this Act shall be December 1, 1998. All peace officers employed as of December 1, 1998, shall be deemed to have met all the requirements of Sections 99 to 110 of this Act and shall be granted certified status as long as they remain in continuous employment of the agency by which they were employed as of the effective date of this Act, or shall have successfully completed an approved basic training course approved and recognized by the Kentucky Law Enforcement Council pursuant to KRS 15.440(4) when seeking employment with another law enforcement agency.

(2) Any peace officers employed after December 1, 1998, shall comply with all minimum standards specified in Sections 99 to 110 of this Act. Persons newly employed or appointed after December 1, 1998, shall have one (1) year within which to gain certified status or they shall lose their law enforcement powers.

(3) The Open Records Act notwithstanding, the person's home address, telephone number, date of birth, social security number, background investigation, medical examination, psychological examination, and polygraph examination conducted pursuant to his statute shall not be subject to disclosure.

SECTION 110. A NEW SECTION OF KRS 15.315 TO 15.510 IS CREATED TO READ AS FOLLOWS:

No provisions of Sections 99 to 110 of this Act shall preclude an appointing or employing agency from having requirements that are in excess of or in addition to any requirements specified by this Act or an administrative regulation promulgated under Sections 99 to 110 of this Act.

Section 111. KRS 532.055 is amended to read as follows:

(1) In all felony cases, the jury in its initial verdict will make a determination of not guilty, guilty, guilty but mentally ill, or not guilty by virtue of insanity, and no more.

(2) Upon return of a verdict of guilty or guilty but mentally ill against a defendant, the court shall conduct a sentencing hearing before the jury, if such case was tried before a jury. In the hearing the jury will determine the punishment to be imposed within the range provided elsewhere by law. The jury shall recommend whether the sentences shall be served concurrently or consecutively.

(a) Evidence may be offered by the Commonwealth relevant to sentencing including:

1. Minimum parole eligibility, prior convictions of the defendant, both felony and misdemeanor;

2. The nature of prior offenses for which he was convicted;

3. The date of the commission, date of sentencing, and date of release from confinement or supervision from all prior offenses;

4. The maximum expiration of sentence as determined by the division of probation and parole for all such current and prior offenses;

5. The defendant's status if on probation, parole, conditional discharge, or any other form of legal release;[~~ and~~]

6. Juvenile court records of adjudications of guilt of a child for an offense that would be a felony if committed by an adult. Subject to the Kentucky Rules of Evidence, these records shall be admissible in court at any time the child is tried as an adult, or after the child becomes an adult, at any subsequent criminal trial relating to that same person. Juvenile court records made available pursuant to this section may be used for impeachment purposes during a criminal trial, and may be used during the sentencing phase of a criminal trial; however, the fact that a juvenile has been adjudicated delinquent of an offense that would be a felony if the child had been an adult shall not be used in finding the child to be a persistent felony offender based upon that adjudication. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Release of any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the federal Social Security Act is also prohibited; ***and***

7. The impact of the crime upon the victim, as defined in KRS 421.500, including a description of the nature and extent of any physical, psychological, or financial harm suffered by the victim;

(b) The defendant may introduce evidence in mitigation. For purposes of this section, mitigating evidence means evidence that the accused has no significant history of criminal activity which may qualify him for leniency. This section shall not preclude the introduction of evidence which negates any evidence introduced by the Commonwealth; and

(c) Upon conclusion of the proof, the court shall instruct the jury on the range of punishment and counsel for the defendant may present arguments followed by the counsel for the Commonwealth. The jury shall then retire and recommend a sentence for the defendant.

(3) All hearings held pursuant to this section shall be combined with any hearing provided for by KRS 532.080.[~~ This section shall not apply to sentencing hearings provided for in KRS 532.025.~~]

(4) In the event that the jury is unable to agree as to the sentence or any portion thereof and so reports to the judge, the judge shall impose the sentence within the range provided elsewhere by law.

Section 112. KRS 439.315 is amended to read as follows:

(1) A person placed by a releasing authority on probation, parole, or other form of release subject to supervision by the Department of Corrections and all persons supervised pursuant to KRS 439.560 shall pay a fee to offset the costs of supervising the probation, parole, or other supervised release.

(2) The fees shall be as follows:

(a) For a felony, not less than ten dollars ($10) per month while on active supervision nor more than two thousand five hundred dollars ($2,500) ***per year***.

(b) For a misdemeanor, not less than ten dollars ($10) per month while on active supervision nor more than five hundred dollars ($500) ***per year***, except as provided in subsection (13) of this section.

(3) The releasing authority shall order the fee paid in a lump sum or installments. If the fee is to be paid in a lump sum, the person shall not be released from custody until the fee is paid in full.

(4) Upon the failure of a person to pay an installment on a fee set forth in a release agreement, the releasing authority shall hold a hearing to determine why the installment has not been paid. Failure without good cause to pay an installment pursuant to a release agreement shall be grounds for the revocation of probation, parole, conditional release, or other form of release upon which the person has been released as provided in KRS 533.050.

(5) The releasing authority shall hold a hearing to determine the ability of the defendant to make the payments; and in making this determination, the releasing authority shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution. In counties containing a city of the first class or an urban-county form of government, the releasing authority may waive the payment of the fee in whole or in part for defendants placed under the supervision of the adult misdemeanant probation and work release program, if it finds that any of the factors in subsection (6) of this section exist.

(6) The releasing authority shall not waive any fee unless the commissioner of the Department of Corrections or his designee petitions the releasing authority in written form for the waiver. The Department of Corrections shall not petition unless:

(a) The offender is a student in a school, college, university, or course of vocational or technical training designed to fit the student for gainful employment. Certification of student status shall be supplied to the releasing authority by the educational institution in which the offender is enrolled. In such case, the fee may be postponed until completion of education but shall be paid thereafter.

(b) The offender has an employment disability, as determined by a physical, psychological, or psychiatric examination acceptable to, or ordered by, the releasing authority.

(7) At any time during the pendency of the judgment or order rendered according to the terms of this section, a defendant may petition the releasing authority to modify or vacate its previous judgment or order on the grounds of change of circumstances with regard to the defendant's ability to pay the fee. The releasing authority shall advise the defendant of this right at the time of the rendering of the judgment or order placing the defendant on probation, parole, or other supervised release.

(8) All sums paid by the defendant pursuant to this section shall be paid into the general fund, except as provided in subsection (13) of this section.

(9) When granting a release of any defendant by way of probation, parole, or otherwise, the releasing authority shall make the payment of this fee a condition of release, unless the fee has been waived, reduced, or delayed as provided in this section. Nonpayment shall be grounds for revocation of the release as provided in KRS 533.050.

(10) The releasing authority, if the Department of Corrections petitions the releasing authority to modify the fee, shall consider the petition and may waive the payment of the fee in whole or in part, delay payment of the fee, increase the fee, or deny the petition.

(11) All fees fixed under the provisions of this section shall be collected by the circuit clerk of the county where the defendant is supervised, except as provided in subsection (13) of this section.

(12) The Department of Corrections and the Division of Probation and Parole shall, for each person released under its supervision, keep an account of all payments made and report delinquencies to the releasing authority.

(13) In counties containing a city of the first class or an urban-county form of government, persons placed by a releasing authority on probation, parole, or other release subject to supervision by the adult misdemeanant probation and work release program of the county containing a city of the first class or urban-county government shall pay a fee to offset the costs of supervising the probation, parole, or other supervised release. The fees shall be assessed by the releasing authority in accordance with the provisions of this section. The fee for a misdemeanant defendant placed under the supervision of an adult misdemeanant probation and work release program of a county containing a city of the first class or an urban-county government shall be not less than one hundred dollars ($100) nor more than five hundred dollars ($500) ***per year***. All sums paid by the defendant under this subsection shall be paid into the general fund of the county containing a city of the first class or urban-county government in lieu of the payment specified in subsection (8) of this section. All fees fixed under this subsection shall be collected by the circuit clerk of the county containing a city of the first class or urban-county involved. The adult misdemeanant probation and work release program of the county containing a city of the first class or urban-county government shall, for each person released under its supervision, keep an account of all payments made, maintain copies of all receipts issued by the circuit clerk, and report delinquencies to the court.

Section 113. KRS 337.010 is amended to read as follows:

(1) As used in this chapter, unless the context requires otherwise:

(a) "Commissioner" means commissioner of the Department of Workplace Standards under the direction and supervision of the secretary of the Labor Cabinet;

(b) "Department" means Department of Workplace Standards in the Labor Cabinet;

(c) "Wages" include any compensation due to an employee by reason of his employment, including salaries, commissions, vested vacation pay, overtime pay, severance or dismissal pay, earned bonuses, and any other similar advantages agreed upon by the employer and the employee or provided to employees as an established policy. The wages shall be payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to the allowances made in this chapter;

(d) "Employer" is any person, either individual, corporation, partnership, agency, or firm who employs an employee and includes any person, either individual, corporation, partnership, agency, or firm acting directly or indirectly in the interest of an employer in relation to an employee; and

(e) "Employee" is any person employed by or suffered or permitted to work for an employer.

(2) As used in KRS 337.275 to 337.325, 337.345, and KRS 337.385 to 337.405, unless the context requires otherwise:

(a) "Employee" is any person employed by or suffered or permitted to work for an employer, but shall not include:

1. Any individual employed in agriculture;

2. Any individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of outside salesman, or as an outside collector as the terms are defined by administrative regulations of the commissioner;

3. Any individual employed by the United States;

4. Any individual employed in domestic service in or about a private home. The provisions of this section shall include individuals employed in domestic service in or about the home of an employer where there is more than one (1) domestic servant regularly employed;

5. Any individual classified and given a certificate by the commissioner showing a status of learner, apprentice, worker with a disability, sheltered workshop employee, and student under administrative procedures and administrative regulations prescribed and promulgated by the commissioner. This certificate shall authorize employment at the wages, less than the established fixed minimum fair wage rates, and for the period of time fixed by the commissioner and stated in the certificate issued to the person;

6. Employees of retail stores, service industries, hotels, motels, and restaurant operations whose average annual gross volume of sales made for business done is less than ninety-five thousand dollars ($95,000) for the five (5) preceding years exclusive of excise taxes at the retail level or if the employee is the parent, spouse, child, or other member of his employer's immediate family;

7. Any individual employed as a babysitter in employer's home, or an individual employed as a companion by a sick, convalescing, or elderly person or by the person's immediate family, to care for that sick, convalescing, or elderly person and whose principal duties do not include housekeeping;

8. Any individual engaged in the delivery of newspapers to the consumer;

9. Any individual subject to the provisions of KRS Chapters 7, 16, 27A, 30A, and 18A provided that the commissioner of the Department of Personnel shall have the authority to prescribe by administrative regulation those emergency employees, or others, who shall receive overtime pay rates necessary for the efficient operation of government and the protection of affected employees;

10. Any employee employed by an establishment which is an organized nonprofit camp, religious, or nonprofit educational conference center, if it does not operate for more than seven (7) months in any calendar year; or

11. Any employee whose function is to provide twenty-four (24) hour residential care on the employer's premises in a parental role to children who are primarily dependent, neglected, and abused and who are in the care of private, nonprofit childcaring facilities licensed by the Cabinet for Human Resources under KRS 199.640 to 199.670.

(b) "Agriculture" means farming in all its branches, including cultivation and tillage of the soil; dairying; production, cultivation, growing, and harvesting of any agricultural or horticultural commodity; raising of livestock, bees, furbearing animals, or poultry; and any practice, including any forestry or lumbering operations, performed on a farm in conjunction with farming operations, including preparation and delivery of produce to storage, to market, or to carriers for transportation to market;

(c) "Gratuity" means voluntary monetary contribution received by an employee from a guest, patron, or customer for services rendered;

(d) "Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than thirty dollars ($30) per month in tips; and

(e) "U.S.C." means the United States Code.

(3) As used in KRS 337.505 to 337.550, unless the context requires otherwise:

(a) "Construction" includes construction, reconstruction, improvement, enlargement, alteration, or repair of any public works project by contract fairly estimated to cost more than two hundred fifty thousand dollars ($250,000). No public works project, if procured under a single contract and subject to the requirements of this section, may be divided into multiple contracts of lesser value to avoid compliance with the provisions of this section;

(b) "Contractor" and "subcontractor" include any superintendent, foreman, or other authorized agent of any contractor or subcontractor who is in charge of the construction of the public works or who is in charge of the employment or payment of the employees of the contractor or subcontractor who are employed in performing the work to be done or being done by the contractor or subcontractor under the particular contract with any public authority;

(c) 1. "Locality" shall be determined by the commissioner. The commissioner may designate more than one (1) county as a single locality, but, if more than one (1) county is designated, the multicounty locality shall not extend beyond the boundaries of a state Senatorial district. The commissioner shall not designate less than an entire county as a locality. If there is not available in the locality a sufficient number of competent, skilled laborers, workmen, and mechanics to efficiently and properly construct the public works, "locality" shall include any other locality nearest the one in which the work of construction is to be performed and from which such available skilled laborers, workmen, and mechanics may be obtained in sufficient number to perform the work; and

2. "Locality" with respect to contracts advertised or awarded by the Transportation Cabinet of this state shall be determined by the secretary of the Transportation Cabinet. The secretary may designate any number of counties as constituting a single locality. The secretary may also designate all counties of the Commonwealth as a single locality, but he shall not designate less than an entire county as a locality;

(d) "Public authority" means any officer, board, or commission of this state, or any political subdivision or department thereof in the state, or any institution supported in whole or in part by public funds, including publicly-owned or controlled corporations, authorized by law to enter into any contract for the construction of public works and any nonprofit corporation funded to act as an agency and instrumentality of the government agency in connection with the construction of public works***, and any "private provider", as defined in Section 93 of this Act, which enters into any contract for the construction of an "adult correctional facility", as defined in Section 93 of this Act***; and

(e) "Public works" includes all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, and all other structures or work***, including "adult correctional facilities", as defined in Section 93 of this Act,*** constructed under contract with any public authority.

(4) If the federal government or any of its agencies furnishes by loans or grants any part of the funds used in constructing public works, and if the federal government or its agencies prescribe predetermined prevailing minimum wages to be paid to mechanics, workmen, and laborers employed in the construction of the public works, and if KRS 337.505 to 337.550 is also applicable, those wages in each classification which are higher shall prevail.

Section 114. KRS 532.110 is amended to read as follows:

(1) When multiple sentences of imprisonment are imposed on a defendant for more than one (1) crime, including a crime for which a previous sentence of probation or conditional discharge has been revoked, the multiple sentences shall run concurrently or consecutively as the court shall determine at the time of sentence, except that:

(a) A definite and an indeterminate term shall run concurrently and both sentences shall be satisfied by service of the indeterminate term;

(b) The aggregate of consecutive definite terms shall not exceed one (1) year; and

(c) The aggregate of consecutive indeterminate terms shall not exceed in maximum length the longest extended term which would be authorized by KRS 532.080 for the highest class of crime for which any of the sentences is imposed. ***In no event shall the aggregate of consecutive indeterminate terms exceed seventy (70) years.***

(2) If the court does not specify the manner in which a sentence imposed by it is to run, the sentence shall run concurrently with any other sentence which the defendant must serve.

(3) When a defendant is sentenced to imprisonment for a crime committed while on parole in this state, the term of imprisonment and any period of reimprisonment that the board of parole may require the defendant to serve upon the revocation of his parole shall run concurrently, unless the court orders them to run consecutively.

(4) Notwithstanding any provision in this section to the contrary, if a person is convicted of an offense that is committed while he is imprisoned in a penal or reformatory institution, during an escape from imprisonment, or while he awaits imprisonment, the sentence imposed for that offense may be added to the portion of the term which remained unserved at the time of the commission of the offense. The sentence imposed upon any person convicted of an escape or attempted escape offense shall run consecutively with any other sentence which the defendant must serve.

(5) Notwithstanding any provision in this chapter to the contrary, if a person is convicted of an offense that is committed while he is imprisoned in a penal or reformatory institution, the sentence imposed for that offense may, upon order of the trial court, be served in that institution. The person may be transferred to another institution pursuant to administrative regulations of the Department of Corrections.

SECTION 115. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

(1) When a person is convicted of, pleads guilty to, or enters an Alford plea to a felony offense and is sentenced to jail as a condition of conditional discharge, or as a condition of probation, the Department of Corrections shall pay for the incarceration of that person in a county jail at the same rate and under the same conditions as for a Class D felon who is incarcerated in the county jail under KRS 532.100.

(2) If a person incarcerated in a county jail on conditional discharge or probation under subsection (1) of this section is granted work release, he shall pay the work release fees required by law to the jailer. The amount of work release fees paid by a prisoner shall be deducted from the amount which the Department of Corrections shall pay for the incarceration of that prisoner.

Section 116. KRS 640.010 is amended to read as follows:

(1) For children who are alleged to be youthful offenders by falling in the purview of KRS 635.020(2), (3),[~~ (4),~~] (5), (6), (7),[~~ or~~] (8) ***or (9)***, the court shall at arraignment assure that the child's rights as specified in KRS 610.060 have been explained and followed.

(2) In the case of a child alleged to be a youthful offender by falling within the purview of KRS 635.020***(2), (3), (6), (7), (8), or (9)***, the District Court shall, upon motion by the county attorney to proceed under this chapter, and after the county attorney has consulted with the Commonwealth's attorney, conduct a preliminary hearing to determine if the child should be transferred to Circuit Court as a youthful offender. The preliminary hearing shall be conducted in accordance with the Rules of Criminal Procedure.

(a) At the preliminary hearing, the court shall determine if there is probable cause to believe that an offense was committed, that the child committed the offense, and that the child is of sufficient age and has the requisite number of prior adjudications, if any, necessary to fall within the purview of KRS 635.020.

(b) If the District Court determines probable cause exists, the court shall consider the following factors before determining whether the child's case shall be transferred to the Circuit Court:

1. The seriousness of the alleged offense;
2. Whether the offense was against persons or property, with greater weight being given to offenses against persons;
3. The maturity of the child as determined by his environment;
4. The child's prior record;
5. The best interest of the child and community;
6. The prospects of adequate protection of the public; and
7. The likelihood of reasonable rehabilitation of the child by the use of procedures, services, and facilities currently available to the juvenile justice system.

(c) If, following the completion of the preliminary hearing, the District Court finds, after considering the factors enumerated in paragraph (b) of this subsection, that two (2) or more of the factors specified in paragraph (b) of this subsection are determined to favor transfer, the child may be transferred to Circuit Court, and if the child is transferred the District Court shall issue an order transferring the child as a youthful offender and shall state on the record the reasons for the transfer. The child shall then be proceeded against in the Circuit Court as an adult, except as otherwise provided in this chapter.

(d) If, following completion of the preliminary hearing, the District Court is of the opinion, after considering the factors enumerated in paragraph (b) of this subsection that the child shall not be transferred to the Circuit Court, the case shall be dealt with as provided in KRS Chapter 635.

(3) If the child is transferred to Circuit Court under this section and the grand jury does not find that there is probable cause to indict the child as a youthful offender, as defined in KRS 635.020(2), (3), ***(5)***[~~(4)~~], (6),[~~ and~~] (7), ***and (8),*** but does find that there is probable cause to indict the child for another criminal offense, the child shall not be tried as a youthful offender in Circuit Court but shall be returned to District Court to be dealt with as provided in KRS Chapter 635.

Section 117. KRS 15.330 is amended to read as follows:

(1) The council is vested with the following functions and powers:

(a) To prescribe standards for the approval and continuation of approval of schools at which law enforcement training courses required under KRS 15.310 to 15.510 and KRS 15.990 to 15.992 shall be conducted, including but not limited to minimum standards for facilities, faculty, curriculum, and hours of attendance related thereto;

(b) To prescribe minimum qualifications for instructors at such schools, except that institutions of higher education shall be exempt from council requirements;

(c) To prescribe qualifications for attendance and conditions for expulsion from such schools;

(d) To approve, to issue and to revoke for cause certificates to schools and instructors as having met requirements under KRS 15.310 to 15.510 and KRS 15.990 to 15.992;

(e) To approve law enforcement officers and other persons as having met requirements under KRS 15.310 to 15.510 and KRS 15.990 to 15.992;

(f) To inspect and evaluate schools at any time and to require of schools, instructors and persons approved or to be approved under the provisions of KRS 15.310 to 15.510 and KRS 15.990 to 15.992, any information or documents;

(g) To recommend reasonable rules and regulations to the secretary to accomplish the purposes of KRS 15.310 to 15.510 and KRS 15.990 to 15.992;

(h) To monitor the Law Enforcement Foundation Program as prescribed in KRS 15.410 to 15.510;[~~ and~~]

(i) To adopt bylaws for the conduct of its business not otherwise provided for***; and***

(j) The council shall have the authority to certify police officers as set out in this chapter.

(2) The provisions of KRS 15.310 to 15.510 and KRS 15.990 to 15.992 do not apply to the Department of State Police

except for the certification requirement established by this chapter.

Section 118. KRS 532.045 is amended to read as follows:

(1) As used in this section:

(a) "Position of authority" means, but is not limited to, the position occupied by a biological parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational staff or volunteer who is an adult, adult athletic manager, adult coach, teacher, counselor, staff or volunteer for either a residential treatment facility, a holding facility as defined in KRS 600.020, or a detention facility as defined in KRS 520.010(4), staff or volunteer with a youth services organization, religious leader, health care provider, or employer;

(b) "Position of special trust" means a position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the minor; and

(c) "Substantial sexual conduct" means penetration of the vagina or rectum by the penis of the offender or the victim, by any foreign object; oral copulation; or masturbation of either the minor or the offender.

(2) Notwithstanding other provisions of applicable law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provision of this section be stricken for a person convicted of violating KRS 510.040, 510.050, 510.070, 510.080, 529.030 to 529.050, 529.070, 530.020, 531.310, 531.320, 531.370, or criminal attempt to commit any of these offenses under KRS 506.010, and, who meets one (1) or more of the following criteria:

(a) A person who commits any of the offenses enumerated in this subsection against a minor by the use of force, violence, duress, menace, or threat of bodily harm;

(b) A person who, in committing any of the offenses enumerated in this subsection, caused bodily injury to the minor;

(c) A person convicted of any of the offenses enumerated in this subsection and who was a stranger to the minor or made friends with the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection, unless the defendant honestly and reasonably believed the minor was eighteen (18) years old or older;

(d) A person who used a dangerous instrument or deadly weapon against a minor during the commission of any of the offenses enumerated in this subsection;

(e) A person convicted of any of the offenses enumerated in this subsection and who has had a prior conviction of assaulting a minor, with intent to commit an act constituting any of the offenses enumerated in this subsection;

(f) A person convicted of kidnapping a minor in violation of the Kentucky penal code and who kidnapped the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection;

(g) A person who is convicted of committing any of the offenses enumerated in this subsection on more than one (1) minor at the same time or in the same course of conduct;

(h) A person who in committing any of the offenses enumerated in this subsection has substantial sexual conduct with a minor under the age of fourteen (14) years; or

(i) A person who occupies a position of special trust and commits an act of substantial sexual conduct.

Nothing in this section shall be construed to prohibit the additional period of three (3) years conditional discharge required by Section 25 of this Act.

(3) If a person is not otherwise prohibited from obtaining probation or conditional discharge under subsection (2), the court may impose on the person a period of probation or conditional discharge. Probation or conditional discharge shall not be granted until the court is in receipt of an evaluation of the offender performed by the sex offender treatment program operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services. The court shall use the evaluation in determining the appropriateness of probation or conditional discharge.

(4) If the court grants probation or conditional discharge, the offender shall be required, as a condition of probation or conditional discharge, to successfully complete a community-based sexual offender treatment program operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services.

(5) The offender shall pay for any evaluation or treatment required pursuant to this section up to the offender's ability to pay but not more than the actual cost of the evaluation or treatment.

(6) Failure to successfully complete the sexual offender treatment program constitutes grounds for the revocation of probation or conditional discharge.

(7) All communications relative to the evaluation and treatment of a sexual offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings.

(8) Before imposing sentence, the court shall advise the defendant or his counsel of the contents and conclusions of any evaluation performed pursuant to this section and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the evaluation. It

shall not be necessary to disclose the sources of confidential information.

(9) To the extent that this section conflicts with KRS 533.010, this section shall take precedence.

SECTION 119. A NEW SECTION OF KRS CHAPTER 439 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby created a program for prerelease probation of inmates confined in correctional facilities under the jurisdiction of or under contract to the Department of Corrections.

(2) Any inmate who is in a prerelease program or eligible for a prerelease program as specified by administrative regulations of the Department of Corrections may apply to the sentencing court for prerelease probation.

(3) The court, upon favorable recommendation of the Department of Corrections, may place the inmate on probation under those terms and conditions the court deems necessary, which may include but not need to be limited to those specified in KRS 533.030.

(4) In particular, the court may require that an inmate placed on prerelease probation remain in a half-way house approved by the Department of Corrections and that the probationer pay the cost of his or her lodging in the half-way house and the costs of probation supervision in accordance with applicable statutes for probation supervision and persons granted work release from jail.

(5) An inmate placed on prerelease probation shall no longer be considered as an inmate of the Department of Corrections but shall be considered as a defendant placed on probation, subject to supervision by the Division of Probation and Parole, or other agency approved by the court, and the orders of the court.

(6) A person placed on prerelease probation by the court who violates the conditions of his or her probation may be dealt with by the court in the same manner as any other person who violates the conditions of probation.

(7) The period of probation under this section shall not exceed the maximum expiration date of the inmate applying for the probation.

Section 120. KRS 15.440 is amended to read as follows:

Each local unit of government which meets the following requirements shall be eligible to share in the distribution of funds from the Law Enforcement Foundation Program fund:

(1) Employs one (1) or more police officers;

(2) Pays every police officer ***at least the***[~~a~~] minimum ***federal wage***[~~annual salary of four thousand three hundred fifty dollars ($4,350)~~];

(3) Maintains the minimum educational requirement of a high school degree, or its equivalent as determined by the Kentucky Law Enforcement Council, for employment of police officers on or after July 1, 1972***, and for all sheriffs appointed or elected on or after the effective date of this Act, and all deputy sheriffs, and state or public university police officers employed after the effective date of this Act***; provided, however, that all police officers employed prior to July 1, 1972, shall be deemed to have met the requirements of this subsection***, and that all sheriffs serving in office on the effective date of this Act, all deputy sheriffs, and state or public university police, employed prior to the effective date of this Act shall be deemed to have met the requirements of this subsection***;

(4) Requires all police officers employed on or after July 1, 1972, ***and all sheriffs appointed or elected on or after the effective date of this Act, and deputy sheriffs, and state or public university police officers employed on or after January 1, 1998,*** to successfully complete a basic training course of at least four hundred (400) hours' duration within one year of the date of employment at a school certified or recognized by the Kentucky Law Enforcement Council***. All sheriffs serving in office on the effective date of this Act, all deputy sheriffs, and state or public university police, employed prior to January 1, 1998, shall be deemed to have met the requirements of this subsection. The council may, by promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A, set the number of hours for basic training at a number higher than four hundred (400) hours based upon a training curriculum approved by the Kentucky Law Enforcement Council as determined by a validated job task analysis***[~~; notwithstanding the authority of any department or administrative agency of state government to promulgate administrative regulations, no such department or administrative agency may, by administrative action, increase the minimum number of hours for a basic training course specified in this subsection~~];

(5) Requires all police officers, whether originally employed before or after July 1, 1972, to successfully complete each calendar year an in-service training course, appropriate to the officer's rank and responsibility and the size and location of his department, of at least forty (40) hours' duration at a school certified or recognized by the Kentucky Law Enforcement Council;

(6) Requires compliance with all provisions of law applicable to local police, including transmission of data to the centralized criminal history record information system as required by KRS 17.150;

(7) Requires compliance with all reasonable rules and regulations, appropriate to the size and location of the local police department, issued by the Justice Cabinet to facilitate the administration of the fund and further the purposes of KRS

15.410 to 15.510;

(8) Provided, however, that no local unit of government which meets the criteria of this section shall be eligible to continue sharing in the distribution of funds from the Law Enforcement Foundation Program fund unless the local police department actually begins and continues to comply with the requirements of this section; provided, further, that no local unit shall be eligible to share in the distribution of funds from the Law Enforcement Foundation Program fund until the local police department has substantially complied with subsections (6) and (7) of this section.

Section 121. The following KRS sections are repealed:

520.100 Resisting order to stop motor vehicle.

610.115 Circumstances permitting court to order further detention of child in custody of Department of Juvenile Justice or cabinet.

Section 122. (1) If the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by this 1998 Regular Session of the General Assembly, each reference to the Cabinet for Human Resources in the following sections shall be codified as the Cabinet for Health Services: Sections 7, 9, 11, 12, 13, 14, 16, 18, 19, 28, and 80 of this Act.

(2) If the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by this 1998 Regular Session of the General Assembly, the reference to the Cabinet for Human Resources appearing in subsection (1)(h) of Section 10 of this Act shall be codified as both the Cabinet for Families and Children and the Cabinet for Health Services.

Section 123. Sections 24 and 25 of this Act may be cited as the Sarah Hansen Act.

Section 124. Sections 99 to 110 of this Act take effect December 1, 1998.

The Committee on Appropriations and Revenue reported **HB 568**, with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 568, AN ACT relating to property tax, and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 132.220 is amended to read as follows:

(1) Deposits belonging to a resident of Kentucky in any financial institution, as defined in KRS 136.500, and unmanufactured tobacco insofar as it is subject to taxation by KRS 132.190 and 132.200, shall be listed, assessed, and valued as of January 1 of each year. Money in hand shall be listed, assessed, and valued as of January 1 of each year. Shares of stock, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, and all interest in the property, unless otherwise provided by law, shall be listed, assessed, and valued as of the beginning of business on January 1 of each year. All other taxable property and all interest in other taxable property, unless otherwise specifically provided by law, shall be listed, assessed, and valued as of January 1 of each year. It shall be the duty of all persons owning or having any interest in any real property taxable in this state to list or have listed the property with the property valuation administrator of the county where it is located, between January 1 and March 1 in each year, except as otherwise provided by law. It shall be the duty of all persons owning or having any interest in any intangible personal property or tangible personal property taxable in this state to list or have listed the property with the property valuation administrator of the county of taxable situs or with the cabinet between January 1 and May 15 in each year, except as otherwise prescribed by law. The filing date for an individual's intangible property tax return may be extended to the extended federal income filing date approved by the Internal Revenue Service for that individual. If an individual extends the filing date for the intangible return, no discount shall be allowed upon the payment of the intangible tax. All persons in whose name property is properly assessed shall remain bound for the tax, notwithstanding they may have sold or parted with it.

(2) Any taxpayer may list his property in person before the property valuation administrator or his deputy, or may file a property tax return by first class mail. Any real property correctly and completely described in the assessment record for the previous year, or purchased during the preceding year and for which a value was stated in the deed according to the provisions of KRS 382.135, may be considered by the owner to be listed for the current year if no changes that could potentially affect the assessed value have been made to the property. However, if requested in writing by the property valuation administrator or by the cabinet, any real property owner shall submit a property tax return to verify existing information or to provide additional information for assessment purposes. Any real property which has been underassessed as a result of the owner intentionally failing to provide information, or intentionally providing erroneous information, shall be subject to revaluation, and the difference in value shall be assessed as omitted property under the provisions of KRS 132.290.

(3) If the owner fails to list the property, the property valuation administrator shall nevertheless assess it. The property valuation administrator may swear witnesses in order to ascertain the person in whose name to make the list. The

property valuation administrator, his employee, or employees of the cabinet may physically inspect and revalue land and buildings in the absence of the property owner or resident. The exterior dimensions of buildings may be measured and building photographs may be taken; however, with the exception of buildings under construction or not yet occupied, an interior inspection of residential and farm buildings, and of the nonpublic portions of commercial buildings shall not be conducted in the absence or without the permission of the owner or resident.

(4) Real property shall be assessed in the name of the owner, if ascertainable by the property valuation administrator, otherwise in the name of the occupant, if ascertainable, and otherwise to "unknown owner." The undivided real estate of any deceased person may be assessed to the heirs or devisees of the person without designating them by name.

(5) Real property tax roll entries for which tax bills have not been collected ***at the expiration of the one (1) year tolling period provided for in Section 13 of this Act***[~~for more than one (1) year~~], and for which the property valuation administrator cannot physically locate and identify the real property, shall be deleted ***from the tax roll and the assessment shall be exonerated***. The property valuation administrator shall keep a record ***of these exonerations***, which shall be open under the provisions of KRS 61.870 to 61.884[~~, of these entries~~]. If, at any time, one of these entries is determined to represent a valid parcel of property it shall be assessed as omitted property under the provisions of KRS 132.290. ***Notwithstanding other provisions of the Kentucky Revised Statutes to the contrary, any loss of ad valorem tax revenue suffered by a taxing district due to the exoneration of these uncollectable tax bills may be recovered through an adjustment in the tax rate for the following year.***

(6) All real property exempt from taxation by Section 170 of the Constitution shall be listed with the property valuation administrator in the same manner and at the same time as taxable real property. The property valuation administrator shall maintain an inventory record of the tax-exempt property, but the property shall not be placed on the tax rolls. A copy of this tax-exempt inventory shall be filed annually with the cabinet within thirty (30) days of the close of the listing period. This inventory shall be in the form prescribed by the cabinet. The cabinet shall make an annual report itemizing all exempt properties to the Governor and the Legislative Research Commission within sixty (60) days of the close of the listing period.

(7) Each property valuation administrator, under the direction of the cabinet, shall review annually all real property listed with him under subsection (6) of this section and claimed to be exempt from taxation by Section 170 of the Constitution. The property valuation administrator shall place on the tax rolls all property that is not exempt. Any property valuation administrator who fails to comply with this subsection shall be subject to the penalties prescribed in KRS 132.990(2).

Section 2. KRS 133.220 is amended to read as follows:

(1) The Revenue Cabinet annually shall furnish to each county clerk tax bill forms designed for adequate accounting control sufficient to cover the taxable property on the rolls.

(2) After receiving the forms, the county clerk shall prepare for the use of the sheriff or collector a correct tax bill for each taxpayer in the county whose property has been assessed and whose valuation is included in the certification provided in KRS 133.180. If the bills are bound, the cost of binding shall be paid out of the county levy. Each tax bill shall show the rate of tax upon each one hundred dollars ($100) worth of property for state, county, and school purposes; the name of the taxpayer and his mailing address; the number of acres of farm land and its value; the number of lots and their value; the amount and value of notes and money; the value of mixed personal property;[~~ the county poll; the school poll; the school tax;~~] and the total amount of taxes due the state, county, school fund, and other levies. Provision shall be made for the sheriff to have a stub, duplicate, or other proper evidence of receipt of payment of each tax bill.

(3) Tax bills prepared in accordance with the certification of the Revenue Cabinet shall be delivered to the sheriff or collector by the county clerk before September 15 of each year. The clerk shall take a receipt showing the number of tax bills and the total amount of tax due each taxing district as shown upon the tax bills. The receipt shall be signed and acknowledged by the sheriff or collector before the county clerk, filed with the county judge/executive, and recorded in the order book of the county judge/executive in the manner required by law for recording the official bond of the sheriff.

(4) Upon delivery to him of the tax bills, the sheriff or collector shall mail a notice to each taxpayer, showing the total amount of taxes due the state, county, school fund, and other levies, the date on which the taxes are due, and any discount to which the taxpayer may be entitled upon payment of the taxes prior to a designated date.

(5) All notices returned as undeliverable shall be submitted no later than the following work day to the property valuation administrator. The property valuation administrator shall correct inadequate or erroneous addresses if the information to do so is available and, if property has been transferred, shall determine the new owner and the current mailing address. The property valuation administrator shall return the corrected notices to the sheriff or collector on a daily basis as corrections are made, but no later than fifteen (15) days after receipt. Uncorrected notices shall be submitted to the cabinet by the property valuation administrator.

Section 3. KRS 134.020 is amended to read as follows:

(1) All state, county, and district taxes, except as otherwise provided by law, shall be due and payable on September 15 following the assessment; except that all taxes in any year on unmanufactured tobacco, money in hand, or money on deposit outside this state, shall be due and payable on the second succeeding September 15 following the assessment,

unless otherwise provided by law.

(2) Any taxpayer who pays his state, county, or district taxes by November 1 after they become due in any year shall be entitled to two percent (2%) discount thereon, and the sheriff shall allow the discount and give a receipt in full to the taxpayer. The sheriff may, at any time after the taxes mentioned in this section become due, receive less than the face amount of the tax bill as a credit on the amount due, including the amount of any penalties then due; and every payment shall be credited upon the tax bill or upon sheets annexed thereto for that purpose, and acknowledged in writing or by a rubber stamp, indicating the amount so paid to the sheriff. ***The sheriff may accept payment of taxes due by any commercially acceptable means, including credit cards.***

(3) All state, county, and district taxes, except as otherwise provided by law, shall become delinquent on January 1 following their due date.

(4) Any taxes which are not paid by the date when they become delinquent shall be subject to a penalty of ten percent (10%) on the taxes due and unpaid; except that taxes which became delinquent on January 1 shall be subject to a penalty of only ***five***[~~two~~] percent ***(5%)***[~~(2%)~~] on the taxes due and unpaid, if paid on or before the last day of January. The sheriff shall collect the penalty and account for it as he is required to collect and account for taxes.

(5) When the tax collection schedule is delayed, through no fault of the taxpayers, the Revenue Cabinet may institute a revised collection schedule. The revised collection dates shall allow a two percent (2%) discount for all payments made within thirty (30) calendar days of the date the tax bills were mailed. Upon expiration of the time period to pay the tax bill with a discount, the face amount of the tax bill shall be due during the next thirty (30) days. If the time period to pay the face amount has lapsed, a ***five***[~~two~~] percent ***(5%)***[~~(2%)~~] penalty shall be added to the tax bill for payments made during the next thirty (30) day period. Upon expiration of this time period, a ten percent (10%) penalty shall be added to all tax bills paid thereafter.

(6) If, upon expiration of the five percent (5%) penalty period, the real property tax delinquencies of the sheriff exceed fifteen percent (15%), the sheriff shall be required to make additional reasonable collection efforts. If the sheriff fails to initiate additional reasonable collection efforts within fifteen (15) business days following the expiration of the five percent (5%) penalty period, the secretary of the cabinet may act in the name of and on behalf of the cities, counties, schools, and other taxing districts to collect the delinquent taxes. In the performance of any tax collection duties undertaken by the cabinet, the cabinet shall have all the powers, rights, and authority for the collection of taxes established in Chapters 131, 132, 133, and 134 of the Kentucky Revised Statutes. If the cabinet assumes collection duties, all fees and commissions which the sheriff would have been entitled to receive from the taxing districts after the expiration of the five percent (5%) penalty period shall be paid to the cabinet for deposit in the delinquent tax fund as provided in KRS 134.400.

Section 4. KRS 134.310 is amended to read as follows:

(1) The sheriff shall annually settle his accounts for county and district taxes with the fiscal court ***after***[~~, before~~] making settlement with the Revenue Cabinet.[~~ At the regular October term each year,~~] The fiscal court shall appoint some competent person other than the Commonwealth's or county attorney to settle the accounts of the sheriff for money due the county or district. ***The cabinet, at the request of the fiscal court or any school district, may conduct the local settlement. Upon completion of the local settlement, the cabinet may receive reasonable reimbursement for expenses incurred.*** The report of ***the state and local***[~~this~~] settlement shall be filed in the county clerk's office and approved by the county judge/executive ***no later than September 1 of each year***. The settlement shall show the amount of ad valorem tax collected, and an itemized statement of the money disbursed.

(2) The settlement shall be published pursuant to KRS Chapter 424. The report of the settlement shall be subject to objections by the sheriff or by the county attorney, who shall represent the state and county, and the county judge/executive shall determine the objections. ***Objections shall be submitted to the county judge/executive within fifteen (15) days of the filing of the settlement in the clerk's office. If no objections are submitted, the settlement will become final.***

(3) ***If the county judge/executive denies the objections, the sheriff***[~~Either party~~] may institute an action in Circuit Court ***within fifteen (15) days of receipt of the denial for review of***[~~to correct~~] the settlement ***and objections. Upon review, the Circuit Court shall issue its determination and the settlement shall become final. The final settlement shall be subject to correction by audit conducted pursuant to KRS 43.070 or 64.810***.[~~ The settlement, when approved, shall be recorded in the county clerk's office.~~]

(4) On the final settlement, the sheriff shall pay to the county treasurer all money that remains in his hands, and take receipts as provided in KRS 134.300***, and shall pay any additional amounts charged against him as a result of the settlements***.

(5) In counties containing a population of less than seventy thousand (70,000), the sheriff shall file annually with his final settlement:

(a) A complete statement of all funds received by his office for official services, showing separately the total income received by his office for services rendered, exclusive of his commissions for collecting taxes, and the total funds received as commissions for collecting state, county, and school taxes; and

(b) A complete statement of all expenditures of his office, including his salary, compensation of deputies and assistants, and reasonable expenses.

(6) At the time he files the statements required by subsection (5) of this section, the sheriff shall pay to the fiscal court any fees, commissions, and other income of his office, including income from investments, which exceed the sum of his maximum salary as permitted by the Constitution and other reasonable expenses, including compensation of deputies and assistants. The settlement for excess fees and commissions and other income shall be subject to correction by audit conducted pursuant to KRS 43.070 or 64.810, and the provisions of this subsection shall not be construed to amend KRS 64.820 or 64.830.

Section 5. KRS 134.325 is amended to read as follows:

Each sheriff shall ***conduct the sale of delinquent tax bills required by Section 10 of this Act and*** make his ***records available for*** settlement with the Revenue Cabinet for all taxes collected for the Commonwealth before ***April 30***[~~August 1~~] of each year during his term of office. In the event that any sheriff resigns, dies, or otherwise vacates his office, the ***books and records***[~~settlement~~] shall be made ***available*** within thirty (30) days from the date that the office is vacated. Any sheriff who ***fails***[~~shall fail~~] to make the settlement ***books and records available or fails to remit any amounts which are due to the taxing districts*** as required by law shall be subject to indictment in the county of his residence and fined not less than ***five***[~~one~~] hundred dollars ***($500)***[~~($100)~~] nor more than five ***thousand***[~~hundred~~] dollars ***($5,000)***[~~($500)~~].

Section 6. KRS 134.330 is amended to read as follows:

(1) No tax bill or tax book shall be delivered to the sheriff ***during***[~~after July 31 of~~] the second or any subsequent calendar year of the sheriff's regular term until he exhibits a quietus from the Revenue Cabinet and from the fiscal court of his county for the preceding tax period and his revenue bond***, if bonding is required by the fiscal court,*** for the next tax year.

(2) If the tax records of a county are destroyed by fire, lost, stolen, or mutilated so as to require reassessment of the property in the county or a recertification of the tax bills, the sheriff shall have five (5) months from the time he receives the recertified tax bills within which to make settlement with the cabinet and the fiscal court, and to receive his quietus from the cabinet and the fiscal court.

Section 7. KRS 134.360 is amended to read as follows:

In making his settlements with the fiscal court and the Revenue Cabinet, the sheriff ***shall***[~~may~~] file a list of uncollectible delinquent taxes,[~~ whereupon the fiscal court and the secretary of revenue or his properly designated agent shall administer to the sheriff and his deputies the following oath: "You do swear that this list of insolvents and delinquents returned by you is just and true, as you believe according to the knowledge which you have, and that you have been to the residence (if in the county) of the person from whom the tax is due, and that you cannot find any property liable to sale for taxes, and that you will true answers make to all questions asked you touching said lists and the efforts made by you to collect the amount thereof." The fiscal court and the secretary of revenue shall then examine the sheriff to ascertain the facts, and upon his answers and other evidence, and their own knowledge, shall allow such portions of the list as may be correct,~~] which[~~, being certified as allowed,~~] shall entitle the sheriff to a credit in his official settlement. The sheriff shall also be allowed credit in his official settlement for the tax bills on which certificates of delinquency have properly been issued to the state, county, and taxing districts.

Section 8. KRS 134.380 is amended to read as follows:

(1) [~~If the real property tax delinquency rate as certified by the cabinet for any county exceeds five percent (5%) in any tax year effective after December 31, 1990, ~~]The secretary[~~ shall investigate the reasons for the delinquency and~~] may act in the name of and in behalf of the state and in the name of and in behalf of any and all counties, school, and other taxing districts in the state[~~, except cities,~~] to institute and prosecute any action or proceeding for the collection of delinquent taxes and the assessment of omitted property[~~ for the tax year with the excessive delinquency rate and for any previous tax year~~]. If the cabinet assumes the duties of collecting the delinquent taxes assessed under the authority of KRS Chapter 132, it shall have all the powers, rights, duties, and authority conferred generally upon the cabinet by the Kentucky Revised Statutes, including, but not limited to, Chapters 131, 134, and 135.

(2) Field agents, accountants, and attorneys of the cabinet shall prosecute all actions and proceedings under the direction of the secretary. Field agents, accountants, attorneys, and all other employees of the cabinet engaged in the prosecution of the actions shall not be hired by personal service contract. The secretary shall prosecute diligently, or cause to be prosecuted by field agents, accountants, and attorneys employed by him, the collection of all delinquent taxes due the state.

(3) Nothing contained in this chapter shall prevent the secretary of revenue from assessing any property in accordance with the provisions of KRS 136.020, 136.030, or 136.050, or KRS 136.120 to 136.180.

(4) The cabinet may require ***the use of*** any reports***, forms, or databases*** necessary to administer the law in connection with the collection of delinquent taxes[~~, and may promulgate regulations as to how the tax bills, certificates of delinquency,~~

~~and other forms shall be filed and recorded~~]. The cabinet shall require an index to be kept of all certificates of delinquency.

Section 9. KRS 134.420 is amended to read as follows:

(1) The state and each county, city, or other taxing district shall have a lien on the property assessed for taxes due them respectively for ***ten (10)***[~~five (5)~~] years following the date when the taxes become delinquent, and also on any real property owned by a delinquent taxpayer at the date when the sheriff offers the tax claims for sale as provided in KRS 134.430 and 134.440. This lien shall not be defeated by gift, devise, sale, alienation, or any means except by sale to a bona fide purchaser, but no purchase of property made before final settlement for taxes for a particular assessment date has been made by the sheriff shall preclude the lien covering the taxes. The lien shall include all interest, penalties, fees, commissions, charges, and other expenses incurred by reason of delinquency in payment of the tax bill or in the process of collecting it, and shall have priority over any other obligation or liability for which the property is liable. The lien of any city, county, or other taxing district shall be of equal rank with that of the state. When any proceeding is instituted to enforce the lien provided in this subsection, it shall continue in force until the matter is judicially terminated. Every city of the third, fourth, fifth, and sixth class shall file notice of the delinquent tax liens with the county clerk of any county or counties in which the taxpayer's business or residence is located, or in any county in which the taxpayer has an interest in property. The notice shall be recorded in the same manner as notices of lis pendens are filed, and the file shall be designated miscellaneous state and city delinquent and unpaid tax liens.

(2) If any person liable to pay any tax administered by the Revenue Cabinet, other than a tax subject to the provisions of subsection (1) of this section, neglects or refuses to pay the tax after demand, the tax due together with all penalties, interest, and other costs applicable provided by law shall be a lien in favor of the Commonwealth of Kentucky. The lien shall attach to all property and rights to property owned or subsequently acquired by the person neglecting or refusing to pay the tax.

(3) The lien imposed by subsection (2) of this section shall remain in force for ten (10) years from the date the notice of tax lien has been filed by the secretary of the Revenue Cabinet, or his delegate with the county clerk of any county or counties in which the taxpayer's business or residence is located, or any county in which the taxpayer has an interest in property.

(4) The tax lien imposed by subsection (2) of this section shall not be valid as against any purchaser, judgment lien creditor, or holder of a security interest or mechanic's lien until notice of the tax lien has been filed by the secretary of the Revenue Cabinet or his delegate with the county clerk of any county or counties in which the taxpayer's business or residence is located, or in any county in which the taxpayer has an interest in property. The recording of the tax lien shall constitute notice of both the original assessment and all subsequent assessments of liability against the same taxpayer. Upon request, the Revenue Cabinet shall disclose the specific amount of liability at a given date to any interested party legally entitled to the information.

(5) Even though notice of a tax lien has been filed as provided by subsection (4) of this section, and notwithstanding the provisions of KRS 382.520, the tax lien imposed by subsection (2) of this section shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made within forty-five (45) days after the date of tax lien filing or the date the person making the disbursements had actual notice or knowledge of tax lien filing, whichever is earlier, provided the security interest:

(a) Is in property which:

1. At the time of tax lien filing is subject to the tax lien imposed by subsection (2) of this section; and

2. Is covered by the terms of a written agreement entered into before tax lien filing; and

(b) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

Section 10. KRS 134.430 is amended to read as follows:

(1) All personal property owned by a delinquent taxpayer shall be subject to distraint, and all property owned by him shall be subject to levy and sale by the proper collecting officer at any time from February 1 after the tax claim becomes delinquent until the tax claim is barred by limitations, unless otherwise provided by law.

(2) When any taxpayer becomes delinquent in the payment of a tax bill covering any property assessed by the property valuation administrator, the county board of assessment appeals, the cabinet, or any omitted property irrespective of by whom assessed, the sheriff ***may***[~~shall first~~] distrain a sufficient quantity of the delinquent's personal property in the county to pay the tax claim, and a necessary part of this property shall be sold as under execution for cash.[~~ For failure to first distrain and sell personal property, the sheriff shall be liable for the tax claim represented by the tax bill, but receipt of a quietus for the tax bill shall preclude liability.~~] Neglect on the part of the sheriff to[~~ first~~] distrain and sell personal property shall not affect the validity of the sale of the tax claim, or the lien or the rights of any purchaser. If personal property sufficient to satisfy the tax claim cannot be found in the county, the sheriff ***may***[~~shall~~] sell so much of the personal property as is found and enter proper credit on the tax bill.

(3) ***As compensation for services, the sheriff shall be entitled to an additional ten percent (10%) of that part of the tax claim represented by the total taxes plus ten percent (10%) penalty, for all delinquent taxes collected from the time the ten percent (10%) penalty becomes applicable through the sale of the tax claims. This fee shall be added to the total amount due and paid by the person paying the delinquent tax bill.***

(4) If no personal property is found, or the amount found is insufficient,[~~ a notation to that effect shall be entered on the tax bill.~~] the sheriff shall, ***no later than the first full week in April***[~~after entering this notation on the tax bill~~], advertise[~~ and offer~~] for sale the tax claims of the state, county, and other taxing districts, if there is any real property subject to the lien provided in subsection (1) of KRS 134.420. ***The sheriff shall receive offers for the purchase of tax claims until April 30, or the last business day prior to April 30, if April 30 falls on a weekend or holiday.***

(5)[~~(4)~~] No sheriff shall knowingly sell a tax claim on the same tract of land more than once for the same tax.

Section 11. KRS 134.440 is amended to read as follows:

(1) The advertisement of sale of tax claims shall be published pursuant to KRS Chapter 424. The advertisement may in addition consist of the posting of printed notices containing the same information in three (3) or more conspicuous places in the county, fifteen (15) days before the sale. The sheriff shall place a copy of the advertisement at the courthouse door in a conspicuous place at least fifteen (15) days before the sale. The sale shall be at the courthouse door. The sheriff shall, not less than twelve (12) days before the sale, mail to the delinquent taxpayer's place of residence or business, if it can be ascertained, a notice of the time and place of sale. Failure to send the notice shall have no effect on the validity of the sale.

(2) As compensation for his services, the sheriff shall receive ***five dollars ($5)***[~~one dollar ($1)~~] for each tax claim advertised. ***The***[~~He shall, in addition, when a certificate of delinquency filed with the county clerk is paid, be entitled to six percent (6%) of that part of the tax claim represented by the total taxes plus ten percent (10%) penalty. Both~~] fees shall be added to the amount of the tax claim as a part of the certificate of delinquency and paid by the person who pays the tax claim, and[~~ they~~] shall not be paid by the state, county***,*** or taxing district. Any ***additional*** expenses incurred that must be paid before the sale of a tax claim or the settlement of an action by the state, county***,*** or taxing district shall be paid by the county, and this sum shall be a preferred claim of the county on any proceeds eventually recovered.

Section 12. KRS 134.450 is amended to read as follows:

(1) ***The sheriff shall sell all tax claims for which payment by the delinquent taxpayer has not been made by the closing date for the acceptance by the sheriff of offers to purchase delinquent tax claims***[~~Any tax claim offered for sale as prescribed in KRS 134.430 and 134.440 shall be sold to any person for cash~~]. If there is more than one (1) willing purchaser ***who has made an offer***[~~at the sale~~], the one having made the most recent purchase of a tax claim against the same delinquent or the same property shall have preference; if there is no such person,[~~ the sale shall be made to~~] the person being the first, in the judgment of the sheriff, to offer to pay cash in the full amount of the tax claim ***shall receive priority for the purchase of the tax claim. If the total of all offers to purchase exceeds ten percent (10%) of the total dollar amount of the delinquent bills offered for sale, or the sum of two hundred thousand dollars ($200,000), whichever is less, the sheriff shall notify the Finance Cabinet of the offers of purchase within five (5) business days of the closing date when the offers were received. Upon receipt of the notice, the Finance Cabinet shall purchase the delinquent tax bills offered for sale by the sheriff that the Finance Cabinet determines are collectable and shall tender payment to the sheriff within fifteen (15) business days of the receipt of the sheriff's notice. Upon purchase of the tax claims, the state shall be the owner of the tax bills and may contract with the county attorney to collect all amounts due on its behalf under the terms and conditions of the county attorney's contract with the Revenue Cabinet to collect delinquent taxes. If the county attorney has not contracted with the Revenue Cabinet to collect delinquent taxes, the Revenue Cabinet shall collect all amounts due on behalf of the Finance Cabinet. If the Finance Cabinet does not purchase all of the delinquent tax bills, within fifteen (15) days of the closing date, the sheriff shall complete the sale of those tax claims for which the sheriff has received responsible offers to purchase***. When a sale is made the tax bill shall be known as a certificate of delinquency and the sheriff shall inscribe thereon the date of sale, the sale price, and the name and address of the purchaser, in the place and manner prescribed by the Revenue Cabinet, and the purchaser shall be entitled to a certified copy of the certificate of delinquency.

(2) If no responsible ***offer***[~~bid~~] in the amount of the tax claim is received, the sheriff shall purchase it for the state, county***,*** and taxing districts having an interest in the tax claim. In such case, the tax bill shall also be known as a certificate of delinquency, and the sheriff shall inscribe thereon the same information required when one other than the state, county, or taxing district is the purchaser.

(3) The sheriff shall file all certificates of delinquency in the county clerk's office immediately upon completion of the tax sale and the clerk shall retain them. The county clerk shall acknowledge receipt of the certificates by signing a receipt form that has been prepared in a manner prescribed by the Revenue Cabinet. If the sheriff fails to file the certificates, he shall be liable on his official bond for the aggregate amount of the certificates not returned, but the claim of the purchaser shall not be affected by this neglect. If the sheriff fails to return any certificate, the purchaser may file his certified copy with the clerk, with the same effect as the original.

Section 13. KRS 134.470 is amended to read as follows:

An uncollectible tax bill or a certificate of delinquency shall embrace the entire tax claim, including the lien provided in subsection (1) of KRS 134.420, and shall continue to be a personal obligation of the delinquent taxpayer. Any property while owned by him shall be subject to foreclosure or execution in satisfaction of a judgment pursuant to an action in rem or an action in personam, or both, to enforce the obligation, and shall also be subject to distraint or levy as provided in subsection (1) of KRS 134.430, but no action may be brought to enforce a certificate of delinquency until one (1) year after the issuance thereof, and the action shall be instituted within ***ten (10)***[~~five (5)~~] years after the expiration of that one (1) year period. During the one (1) year period the statute of limitations shall be suspended in all respects and shall be continued in all respects for ***ten (10)***[~~five (5)~~] years thereafter. If the owner of a certificate of delinquency proceeds to enforce satisfaction of the certificate, he may include all other certificates held by him against the same delinquent taxpayer; but insofar as the proceedings may undertake to effect a lien foreclosure, they shall be governed by the time applicable to the particular property subject to the lien, if that property is no longer owned by the delinquent.

Section 14. KRS 134.480 is amended to read as follows:

(1) The delinquent taxpayer or any person owning or having a legal or equitable interest in real property covered by a certificate of delinquency may at any time pay the total amount of the certificate to any purchaser thereof, and any person whatsoever may likewise pay a certificate of delinquency when the state, county, or taxing district was the purchaser. When a certificate is paid to an owner other than the state, county, or taxing district the certified copy of the certificate shall be surrendered to the person making payment, and if he is the person primarily liable on the certificate he may, by exhibiting it to the county clerk, have the certificate released of record. When a certificate of delinquency has been fully paid to the state, county, and taxing districts, the clerk shall note the name and address of the person making the payment, the amount paid by him, and such other information as the Revenue Cabinet may require. Payment in such instance by one other than the person primarily liable on the certificate will amount to an assignment thereof. Anyone other than the person primarily liable who pays a certificate or purchases it from an owner other than the state, county, and taxing district may, by paying a fee of fifty cents ($0.50), have the clerk record the payment or purchase and such recordation shall constitute an assignment thereof. Failure to obtain such an assignment shall render the claim of such payor or purchaser to any real estate represented thereby inferior to rights of other bona fide purchasers, payors, or creditors. Any owner of a certificate of delinquency once having paid the assignment fee may have a change of his address noted of record by the clerk without paying an additional charge, otherwise he shall pay a fee of fifty cents ($0.50) to the clerk for entering such change on the certificate.

(2) The county clerk may receive payment of the amount due on certificates of delinquency owned by the state, county, and taxing districts, and he shall give a receipt to the payor and make a report to the Revenue Cabinet, the county treasurer, and the proper officials of the taxing districts as often as such units may require, and not less than once in every thirty (30) days. ***The clerk may accept payment of taxes due by any commercially acceptable means, including credit cards.*** He shall pay to the Revenue Cabinet for deposit with the State Treasurer all moneys collected by him due the state, to the county treasurer all moneys due the county, and to the authorized officers of the taxing districts the amount due each such district. He shall pay the amount of fees, costs, commissions, and penalties to the persons, agencies, or parties entitled thereto. He shall retain ***ten***[~~five~~] percent ***(10%)***[~~(5%)~~] of the amount due each taxing unit for his services ***as a fee. This fee shall be added to the amount of the tax claim and paid by the persons paying the tax claim***.

(3) If the person entitled to pay a certificate of delinquency sends a registered letter addressed to the owner of record of the certificate, other than the state, county, or taxing district, and the letter is returned by mail unclaimed, the sender thereof may make payment to the county clerk, who shall make the necessary assignment or release and deposit the money to the account of the owner of record in the nearest bank having its deposits insured with the Federal Deposit Insurance Corporation. The clerk may deduct the sum of fifty cents ($0.50) as a fee for such service. The name of the bank in which the money is deposited shall be noted on the certificate.

(4) If any clerk fails to pay to the person entitled thereto, upon demand, the money received in payment of a certificate of delinquency, he and his sureties shall be liable for the same and twenty percent (20%) interest thereon annually from the time he received it until paid.

(5) Copies of the records provided for in KRS 134.450 and 134.480, certified by the county clerk, shall be evidence of the facts stated in them in all the courts of this state.

Section 15. KRS 134.490 is amended to read as follows:

(1) ***Within fifty (50) days after the issuance of a certificate of delinquency to a private purchaser, the private purchaser shall cause a notice of the purchase to be mailed by regular mail to the property owner at the address reflected in the records of the property valuation administrator. The notice shall advise the owner that the certificate is a lien of record against all property of the owner, and bears interest at the rate of twelve percent (12%) per annum, and if the certificate is not paid, it will be subject to collection as provided by law.***

(2) If a private person is the owner of a certificate of delinquency, he may, after the expiration of the one (1) year period provided in KRS 134.470:

(a) Institute an action against the delinquent taxpayer to collect the amount of the certificate, and any other certificates subsequently issued to the same owner against the same delinquent, and shall have all the remedies available for the enforcement of a debt; or

(b) Institute an action to enforce the lien provided in subsection (1) of KRS 134.420, represented by the certificate that is more than one (1) year of age, and those certificates subsequently held by the same owner against the same delinquent or property; or

(c) Institute one (1) action including both types of actions mentioned in paragraphs (a) and (b) of this subsection, and the joinder of actions shall not be defeated if the delinquent taxpayer has disposed of any property covered by the lien, but the purchaser of the property shall be made a defendant if the judgment is to affect his interest in the property, and as between them the delinquent taxpayer shall be responsible.

(3)[~~(2)~~] If the state, county***,*** or a taxing district is the owner of a certificate of delinquency, it shall have, after the expiration of the one (1) year period provided in KRS 134.470, in addition to the remedies mentioned in subsection ***(2)***[~~(1)~~] of this section, the right to distrain and sell any property owned by the delinquent, including that on which the lien provided in subsection (1) of KRS 134.420 has attached. Any property sold under distraint proceedings shall be sold in the same manner as provided in KRS 134.430 and 134.440, except that the exercise of the power shall be vested in the county attorney***.***[~~ The county attorney may designate the property subject to distraint and require the sheriff to take custody if he deems custody of the property necessary. If the sheriff fails to perform this duty, he shall not be entitled to his six percent (6%) fee provided in KRS 134.440.~~]

(4)[~~(3)~~] If property is sold pursuant to a judgment of foreclosure, it shall be appraised pursuant to the provisions of KRS 426.520 and there shall be a right of redemption as provided in KRS 426.530. If there is no purchaser at a foreclosure sale, the master commissioner shall make a deed to the person or persons shown by record to be the owner of the certificate or certificates of delinquency, and they shall have a pro rata interest in accordance with the amount of their respective certificates.

Section 16. KRS 134.500 is amended to read as follows:

(1) Uncollectible tax claims shall bear interest at twelve percent (12%) per annum from the date the ***certificate of delinquency is issued***[~~sheriff makes settlement with the cabinet and receives credit therefor~~]. All tax bills on omitted property that were not turned over to the sheriff in time to be collected or to make the sale provided for in KRS 134.430 and 134.440 shall also be submitted to the fiscal court but shall be carried over as a charge against the sheriff at the time he makes his next regular settlement.

(2) The cabinet shall be responsible for the collection of certificates of delinquency and delinquent personal property tax bills; however, the cabinet shall first offer the collection duties to the county attorney***, unless the cabinet determines that the county attorney has previously failed to perform collection duties in a reasonable and acceptable manner***. Any county attorney desiring to perform the duties associated with the collection of delinquent tax claims shall enter into a contract with the cabinet on an annual basis. The terms of the contract shall specify the duties to be undertaken by the county attorney. These duties shall include but are not limited to the following actions:

(a) Within fifty (50) days after the issuance of a certificate of delinquency to the state, county, and taxing district, the county attorney ***or the Revenue Cabinet*** shall cause a notice of the purchase to be mailed by regular mail to the property owner at the address on the records of the property valuation administrator. The notice shall advise the owner that the certificate is a lien of record against all property of the owner, and bears interest at the rate of twelve percent (12%) per annum, and if not paid will be subject to collection by the county attorney as provided by law.

(b) The county attorney shall file in the office of the county clerk a list of the names and addresses to which the notice was mailed along with a certificate that the notice was mailed in accordance with the requirements of this section.

(c) All notices returned as undeliverable shall be submitted to the property valuation administrator. The property valuation administrator shall attempt to correct inadequate or erroneous addresses and, if property has been transferred, shall determine the new owner and the current mailing address. The property valuation administrator shall return the notices with the corrected information to the county attorney prior to the expiration of the one (1) year tolling period provided in KRS 134.470.

(d) Within ninety (90) days after the expiration of the one (1) year tolling period provided in KRS 134.470, the county attorney shall cause a notice of his intention to enforce the lien to be mailed to all owners whose tax bills remain delinquent. No second notice shall be required for addresses previously determined to be undeliverable and for which the property valuation administrator has not provided corrected information.[~~ A copy of the return receipt shall be filed by the county attorney in the office of the county clerk in the manner prescribed by the cabinet.~~]

(e) Failure to mail the notices shall not affect the validity of the claim of the state, county, and taxing district. The postal cost of mailing the notices shall be added to the certificate of delinquency and, upon collection, the county attorney shall be reimbursed for the postage. ***The county attorney shall deliver at the same time a list of the owners whose tax bills remain delinquent to the Property Valuation Administration. The Property Valuation Administration shall review this list in accordance with the provisions of Section 1 of this Act to establish that the properties on the list can be identified and physically located.***

(3) ***The county attorney who enters into a contract with the cabinet shall have a period of two (2) years after the expiration of the one (1) year tolling period provided in Section 13 of this Act to collect delinquent tax bills or to initiate court action for their collection. At the expiration of the two (2) years the cabinet may assume responsibility for all uncollected bills except those with pending court action.***

(4) The county attorney who enters into a contract with the cabinet and performs his duties in respect to the certificate of delinquency and delinquent personal property tax bills shall be entitled to twenty percent (20%) of the amount due each taxing unit, whether the tax claim is voluntarily paid or is paid through sale or under court order, and the ***fee***[~~commission~~] shall be paid to him by the county clerk when making distribution, as provided in KRS 134.480. ***This fee shall be added to the amount of the tax claims and paid by the persons paying the tax claims. They shall not be paid by the taxing districts or deducted from the taxes due the taxing districts.*** If more than one (1) county attorney renders necessary services in an effort to collect a tax claim, the attorney serving the last notice or rendering the last substantial service preceding collection shall be entitled to the ***fee***[~~commission on the amount collected for each taxing unit~~]. When the county attorney's office, in an effort to collect a certificate of delinquency, or delinquent personal property tax bills files a court action which ***is litigated by the taxpayer***[~~results in contested litigation~~], an additional county's attorney fee equal to thirteen percent (13%) of the total tax ***plus ten percent (10%) penalty***,[~~ interest, and penalties due~~] may be added to the certificate or the bill and shall become part of the tax claim.

(5)[~~(4)~~] If a county attorney chooses not to contract for these collection duties or if a county attorney fails to perform the duties required by the contract, the cabinet shall assume responsibility for the collection process. In the performance of those duties, the cabinet shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of the amount due on the certificate of delinquency conferred generally upon the cabinet by Kentucky Revised Statutes including, but not limited to, KRS Chapters 131, 134, and 135. The twenty percent (20%) fee that would have otherwise been paid to the county attorney shall be paid to the cabinet for deposit in the delinquent tax fund provided for under KRS 134.400.

(6)[~~(5)~~] Any action on behalf of the state, county, and taxing districts authorized by this section or by KRS 134.470, 134.490, or 134.540 shall be filed on relation of the secretary, and the petition may be sent to the cabinet, which may require revision in instances where it deems revision or amendment necessary. The cabinet shall advise the county attorney in all actions, and may send him special assistance when the secretary deems assistance necessary. A copy of the judgment shall also be sent to the cabinet. If the cabinet sends assistance to a county attorney who contracts to prosecute the suits or proceedings, the county attorney shall be entitled to his full fee. On the same day that suit is filed, the county clerk shall be given notice of its filing. Costs incident to the suit shall become a part of the tax claim.

(7) The cabinet may make its delinquent tax collection databases and other technical resources, including but not limited to income tax refund offsetting, available to the county attorney upon request from the county attorney. The county attorney seeking assistance shall enter into any agreements required by the cabinet to protect taxpayer confidentiality, to ensure database integrity, or to address other concerns of the cabinet.

Section 17. KRS 134.800 is amended to read as follows:

The county clerk shall be collector of all state, county, city, urban-county government, school, and special taxing district ad valorem taxes on motor vehicles registered by him. ***The clerk may accept payment of taxes due by any commercially acceptable means including credit cards.***

Section 18. KRS 134.990 is amended to read as follows:

(1) Any sheriff who violates subsection (2) of KRS 134.140 shall be fined one hundred dollars ($100) for each offense.

(2) Any person who violates the provisions of KRS 134.150 shall, upon indictment and conviction in the county in which the act was done, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500), and be removed from office.

(3) Any sheriff who violates subsection (3) of KRS 134.170 shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each offense.

(4) Any sheriff who violates subsection (2) of KRS 134.200 shall be fined not less than five hundred dollars ($500) for each offense.

(5) Any outgoing sheriff who fails for ten (10) days to comply with the provisions of KRS 134.215 shall be fined not less than fifty dollars ($50) nor more than five hundred dollars ($500), and be liable on his bond for any default.

(6) Any sheriff who fails to report as required in KRS 134.300 shall be liable to indictment in the county of his residence, and upon conviction shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

(7) Any sheriff who fails to report as provided in KRS 134.320 shall be liable to indictment in the Franklin Circuit Court,

and upon conviction shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each offense.

(8) Any person who willfully fails to comply with any rule or regulation promulgated under subsection (4) of KRS 134.380 shall be fined not less than twenty dollars ($20) nor more than one thousand dollars ($1,000).

(9) Any sheriff who violates subsection ***(5)***[~~(4)~~] of KRS 134.430 shall be fined one hundred dollars ($100) and be liable on his official bond for the damages sustained by any person aggrieved.

(10) Any county attorney who fails to prepare, and any sheriff who fails to serve, the notice provided for in subsection (2) of KRS 134.500 shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100).

(11) Any sheriff who intentionally fails to keep his books in an intelligible manner and according to the form prescribed by the Revenue Cabinet, or to make the entries required by law, shall be fined not less than fifty dollars ($50) nor more than two hundred dollars ($200) for each offense.

(12) Any person who fails to do an act required, or does an act forbidden, by any provision of this chapter for which no other penalty is provided shall be fined not less than ten dollars ($10) nor more than five hundred dollars ($500).

Section 19. KRS 42.500 is amended to read as follows:

(1) There shall be a State Investment Commission composed of the Governor who shall be chairman; the State Treasurer who shall be vice chairman and serve as chairman in the absence of the Governor; the secretary of the Finance and Administration Cabinet; and two (2) persons appointed by the Governor.

(2) The individuals appointed by the Governor shall be selected as follows: one (1) to be selected from a list of five (5) submitted to the Governor by the Kentucky Bankers Association, and one (1) to be selected from a list of five (5) submitted to the Governor by the Independent Community Bankers Association.

(3) The State Investment Commission shall meet at least quarterly to review investment performance and conduct other business. This provision shall not prohibit the commission from meeting more frequently as the need arises.

(4) The Governor, State Treasurer, and secretary of the Finance and Administration Cabinet shall each have the authority to designate, by an instrument in writing over his or her signature and filed with the secretary of the commission as a public record of the commission, an alternate with full authority to:

(a) Attend in the member's absence, for any reason, any properly convened meeting of the commission; and

(b) Participate in the consideration of, and vote upon, business and transactions of the commission.

Each alternate shall be a person on the staff of the appointing member or in the employ of the appointing member's state agency or department.

(5) Any designation of an alternate may, at the appointing member's direction:

(a) Be limited upon the face of the appointing instrument to be effective for only a specific meeting or specified business;

(b) Be shown on the face of the appointing instrument to be a continuing designation, for a period of no more than four (4) years, whenever the appointing member is unable to attend; or

(c) Be revoked at any time by the appointing member in an instrument in writing, over his or her signature, filed with the secretary of the commission as a public record of the commission.

(6) Any person transacting business with, or materially affected by, the business of the commission may accept and rely upon a joint certificate of the secretary of the commission and any member of the commission concerning the designation of any alternate, the time and scope of the designation, and, if it is of a continuing nature, whether and when the designation has been revoked. The joint certificate shall be made and delivered to the person requesting it within a reasonable time after it has been requested in writing, with acceptable identification of the business or transaction to which it refers and the requesting person's interest in the business or transaction.

(7) Any three (3) persons who are members of the commission or alternates authorized under subsections (4) and (5) of this section shall constitute a quorum and may, by majority vote, transact any business of the commission. Any three (3) members of the commission may call a meeting.

(8) The provisions of KRS 61.070 shall not apply to members of the commission.

(9) The commission shall have authority and may, if in its opinion the cash in the State Treasury is in excess of the amount required to meet current expenditures, invest any and all of the excess cash in:

(a) Obligations and contracts for future delivery of obligations backed by the full faith and credit of the United States or a United States government agency, including but not limited to:

1. United States Treasury;

2. Export-Import Bank of the United States;

3. Farmers Home Administration;

4. Government National Mortgage Corporation; and

5. Merchant Marine bonds;

(b) Obligations of any corporation of the United States government, including but not limited to:

1. Federal Home Loan Mortgage Corporation;

2. Federal Farm Credit Banks;

a. Bank for Cooperatives;

b. Federal Intermediate Credit Banks; and

c. Federal Land Banks;

3. Federal Home Loan Banks;

4. Federal National Mortgage Association; and

5. Tennessee Valley Authority obligations;

(c) Collateralized or uncollateralized certificates of deposit, issued by banks rated in one (1) of the three (3) highest categories by a nationally recognized rating agency or other interest-bearing accounts in depository institutions chartered by this state or by the United States, except for shares in mutual savings banks;

(d) Bankers acceptances for banks rated in one (1) of the three (3) highest categories by a nationally recognized rating agency;

(e) Commercial paper rated in the highest category by a nationally recognized rating agency;

(f) Securities issued by a state or local government, or any instrumentality or agency thereof, in the United States, and rated in one (1) of the three (3) highest categories by a nationally recognized rating agency;

(g) United States denominated corporate, Yankee, and Eurodollar securities, excluding corporate stocks, issued by foreign and domestic issuers, including sovereign and supranational governments, rated in one (1) of the three (3) highest categories by a nationally recognized rating agency;

(h) Asset-backed securities rated in the highest category by a nationally recognized rating agency; and

(i) Shares of mutual funds, not to exceed ten percent (10%) of the total funds available for investment as described in subsection (9) of this section, each of which shall have the following characteristics:

1. The mutual fund shall be an open-end diversified investment company registered under Federal Investment Company Act of 1940, as amended;

2. The management company of the investment company shall have been in operation for at least five (5) years;~~[and]~~

3. At least ninety percent (90%) of the securities in the mutual fund shall be eligible investments pursuant to this section***; and***

(j) State and local delinquent property tax claims which upon purchase shall become certificates of delinquency secured by interests in real property not to exceed twenty five million dollars ($25,000,000) in the aggregate. For any certificates of delinquency that have been exonerated pursuant to subsection (5) of Section 1 of this Act, the Revenue Cabinet shall offset the loss suffered by the Finance Cabinet against subsequent local distributions to the affected taxing districts as shown on the certificate of delinquency.

(10) The State Investment Commission shall promulgate administrative regulations for the investment and reinvestment of state funds in shares of mutual funds, and the regulations shall specify:

(a) The long and short term goals of any investment;

(b) The specification of moneys to be invested;

(c) The amount of funds which may be invested per instrument;

(d) The qualifications of instruments; and

(e) The acceptable maturity of investments.

(11) Any investment in obligations and securities pursuant to subsection (9) of this section shall satisfy this section if these obligations are subject to repurchase agreements, provided that delivery of these obligations is taken either directly or through an authorized custodian.

(12) Income earned from investments made pursuant to this Section shall accrue to the credit of the investment income account of the general fund, except that interest from investments of excess cash in the road fund shall be credited to the surplus account of the road fund and interest from investments of excess cash in the game and fish fund shall be credited to the game and fish fund, interest earned from investments of impress cash funds and funds in the trust and revolving fund for each state public university shall be credited to the appropriate institutional account, and interest earned from the investment of funds accumulated solely by means of contributions and gifts shall not be diverted to any purpose other

than that stipulated by the donor, when the donor shall have designated the use to which the interest shall be placed. Except as otherwise provided by law, or by the obligations and covenants contained in resolutions and trust indentures adopted or entered into for state bond issues, interest earned from the investment of moneys appropriated to the capital construction accounts, trust and agency accounts, and trust and agency revolving accounts shall accrue to the capital construction investment income account. If the total general fund revenue receipts are less than the total revenue estimates for the general fund under KRS 48.120 and 48.130, the secretary of the Finance and Administration Cabinet, upon the recommendation of the state budget director, may direct the transfer of excess unappropriated capital construction investment income to the general fund investment income account. The amount of the transfer shall not exceed the amount of the shortfall in general fund revenues. If the capital construction investment income is less than that amount appropriated by the General Assembly, the secretary of the Finance and Administration Cabinet may, upon recommendation of the state budget director, direct the transfer of excess unappropriated general fund investment income to the capital construction investment income account. The transfer of general fund investment income revenues to the capital construction investment income account shall be made only when the actual general fund revenues are in excess of the revenue estimates under KRS 48.120 and shall be limited to the amount of the excess general fund revenues. The amount of the transfer shall not exceed the amount of the shortfall in the capital construction fund revenues.

(13) The authority granted by this section to the State Investment Commission shall not extend to any funds that are specifically provided by law to be invested by some other officer or agency of the state government.

(14) The authority granted by this section to the State Investment Commission shall only be exercised pursuant to the administrative regulations mandated by KRS 42.525.

(15) Each member of the State Investment Commission, with the exception of the Governor, shall post bond for his acts or omissions as a member thereof identical in amount and kind to that posted by the State Treasurer.

Section 20. The following KRS section is repealed:

134.382 Reduction of commission.

Section 21. The amendments contained in Section 5, subsection (4) of Section 10, Section 12, subsection (1) of Section 15, subsection (4) of Section 16, and Section 19 of this Act shall apply for sales of delinquent tax bills made on or after March 1, 1998. The remainder of the amendments contained in this Act shall apply for assessments made on or after January 1, 1998.

Section 22. Whereas the property tax administration calendar and the timelines established for the sale of delinquent tax bills necessitate that certain provisions of this Act be effective in March to ensure the proper administration of the property tax collection process, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

The Committee Substitute to **HB 568** is as follows:

AN ACT relating to property tax, and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 132.220 is amended to read as follows:

(1) Deposits belonging to a resident of Kentucky in any financial institution, as defined in KRS 136.500, and unmanufactured tobacco insofar as it is subject to taxation by KRS 132.190 and 132.200, shall be listed, assessed, and valued as of January 1 of each year. Money in hand shall be listed, assessed, and valued as of January 1 of each year. Shares of stock, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, and all interest in the property, unless otherwise provided by law, shall be listed, assessed, and valued as of the beginning of business on January 1 of each year. All other taxable property and all interest in other taxable property, unless otherwise specifically provided by law, shall be listed, assessed, and valued as of January 1 of each year. It shall be the duty of all persons owning or having any interest in any real property taxable in this state to list or have listed the property with the property valuation administrator of the county where it is located, between January 1 and March 1 in each year, except as otherwise provided by law. It shall be the duty of all persons owning or having any interest in any intangible personal property or tangible personal property taxable in this state to list or have listed the property with the property valuation administrator of the county of taxable situs or with the cabinet between January 1 and May 15 in each year, except as otherwise prescribed by law. The filing date for an individual's intangible property tax return may be extended to the extended federal income filing date approved by the Internal Revenue Service for that individual. If an individual extends the filing date for the intangible return, no discount shall be allowed upon the payment of the intangible tax. All persons in whose name property is properly assessed shall remain bound for the tax, notwithstanding they may have sold or parted with it.

(2) Any taxpayer may list his property in person before the property valuation administrator or his deputy, or may file a property tax return by first class mail. Any real property correctly and completely described in the assessment record for the previous year, or purchased during the preceding year and for which a value was stated in the deed according to the provisions of KRS 382.135, may be considered by the owner to be listed for the current year if no changes that could

potentially affect the assessed value have been made to the property. However, if requested in writing by the property valuation administrator or by the cabinet, any real property owner shall submit a property tax return to verify existing information or to provide additional information for assessment purposes. Any real property which has been underassessed as a result of the owner intentionally failing to provide information, or intentionally providing erroneous information, shall be subject to revaluation, and the difference in value shall be assessed as omitted property under the provisions of KRS 132.290.

(3) If the owner fails to list the property, the property valuation administrator shall nevertheless assess it. The property valuation administrator may swear witnesses in order to ascertain the person in whose name to make the list. The property valuation administrator, his employee, or employees of the cabinet may physically inspect and revalue land and buildings in the absence of the property owner or resident. The exterior dimensions of buildings may be measured and building photographs may be taken; however, with the exception of buildings under construction or not yet occupied, an interior inspection of residential and farm buildings, and of the nonpublic portions of commercial buildings shall not be conducted in the absence or without the permission of the owner or resident.

(4) Real property shall be assessed in the name of the owner, if ascertainable by the property valuation administrator, otherwise in the name of the occupant, if ascertainable, and otherwise to "unknown owner." The undivided real estate of any deceased person may be assessed to the heirs or devisees of the person without designating them by name.

(5) Real property tax roll entries for which tax bills have not been collected ***at the expiration of the one (1) year tolling period provided for in Section 13 of this Act***[~~for more than one (1) year~~], and for which the property valuation administrator cannot physically locate and identify the real property, shall be deleted ***from the tax roll and the assessment shall be exonerated***. The property valuation administrator shall keep a record ***of these exonerations***, which shall be open under the provisions of KRS 61.870 to 61.884[~~, of these entries~~]. If, at any time, one of these entries is determined to represent a valid parcel of property it shall be assessed as omitted property under the provisions of KRS 132.290. ***Notwithstanding other provisions of the Kentucky Revised Statutes to the contrary, any loss of ad valorem tax revenue suffered by a taxing district due to the exoneration of these uncollectable tax bills may be recovered through an adjustment in the tax rate for the following year.***

(6) All real property exempt from taxation by Section 170 of the Constitution shall be listed with the property valuation administrator in the same manner and at the same time as taxable real property. The property valuation administrator shall maintain an inventory record of the tax-exempt property, but the property shall not be placed on the tax rolls. A copy of this tax-exempt inventory shall be filed annually with the cabinet within thirty (30) days of the close of the listing period. This inventory shall be in the form prescribed by the cabinet. The cabinet shall make an annual report itemizing all exempt properties to the Governor and the Legislative Research Commission within sixty (60) days of the close of the listing period.

(7) Each property valuation administrator, under the direction of the cabinet, shall review annually all real property listed with him under subsection (6) of this section and claimed to be exempt from taxation by Section 170 of the Constitution. The property valuation administrator shall place on the tax rolls all property that is not exempt. Any property valuation administrator who fails to comply with this subsection shall be subject to the penalties prescribed in KRS 132.990(2).

Section 2. KRS 133.220 is amended to read as follows:

(1) The Revenue Cabinet annually shall furnish to each county clerk tax bill forms designed for adequate accounting control sufficient to cover the taxable property on the rolls.

(2) After receiving the forms, the county clerk shall prepare for the use of the sheriff or collector a correct tax bill for each taxpayer in the county whose property has been assessed and whose valuation is included in the certification provided in KRS 133.180. If the bills are bound, the cost of binding shall be paid out of the county levy. Each tax bill shall show the rate of tax upon each one hundred dollars ($100) worth of property for state, county, and school purposes; the name of the taxpayer and his mailing address; the number of acres of farm land and its value; the number of lots and their value; the amount and value of notes and money; the value of mixed personal property;[~~ the county poll; the school poll; the school tax;~~] and the total amount of taxes due the state, county, school fund, and other levies. Provision shall be made for the sheriff to have a stub, duplicate, or other proper evidence of receipt of payment of each tax bill.

(3) Tax bills prepared in accordance with the certification of the Revenue Cabinet shall be delivered to the sheriff or collector by the county clerk before September 15 of each year. The clerk shall take a receipt showing the number of tax bills and the total amount of tax due each taxing district as shown upon the tax bills. The receipt shall be signed and acknowledged by the sheriff or collector before the county clerk, filed with the county judge/executive, and recorded in the order book of the county judge/executive in the manner required by law for recording the official bond of the sheriff.

(4) Upon delivery to him of the tax bills, the sheriff or collector shall mail a notice to each taxpayer, showing the total amount of taxes due the state, county, school fund, and other levies, the date on which the taxes are due, and any discount to which the taxpayer may be entitled upon payment of the taxes prior to a designated date.

(5) All notices returned as undeliverable shall be submitted no later than the following work day to the property valuation administrator. The property valuation administrator shall correct inadequate or erroneous addresses if the

information to do so is available and, if property has been transferred, shall determine the new owner and the current mailing address. The property valuation administrator shall return the corrected notices to the sheriff or collector on a daily basis as corrections are made, but no later than fifteen (15) days after receipt. Uncorrected notices shall be submitted to the cabinet by the property valuation administrator.

Section 3. KRS 134.020 is amended to read as follows:

(1) All state, county, and district taxes, except as otherwise provided by law, shall be due and payable on September 15 following the assessment; except that all taxes in any year on unmanufactured tobacco, money in hand, or money on deposit outside this state, shall be due and payable on the second succeeding September 15 following the assessment, unless otherwise provided by law.

(2) Any taxpayer who pays his state, county, or district taxes by November 1 after they become due in any year shall be entitled to two percent (2%) discount thereon, and the sheriff shall allow the discount and give a receipt in full to the taxpayer. The sheriff may, at any time after the taxes mentioned in this section become due, receive less than the face amount of the tax bill as a credit on the amount due, including the amount of any penalties then due; and every payment shall be credited upon the tax bill or upon sheets annexed thereto for that purpose, and acknowledged in writing or by a rubber stamp, indicating the amount so paid to the sheriff. ***The sheriff or any authorized collector of property taxes may accept payment of taxes due by any commercially acceptable means, including credit cards.***

(3) All state, county, and district taxes, except as otherwise provided by law, shall become delinquent on January 1 following their due date.

(4) Any taxes which are not paid by the date when they become delinquent shall be subject to a penalty of ten percent (10%) on the taxes due and unpaid; except that taxes which became delinquent on January 1 shall be subject to a penalty of only ***five***[~~two~~] percent ***(5%)***[~~(2%)~~] on the taxes due and unpaid, if paid on or before the last day of January. The sheriff shall collect the penalty and account for it as he is required to collect and account for taxes.

(5) When the tax collection schedule is delayed, through no fault of the taxpayers, the Revenue Cabinet may institute a revised collection schedule. The revised collection dates shall allow a two percent (2%) discount for all payments made within thirty (30) calendar days of the date the tax bills were mailed. Upon expiration of the time period to pay the tax bill with a discount, the face amount of the tax bill shall be due during the next thirty (30) days. If the time period to pay the face amount has lapsed, a ***five***[~~two~~] percent ***(5%)***[~~(2%)~~] penalty shall be added to the tax bill for payments made during the next thirty (30) day period. Upon expiration of this time period, a ten percent (10%) penalty shall be added to all tax bills paid thereafter.

(6) If, upon expiration of the five percent (5%) penalty period, the real property tax delinquencies of the sheriff exceed fifteen percent (15%), the sheriff shall be required to make additional reasonable collection efforts. If the sheriff fails to initiate additional reasonable collection efforts within fifteen (15) business days following the expiration of the five percent (5%) penalty period, the secretary of the cabinet may act in the name of and on behalf of the cities, counties, schools, and other taxing districts to collect the delinquent taxes. In the performance of any tax collection duties undertaken by the cabinet, the cabinet shall have all the powers, rights, and authority for the collection of taxes established in Chapters 131, 132, 133, and 134 of the Kentucky Revised Statutes. If the cabinet assumes collection duties, all fees and commissions which the sheriff would have been entitled to receive from the taxing districts after the expiration of the five percent (5%) penalty period shall be paid to the cabinet for deposit in the delinquent tax fund as provided in KRS 134.400.

Section 4. KRS 134.310 is amended to read as follows:

(1) The sheriff shall annually settle his accounts for county and district taxes with the fiscal court ***after***[~~, before~~] making settlement with the Revenue Cabinet.[~~ At the regular October term each year,~~] The fiscal court shall appoint some competent person other than the Commonwealth's or county attorney to settle the accounts of the sheriff for money due the county or district. ***The cabinet, at the request of the fiscal court or any school district, may conduct the local settlement. If no local settlement has been initiated by July 1 of any year, the cabinet may initiate the local settlement on behalf of the local district. Upon completion of the local settlement, the cabinet may receive reasonable reimbursement for expenses incurred.*** The report of ***the state and local***[~~this~~] settlement shall be filed in the county clerk's office and approved by the county judge/executive ***no later than September 1 of each year***. The settlement shall show the amount of ad valorem tax collected, and an itemized statement of the money disbursed.

(2) The settlement shall be published pursuant to KRS Chapter 424. The report of the settlement shall be subject to objections by the sheriff or by the county attorney, who shall represent the state and county, and the county judge/executive shall determine the objections. ***Objections shall be submitted to the county judge/executive within fifteen (15) days of the filing of the settlement in the clerk's office. If no objections are submitted, the settlement will become final.***

(3) ***If the county judge/executive denies the objections, the sheriff***[~~Either party~~] may institute an action in Circuit Court ***within fifteen (15) days of receipt of the denial for review of***[~~to correct~~] the settlement ***and objections. Upon review, the Circuit Court shall issue its determination and the settlement shall become final. The final settlement shall be***

subject to correction by audit conducted pursuant to KRS 43.070 or 64.810.[~~ The settlement, when approved, shall be recorded in the county clerk's office.~~]

(4) On the final settlement, the sheriff shall pay to the county treasurer all money that remains in his hands, and take receipts as provided in KRS 134.300***, and shall pay any additional amounts charged against him as a result of the settlements. If the sheriff fails to remit amounts charged against him the cabinet may issue bills for the subsequent year and may assume all collection duties in the name of and on behalf of the cities, counties, school districts, and other taxing districts to collect the taxes. In the performance of any tax collection duties undertaken by the cabinet, the cabinet shall have all the powers, rights, and authority for the collection of taxes established in Chapters 131, 132, 133, and 134 of the Kentucky Revised Statutes. The fees and commissions which the sheriff would have been entitled to receive from the taxing districts shall be paid to the cabinet***.

(5) In counties containing a population of less than seventy thousand (70,000), the sheriff shall file annually with his final settlement:

(a) A complete statement of all funds received by his office for official services, showing separately the total income received by his office for services rendered, exclusive of his commissions for collecting taxes, and the total funds received as commissions for collecting state, county, and school taxes; and

(b) A complete statement of all expenditures of his office, including his salary, compensation of deputies and assistants, and reasonable expenses.

(6) At the time he files the statements required by subsection (5) of this section, the sheriff shall pay to the fiscal court any fees, commissions, and other income of his office, including income from investments, which exceed the sum of his maximum salary as permitted by the Constitution and other reasonable expenses, including compensation of deputies and assistants. The settlement for excess fees and commissions and other income shall be subject to correction by audit conducted pursuant to KRS 43.070 or 64.810, and the provisions of this subsection shall not be construed to amend KRS 64.820 or 64.830.

Section 5. KRS 134.325 is amended to read as follows:

Each sheriff shall ***conduct the sale of delinquent tax bills required by Section 10 of this Act and*** make his ***records available for*** settlement with the Revenue Cabinet for all taxes collected for the Commonwealth before ***April 30***[~~August 1~~] of each year during his term of office. In the event that any sheriff resigns, dies, or otherwise vacates his office, the ***books and records***[~~settlement~~] shall be made ***available*** within thirty (30) days from the date that the office is vacated. Any sheriff who ***fails***[~~shall fail~~] to make the settlement ***books and records available or fails to remit any amounts which are due to the taxing districts*** as required by law shall be subject to indictment in the county of his residence and fined not less than ***five***[~~one~~] hundred dollars ***($500)***[~~($100)~~] nor more than five ***thousand***[~~hundred~~] dollars ***($5,000)***[~~($500)~~].

Section 6. KRS 134.330 is amended to read as follows:

(1) No tax bill or tax book shall be delivered to the sheriff ***during***[~~after July 31 of~~] the second or any subsequent calendar year of the sheriff's regular term until he exhibits a quietus from the Revenue Cabinet and from the fiscal court of his county for the preceding tax period and his revenue bond***, if bonding is required by the fiscal court,*** for the next tax year.

(2) If the tax records of a county are destroyed by fire, lost, stolen***,*** or mutilated so as to require reassessment of the property in the county or a recertification of the tax bills, the sheriff shall have five (5) months from the time he receives the recertified tax bills within which to make settlement with the cabinet and the fiscal court, and to receive his quietus from the cabinet and the fiscal court.

Section 7. KRS 134.360 is amended to read as follows:

In making his settlements with the fiscal court and the Revenue Cabinet, the sheriff ***shall***[~~may~~] file a list of uncollectible delinquent taxes,[~~ whereupon the fiscal court and the secretary of revenue or his properly designated agent shall administer to the sheriff and his deputies the following oath: "You do swear that this list of insolvents and delinquents returned by you is just and true, as you believe according to the knowledge which you have, and that you have been to the residence (if in the county) of the person from whom the tax is due, and that you cannot find any property liable to sale for taxes, and that you will true answers make to all questions asked you touching said lists and the efforts made by you to collect the amount thereof." The fiscal court and the secretary of revenue shall then examine the sheriff to ascertain the facts, and upon his answers and other evidence, and their own knowledge, shall allow such portions of the list as may be correct,~~] which[~~, being certified as allowed,~~] shall entitle the sheriff to a credit in his official settlement. The sheriff shall also be allowed credit in his official settlement for the tax bills on which certificates of delinquency have properly been issued to the state, county***,*** and taxing districts.

Section 8. KRS 134.380 is amended to read as follows:

(1) [~~If the real property tax delinquency rate as certified by the cabinet for any county exceeds five percent (5%) in any tax year effective after December 31, 1990, ~~]The secretary[~~ shall investigate the reasons for the delinquency and~~] may act in the name of and in behalf of the state and in the name of and in behalf of any and all counties, school, and other taxing districts in the state[~~, except cities,~~] to institute and prosecute any action or proceeding for the collection of delinquent

taxes and the assessment of omitted property[~~ for the tax year with the excessive delinquency rate and for any previous tax year~~]. If the cabinet assumes the duties of collecting the delinquent taxes assessed under the authority of KRS Chapter 132, it shall have all the powers, rights, duties, and authority conferred generally upon the cabinet by the Kentucky Revised Statutes, including, but not limited to, Chapters 131, 134, and 135.

(2) Field agents, accountants, and attorneys of the cabinet shall prosecute all actions and proceedings under the direction of the secretary. Field agents, accountants, attorneys, and all other employees of the cabinet engaged in the prosecution of the actions shall not be hired by personal service contract. The secretary shall prosecute diligently, or cause to be prosecuted by field agents, accountants, and attorneys employed by him, the collection of all delinquent taxes due the state.

(3) Nothing contained in this chapter shall prevent the secretary of revenue from assessing any property in accordance with the provisions of KRS 136.020, 136.030, or 136.050, or KRS 136.120 to 136.180.

(4) The cabinet may require ***the use of*** any reports***, forms, or databases*** necessary to administer the law in connection with the collection of delinquent taxes[~~, and may promulgate regulations as to how the tax bills, certificates of delinquency, and other forms shall be filed and recorded~~]. The cabinet shall require an index to be kept of all certificates of delinquency.

Section 9. KRS 134.420 is amended to read as follows:

(1) The state and each county, city, or other taxing district shall have a lien on the property assessed for taxes due them respectively for ***ten (10)***[~~five (5)~~] years following the date when the taxes become delinquent, and also on any real property owned by a delinquent taxpayer at the date when the sheriff offers the tax claims for sale as provided in KRS 134.430 and 134.440. This lien shall not be defeated by gift, devise, sale, alienation, or any means except by sale to a bona fide purchaser, but no purchase of property made before final settlement for taxes for a particular assessment date has been made by the sheriff shall preclude the lien covering the taxes. The lien shall include all interest, penalties, fees, commissions, charges, and other expenses incurred by reason of delinquency in payment of the tax bill or in the process of collecting it, and shall have priority over any other obligation or liability for which the property is liable. The lien of any city, county, or other taxing district shall be of equal rank with that of the state. When any proceeding is instituted to enforce the lien provided in this subsection, it shall continue in force until the matter is judicially terminated. Every city of the third, fourth, fifth, and sixth class shall file notice of the delinquent tax liens with the county clerk of any county or counties in which the taxpayer's business or residence is located, or in any county in which the taxpayer has an interest in property. The notice shall be recorded in the same manner as notices of lis pendens are filed, and the file shall be designated miscellaneous state and city delinquent and unpaid tax liens.

(2) If any person liable to pay any tax administered by the Revenue Cabinet, other than a tax subject to the provisions of subsection (1) of this section, neglects or refuses to pay the tax after demand, the tax due together with all penalties, interest, and other costs applicable provided by law shall be a lien in favor of the Commonwealth of Kentucky. The lien shall attach to all property and rights to property owned or subsequently acquired by the person neglecting or refusing to pay the tax.

(3) The lien imposed by subsection (2) of this section shall remain in force for ten (10) years from the date the notice of tax lien has been filed by the secretary of the Revenue Cabinet, or his delegate with the county clerk of any county or counties in which the taxpayer's business or residence is located, or any county in which the taxpayer has an interest in property.

(4) The tax lien imposed by subsection (2) of this section shall not be valid as against any purchaser, judgment lien creditor, or holder of a security interest or mechanic's lien until notice of the tax lien has been filed by the secretary of the Revenue Cabinet or his delegate with the county clerk of any county or counties in which the taxpayer's business or residence is located, or in any county in which the taxpayer has an interest in property. The recording of the tax lien shall constitute notice of both the original assessment and all subsequent assessments of liability against the same taxpayer. Upon request, the Revenue Cabinet shall disclose the specific amount of liability at a given date to any interested party legally entitled to the information.

(5) Even though notice of a tax lien has been filed as provided by subsection (4) of this section, and notwithstanding the provisions of KRS 382.520, the tax lien imposed by subsection (2) of this section shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made within forty-five (45) days after the date of tax lien filing or the date the person making the disbursements had actual notice or knowledge of tax lien filing, whichever is earlier, provided the security interest:

(a) Is in property which:

1. At the time of tax lien filing is subject to the tax lien imposed by subsection (2) of this section; and

2. Is covered by the terms of a written agreement entered into before tax lien filing; and

(b) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

Section 10. KRS 134.430 is amended to read as follows:

(1) All personal property owned by a delinquent taxpayer shall be subject to distraint, and all property owned by him shall be subject to levy and sale by the proper collecting officer at any time from February 1 after the tax claim becomes delinquent until the tax claim is barred by limitations, unless otherwise provided by law.

(2) When any taxpayer becomes delinquent in the payment of a tax bill covering any property assessed by the property valuation administrator, the county board of assessment appeals, the cabinet, or any omitted property irrespective of by whom assessed, the sheriff ***may***[~~shall first~~] distrain a sufficient quantity of the delinquent's personal property in the county to pay the tax claim, and a necessary part of this property shall be sold as under execution for cash.[~~ For failure to first distrain and sell personal property, the sheriff shall be liable for the tax claim represented by the tax bill, but receipt of a quietus for the tax bill shall preclude liability.~~] Neglect on the part of the sheriff to[~~ first~~] distrain and sell personal property shall not affect the validity of the sale of the tax claim, or the lien or the rights of any purchaser. If personal property sufficient to satisfy the tax claim cannot be found in the county, the sheriff ***may***[~~shall~~] sell so much of the personal property as is found and enter proper credit on the tax bill.

(3) ***As compensation for services, the sheriff shall be entitled to an additional ten percent (10%) of that part of the tax claim represented by the total taxes plus ten percent (10%) penalty, for all delinquent taxes collected from the time the ten percent (10%) penalty becomes applicable through the sale of the tax claims. This fee shall be added to the total amount due and paid by the person paying the delinquent tax bill.***

(4) If no personal property is found, or the amount found is insufficient,[~~ a notation to that effect shall be entered on the tax bill.~~] the sheriff shall, ***no later than the first full week in April***[~~after entering this notation on the tax bill~~], advertise[~~ and offer~~] for sale the tax claims of the state, county, and other taxing districts, if there is any real property subject to the lien provided in subsection (1) of KRS 134.420. ***The sheriff shall receive offers for the purchase of tax claims up to fifteen (15) business days following the date of the initial advertisement or no later than April 30, or the last business day prior to April 30, if April 30 falls on a weekend or holiday.***

(5)[~~(4)~~] No sheriff shall knowingly sell a tax claim on the same tract of land more than once for the same tax.

Section 11. KRS 134.440 is amended to read as follows:

(1) The advertisement of sale of tax claims shall be published pursuant to KRS Chapter 424. The advertisement may in addition consist of the posting of printed notices containing the same information in three (3) or more conspicuous places in the county, fifteen (15) days before the sale. The sheriff shall place a copy of the advertisement at the courthouse door in a conspicuous place at least fifteen (15) days before the sale. The sale shall be at the courthouse door. The sheriff shall, not less than twelve (12) days before the sale, mail to the delinquent taxpayer's place of residence or business, if it can be ascertained, a notice of the time and place of sale. Failure to send the notice shall have no effect on the validity of the sale.

(2) As compensation for his services, the sheriff shall receive ***five dollars ($5)***[~~one dollar ($1)~~] for each tax claim advertised. ***The***[~~He shall, in addition, when a certificate of delinquency filed with the county clerk is paid, be entitled to six percent (6%) of that part of the tax claim represented by the total taxes plus ten percent (10%) penalty. Both~~] fees shall be added to the amount of the tax claim as a part of the certificate of delinquency and paid by the person who pays the tax claim, and[~~ they~~] shall not be paid by the state, county***,*** or taxing district. Any ***additional*** expenses incurred that must be paid before the sale of a tax claim or the settlement of an action by the state, county***,*** or taxing district shall be paid by the county, and this sum shall be a preferred claim of the county on any proceeds eventually recovered.

Section 12. KRS 134.450 is amended to read as follows:

(1) ***The sheriff shall sell all tax claims for which payment by the delinquent taxpayer has not been made by the closing date for the acceptance by the sheriff of offers to purchase delinquent tax claims***[~~Any tax claim offered for sale as prescribed in KRS 134.430 and 134.440 shall be sold to any person for cash~~]. If there is more than one (1) willing purchaser ***who has made an offer***[~~at the sale~~], the one having made the most recent purchase of a tax claim against the same delinquent or the same property shall have preference; if there is no such person,[~~ the sale shall be made to~~] the person being the first, in the judgment of the sheriff, to offer to pay cash in the full amount of the tax claim ***shall receive priority for the purchase of the tax claim. If the total of all offers to purchase exceeds ten percent (10%) of the total dollar amount of the delinquent bills offered for sale, or the sum of two hundred thousand dollars ($200,000), whichever is less, the sheriff shall notify the Finance and Administration Cabinet of the offers of purchase within five (5) business days of the closing date when the offers were received. Upon receipt of the notice, the Finance and Administration Cabinet shall purchase the delinquent tax bills upon which the sheriff has received an offer of purchase and shall tender payment to the sheriff within fifteen (15) business days of the receipt of the sheriff's notice. Upon purchase of the tax claims, the state shall be the owner of the tax bills and may contract with the county attorney to collect all amounts due on its behalf under the terms and conditions of the county attorney's contract with the Revenue Cabinet to collect delinquent taxes. If the county attorney has not contracted with the Revenue Cabinet to collect delinquent taxes, the Revenue Cabinet shall collect all amounts due on behalf of the Finance and Administration Cabinet. If the Finance and Administration Cabinet does not purchase all of the***

delinquent tax bills, within fifteen (15) days of the closing date, the sheriff shall complete the sale of those tax claims for which the sheriff has received responsible offers to purchase. When a sale is made the tax bill shall be known as a certificate of delinquency and the sheriff shall inscribe thereon the date of sale, the sale price, and the name and address of the purchaser, in the place and manner prescribed by the Revenue Cabinet, and the purchaser shall be entitled to a certified copy of the certificate of delinquency.

(2) If no responsible ***offer***[~~bid~~] in the amount of the tax claim is received, the sheriff shall purchase it for the state, county, and taxing districts having an interest in the tax claim. In such case, the tax bill shall also be known as a certificate of delinquency, and the sheriff shall inscribe thereon the same information required when one other than the state, county, or taxing district is the purchaser.

(3) The sheriff shall file all certificates of delinquency in the county clerk's office immediately upon completion of the tax sale and the clerk shall retain them. The county clerk shall acknowledge receipt of the certificates by signing a receipt form that has been prepared in a manner prescribed by the Revenue Cabinet. If the sheriff fails to file the certificates, he shall be liable on his official bond for the aggregate amount of the certificates not returned, but the claim of the purchaser shall not be affected by this neglect. If the sheriff fails to return any certificate, the purchaser may file his certified copy with the clerk, with the same effect as the original.

Section 13. KRS 134.470 is amended to read as follows:

An uncollectible tax bill or a certificate of delinquency shall embrace the entire tax claim, including the lien provided in subsection (1) of KRS 134.420, and shall continue to be a personal obligation of the delinquent taxpayer. Any property while owned by him shall be subject to foreclosure or execution in satisfaction of a judgment pursuant to an action in rem or an action in personam, or both, to enforce the obligation, and shall also be subject to distraint or levy as provided in subsection (1) of KRS 134.430, but no action may be brought to enforce a certificate of delinquency until one (1) year after the issuance thereof, and the action shall be instituted within ***ten (10)***[~~five (5)~~] years after the expiration of that one (1) year period. During the one (1) year period the statute of limitations shall be suspended in all respects and shall be continued in all respects for ***ten (10)***[~~five (5)~~] years thereafter. If the owner of a certificate of delinquency proceeds to enforce satisfaction of the certificate, he may include all other certificates held by him against the same delinquent taxpayer; but insofar as the proceedings may undertake to effect a lien foreclosure, they shall be governed by the time applicable to the particular property subject to the lien, if that property is no longer owned by the delinquent.

Section 14. KRS 134.480 is amended to read as follows:

(1) The delinquent taxpayer or any person owning or having a legal or equitable interest in real property covered by a certificate of delinquency may at any time pay the total amount of the certificate to any purchaser thereof, and any person whatsoever may likewise pay a certificate of delinquency when the state, county, or taxing district was the purchaser. When a certificate is paid to an owner other than the state, county, or taxing district the certified copy of the certificate shall be surrendered to the person making payment, and if he is the person primarily liable on the certificate he may, by exhibiting it to the county clerk, have the certificate released of record. When a certificate of delinquency has been fully paid to the state, county, and taxing districts, the clerk shall note the name and address of the person making the payment, the amount paid by him, and such other information as the Revenue Cabinet may require. Payment in such instance by one other than the person primarily liable on the certificate will amount to an assignment thereof. Anyone other than the person primarily liable who pays a certificate or purchases it from an owner other than the state, county, and taxing district may, by paying a fee of fifty cents ($0.50), have the clerk record the payment or purchase and such recordation shall constitute an assignment thereof. Failure to obtain such an assignment shall render the claim of such payor or purchaser to any real estate represented thereby inferior to rights of other bona fide purchasers, payors, or creditors. Any owner of a certificate of delinquency once having paid the assignment fee may have a change of his address noted of record by the clerk without paying an additional charge, otherwise he shall pay a fee of fifty cents ($0.50) to the clerk for entering such change on the certificate.

(2) The county clerk may receive payment of the amount due on certificates of delinquency owned by the state, county, and taxing districts, and he shall give a receipt to the payor and make a report to the Revenue Cabinet, the county treasurer, and the proper officials of the taxing districts as often as such units may require, and not less than once in every thirty (30) days. ***The clerk may accept payment of taxes due by any commercially acceptable means, including credit cards.*** He shall pay to the Revenue Cabinet for deposit with the State Treasurer all moneys collected by him due the state, to the county treasurer all moneys due the county, and to the authorized officers of the taxing districts the amount due each such district. He shall pay the amount of fees, costs, commissions, and penalties to the persons, agencies, or parties entitled thereto. He shall retain ***ten***[~~five~~] percent ***(10%)***[~~(5%)~~] of the amount due each taxing unit for his services ***as a fee. This fee shall be added to the amount of the tax claim and paid by the persons paying the tax claim***.

(3) If the person entitled to pay a certificate of delinquency sends a registered letter addressed to the owner of record of the certificate, other than the state, county, or taxing district, and the letter is returned by mail unclaimed, the sender thereof may make payment to the county clerk, who shall make the necessary assignment or release and deposit the money to the account of the owner of record in the nearest bank having its deposits insured with the Federal Deposit Insurance Corporation. The clerk may deduct the sum of fifty cents ($0.50) as a fee for such service. The name of the bank in which

the money is deposited shall be noted on the certificate.

(4) If any clerk fails to pay to the person entitled thereto, upon demand, the money received in payment of a certificate of delinquency, he and his sureties shall be liable for the same and twenty percent (20%) interest thereon annually from the time he received it until paid.

(5) Copies of the records provided for in KRS 134.450 and 134.480, certified by the county clerk, shall be evidence of the facts stated in them in all the courts of this state.

Section 15. KRS 134.490 is amended to read as follows:

(1) ***Within fifty (50) days after the issuance of a certificate of delinquency to a private purchaser, the private purchaser shall give the same notice as required of a county attorney in subsection (2) of Section 16 of this Act. The notice shall advise the owner that the certificate is a lien of record against all property of the owner, and bears interest at the rate of twelve percent (12%) per annum, and if the certificate is not paid, it will be subject to collection as provided by law.***

(2) If a private person is the owner of a certificate of delinquency, he may, after the expiration of the one (1) year period provided in KRS 134.470:

(a) Institute an action against the delinquent taxpayer to collect the amount of the certificate, and any other certificates subsequently issued to the same owner against the same delinquent, and shall have all the remedies available for the enforcement of a debt; or

(b) Institute an action to enforce the lien provided in subsection (1) of KRS 134.420, represented by the certificate that is more than one (1) year of age, and those certificates subsequently held by the same owner against the same delinquent or property; or

(c) Institute one (1) action including both types of actions mentioned in paragraphs (a) and (b) of this subsection, and the joinder of actions shall not be defeated if the delinquent taxpayer has disposed of any property covered by the lien, but the purchaser of the property shall be made a defendant if the judgment is to affect his interest in the property, and as between them the delinquent taxpayer shall be responsible.

(3)[~~(2)~~] If the state, county***,*** or a taxing district is the owner of a certificate of delinquency, it shall have, after the expiration of the one (1) year period provided in KRS 134.470, in addition to the remedies mentioned in subsection ***(2)***[~~(1)~~] of this section, the right to distrain and sell any property owned by the delinquent, including that on which the lien provided in subsection (1) of KRS 134.420 has attached. Any property sold under distraint proceedings shall be sold in the same manner as provided in KRS 134.430 and 134.440, except that the exercise of the power shall be vested in the county attorney.[~~ The county attorney may designate the property subject to distraint and require the sheriff to take custody if he deems custody of the property necessary. If the sheriff fails to perform this duty, he shall not be entitled to his six percent (6%) fee provided in KRS 134.440.~~]

(4)[~~(3)~~] If property is sold pursuant to a judgment of foreclosure, it shall be appraised pursuant to the provisions of KRS 426.520 and there shall be a right of redemption as provided in KRS 426.530. If there is no purchaser at a foreclosure sale, the master commissioner shall make a deed to the person or persons shown by record to be the owner of the certificate or certificates of delinquency, and they shall have a pro rata interest in accordance with the amount of their respective certificates.

Section 16. KRS 134.500 is amended to read as follows:

(1) Uncollectible tax claims shall bear interest at twelve percent (12%) per annum from the date the ***certificate of delinquency is issued***[~~sheriff makes settlement with the cabinet and receives credit therefor~~]. All tax bills on omitted property that were not turned over to the sheriff in time to be collected or to make the sale provided for in KRS 134.430 and 134.440 shall also be submitted to the fiscal court but shall be carried over as a charge against the sheriff at the time he makes his next regular settlement.

(2) The cabinet shall be responsible for the collection of certificates of delinquency and delinquent personal property tax bills; however, the cabinet shall first offer the collection duties to the county attorney***, unless the cabinet determines that the county attorney has previously failed to perform collection duties in a reasonable and acceptable manner***. Any county attorney desiring to perform the duties associated with the collection of delinquent tax claims shall enter into a contract with the cabinet on an annual basis. The terms of the contract shall specify the duties to be undertaken by the county attorney. These duties shall include but are not limited to the following actions:

(a) Within fifty (50) days after the issuance of a certificate of delinquency to the state, county, and taxing district, the county attorney ***or the Revenue Cabinet*** shall cause a notice of the purchase to be mailed by regular mail to the property owner at the address on the records of the property valuation administrator. The notice shall advise the owner that the certificate is a lien of record against all property of the owner, and bears interest at the rate of twelve percent (12%) per annum, and if not paid will be subject to collection by the county attorney as provided by law.

(b) The county attorney shall file in the office of the county clerk a list of the names and addresses to which the notice was mailed along with a certificate that the notice was mailed in accordance with the requirements of this section.

(c) All notices returned as undeliverable shall be submitted to the property valuation administrator. The property valuation administrator shall attempt to correct inadequate or erroneous addresses and, if property has been transferred, shall determine the new owner and the current mailing address. The property valuation administrator shall return the notices with the corrected information to the county attorney prior to the expiration of the one (1) year tolling period provided in KRS 134.470.

(d) Within ninety (90) days after the expiration of the one (1) year tolling period provided in KRS 134.470, the county attorney shall cause a notice of his intention to enforce the lien to be mailed to all owners whose tax bills remain delinquent. No second notice shall be required for addresses previously determined to be undeliverable and for which the property valuation administrator has not provided corrected information.[~~ A copy of the return receipt shall be filed by the county attorney in the office of the county clerk in the manner prescribed by the cabinet.~~]

(e) Failure to mail the notices shall not affect the validity of the claim of the state, county, and taxing district. The postal cost of mailing the notices shall be added to the certificate of delinquency and, upon collection, the county attorney shall be reimbursed for the postage. ***The county attorney shall deliver at the same time a list of the owners whose tax bills remain delinquent to the Property Valuation Administration. The Property Valuation Administration shall review this list in accordance with the provisions of Section 1 of this Act to establish that the properties on the list can be identified and physically located.***

(3) ***The county attorney who enters into a contract with the cabinet shall have a period of two (2) years after the expiration of the one (1) year tolling period provided in Section 13 of this Act to collect delinquent tax bills or to initiate court action for their collection., At the expiration of the two (2) years the cabinet may assume responsibility for all uncollected bills except those with pending court action.***

(4) The county attorney who enters into a contract with the cabinet and performs his duties in respect to the certificate of delinquency and delinquent personal property tax bills shall be entitled to twenty percent (20%) of the amount due each taxing unit, whether the tax claim is voluntarily paid or is paid through sale or under court order, and the ***fee***[~~commission~~] shall be paid to him by the county clerk when making distribution, as provided in KRS 134.480. ***This fee shall be added to the amount of the tax claims and paid by the persons paying the tax claims. They shall not be paid by the taxing districts or deducted from the taxes due the taxing districts.*** If more than one (1) county attorney renders necessary services in an effort to collect a tax claim, the attorney serving the last notice or rendering the last substantial service preceding collection shall be entitled to the ***fee***[~~commission on the amount collected for each taxing unit~~]. When the county attorney's office, in an effort to collect a certificate of delinquency, or delinquent personal property tax bills files a court action which ***is litigated by the taxpayer***[~~results in contested litigation~~], an additional county's attorney fee equal to thirteen percent (13%) of the total tax ***plus ten percent (10%) penalty***,[~~ interest, and penalties due~~] may be added to the certificate or the bill and shall become part of the tax claim.

(5)[~~(4)~~] If a county attorney chooses not to contract for these collection duties or if a county attorney fails to perform the duties required by the contract, the cabinet shall assume responsibility for the collection process. In the performance of those duties, the cabinet shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of the amount due on the certificate of delinquency conferred generally upon the cabinet by Kentucky Revised Statutes including, but not limited to, KRS Chapters 131, 134, and 135. The twenty percent (20%) fee that would have otherwise been paid to the county attorney shall be paid to the cabinet for deposit in the delinquent tax fund provided for under KRS 134.400.

(6)[~~(5)~~] Any action on behalf of the state, county, and taxing districts authorized by this section or by KRS 134.470, 134.490, or 134.540 shall be filed on relation of the secretary, and the petition may be sent to the cabinet, which may require revision in instances where it deems revision or amendment necessary. The cabinet shall advise the county attorney in all actions, and may send him special assistance when the secretary deems assistance necessary. A copy of the judgment shall also be sent to the cabinet. If the cabinet sends assistance to a county attorney who contracts to prosecute the suits or proceedings, the county attorney shall be entitled to his full fee. On the same day that suit is filed, the county clerk shall be given notice of its filing. Costs incident to the suit shall become a part of the tax claim.

(7) The cabinet may make its delinquent tax collection databases and other technical resources, including but not limited to income tax refund offsetting, available to the county attorney upon request from the county attorney. The county attorney seeking assistance shall enter into any agreements required by the cabinet to protect taxpayer confidentiality, to ensure database integrity, or to address other concerns of the cabinet.

Section 17. KRS 134.800 is amended to read as follows:

The county clerk shall be collector of all state, county, city, urban-county government, school, and special taxing district ad valorem taxes on motor vehicles registered by him. ***The clerk may accept payment of taxes due by any commercially acceptable means including credit cards.***

Section 18. KRS 134.990 is amended to read as follows:

(1) Any sheriff who violates subsection (2) of KRS 134.140 shall be fined one hundred dollars ($100) for each offense.

(2) Any person who violates the provisions of KRS 134.150 shall, upon indictment and conviction in the county in which the act was done, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500), and be removed from office.

(3) Any sheriff who violates subsection (3) of KRS 134.170 shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each offense.

(4) Any sheriff who violates subsection (2) of KRS 134.200 shall be fined not less than five hundred dollars ($500) for each offense.

(5) Any outgoing sheriff who fails for ten (10) days to comply with the provisions of KRS 134.215 shall be fined not less than fifty dollars ($50) nor more than five hundred dollars ($500), and be liable on his bond for any default.

(6) Any sheriff who fails to report as required in KRS 134.300 shall be liable to indictment in the county of his residence, and upon conviction shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

(7) Any sheriff who fails to report as provided in KRS 134.320 shall be liable to indictment in the Franklin Circuit Court, and upon conviction shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each offense.

(8) Any person who willfully fails to comply with any rule or regulation promulgated under subsection (4) of KRS 134.380 shall be fined not less than twenty dollars ($20) nor more than one thousand dollars ($1,000).

(9) Any sheriff who violates subsection *(5)*~~[(4)]~~ of KRS 134.430 shall be fined one hundred dollars ($100) and be liable on his official bond for the damages sustained by any person aggrieved.

(10) Any county attorney who fails to prepare, and any sheriff who fails to serve, the notice provided for in subsection (2) of KRS 134.500 shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100).

(11) Any sheriff who intentionally fails to keep his books in an intelligible manner and according to the form prescribed by the Revenue Cabinet, or to make the entries required by law, shall be fined not less than fifty dollars ($50) nor more than two hundred dollars ($200) for each offense.

(12) Any person who fails to do an act required, or does an act forbidden, by any provision of this chapter for which no other penalty is provided shall be fined not less than ten dollars ($10) nor more than five hundred dollars ($500).

Section 19. KRS 42.500 is amended to read as follows:

(1) There shall be a State Investment Commission composed of the Governor who shall be chairman; the State Treasurer who shall be vice chairman and serve as chairman in the absence of the Governor; the secretary of the Finance and Administration Cabinet; and two (2) persons appointed by the Governor.

(2) The individuals appointed by the Governor shall be selected as follows: one (1) to be selected from a list of five (5) submitted to the Governor by the Kentucky Bankers Association, and one (1) to be selected from a list of five (5) submitted to the Governor by the Independent Community Bankers Association.

(3) The State Investment Commission shall meet at least quarterly to review investment performance and conduct other business. This provision shall not prohibit the commission from meeting more frequently as the need arises.

(4) The Governor, State Treasurer, and secretary of the Finance and Administration Cabinet shall each have the authority to designate, by an instrument in writing over his or her signature and filed with the secretary of the commission as a public record of the commission, an alternate with full authority to:

  (a) Attend in the member's absence, for any reason, any properly convened meeting of the commission; and

  (b) Participate in the consideration of, and vote upon, business and transactions of the commission.

Each alternate shall be a person on the staff of the appointing member or in the employ of the appointing member's state agency or department.

(5) Any designation of an alternate may, at the appointing member's direction:

  (a) Be limited upon the face of the appointing instrument to be effective for only a specific meeting or specified business;

  (b) Be shown on the face of the appointing instrument to be a continuing designation, for a period of no more than four (4) years, whenever the appointing member is unable to attend; or

  (c) Be revoked at any time by the appointing member in an instrument in writing, over his or her signature, filed with the secretary of the commission as a public record of the commission.

(6) Any person transacting business with, or materially affected by, the business of the commission may accept and rely upon a joint certificate of the secretary of the commission and any member of the commission concerning the designation of any alternate, the time and scope of the designation, and, if it is of a continuing nature, whether and when the

designation has been revoked. The joint certificate shall be made and delivered to the person requesting it within a reasonable time after it has been requested in writing, with acceptable identification of the business or transaction to which it refers and the requesting person's interest in the business or transaction.

(7) Any three (3) persons who are members of the commission or alternates authorized under subsections (4) and (5) of this section shall constitute a quorum and may, by majority vote, transact any business of the commission. Any three (3) members of the commission may call a meeting.

(8) The provisions of KRS 61.070 shall not apply to members of the commission.

(9) The commission shall have authority and may, if in its opinion the cash in the State Treasury is in excess of the amount required to meet current expenditures, invest any and all of the excess cash in:

(a) Obligations and contracts for future delivery of obligations backed by the full faith and credit of the United States or a United States government agency, including but not limited to:

1. United States Treasury;

2. Export-Import Bank of the United States;

3. Farmers Home Administration;

4. Government National Mortgage Corporation; and

5. Merchant Marine bonds;

(b) Obligations of any corporation of the United States government, including but not limited to:

1. Federal Home Loan Mortgage Corporation;

2. Federal Farm Credit Banks;

a. Bank for Cooperatives;

b. Federal Intermediate Credit Banks; and

c. Federal Land Banks;

3. Federal Home Loan Banks;

4. Federal National Mortgage Association; and

5. Tennessee Valley Authority obligations;

(c) Collateralized or uncollateralized certificates of deposit, issued by banks rated in one (1) of the three (3) highest categories by a nationally recognized rating agency or other interest-bearing accounts in depository institutions chartered by this state or by the United States, except for shares in mutual savings banks;

(d) Bankers acceptances for banks rated in one (1) of the three (3) highest categories by a nationally recognized rating agency;

(e) Commercial paper rated in the highest category by a nationally recognized rating agency;

(f) Securities issued by a state or local government, or any instrumentality or agency thereof, in the United States, and rated in one (1) of the three (3) highest categories by a nationally recognized rating agency;

(g) United States denominated corporate, Yankee, and Eurodollar securities, excluding corporate stocks, issued by foreign and domestic issuers, including sovereign and supranational governments, rated in one (1) of the three (3) highest categories by a nationally recognized rating agency;

(h) Asset-backed securities rated in the highest category by a nationally recognized rating agency; and

(i) Shares of mutual funds, not to exceed ten percent (10%) of the total funds available for investment as described in subsection (9) of this section, each of which shall have the following characteristics:

1. The mutual fund shall be an open-end diversified investment company registered under Federal Investment Company Act of 1940, as amended;

2. The management company of the investment company shall have been in operation for at least five (5) years;[~~ and~~]

3. At least ninety percent (90%) of the securities in the mutual fund shall be eligible investments pursuant to this section***; and***

(j) State and local delinquent property tax claims which upon purchase shall become certificates of delinquency secured by interests in real property not to exceed twenty-five million dollars ($25,000,000) in the aggregate. For any certificates of delinquency that have been exonerated pursuant to subsection (5) of Section 1 of this Act, the Revenue Cabinet shall offset the loss suffered by the Finance and Administration Cabinet against subsequent local distributions to the affected taxing districts as shown on the certificate of delinquency.

(10) The State Investment Commission shall promulgate administrative regulations for the investment and reinvestment of state funds in shares of mutual funds, and the regulations shall specify:

(a) The long and short term goals of any investment;

(b) The specification of moneys to be invested;

(c) The amount of funds which may be invested per instrument;

(d) The qualifications of instruments; and

(e) The acceptable maturity of investments.

(11) Any investment in obligations and securities pursuant to subsection (9) of this section shall satisfy this section if these obligations are subject to repurchase agreements, provided that delivery of these obligations is taken either directly or through an authorized custodian.

(12) Income earned from investments made pursuant to this section shall accrue to the credit of the investment income account of the general fund, except that interest from investments of excess cash in the road fund shall be credited to the surplus account of the road fund and interest from investments of excess cash in the game and fish fund shall be credited to the game and fish fund, interest earned from investments of imprest cash funds and funds in the trust and revolving fund for each state public university shall be credited to the appropriate institutional account, and interest earned from the investment of funds accumulated solely by means of contributions and gifts shall not be diverted to any purpose other than that stipulated by the donor, when the donor shall have designated the use to which the interest shall be placed. Except as otherwise provided by law, or by the obligations and covenants contained in resolutions and trust indentures adopted or entered into for state bond issues, interest earned from the investment of moneys appropriated to the capital construction accounts, trust and agency accounts, and trust and agency revolving accounts shall accrue to the capital construction investment income account. If the total general fund revenue receipts are less than the total revenue estimates for the general fund under KRS 48.120 and 48.130, the secretary of the Finance and Administration Cabinet, upon the recommendation of the state budget director, may direct the transfer of excess unappropriated capital construction investment income to the general fund investment income account. The amount of the transfer shall not exceed the amount of the shortfall in general fund revenues. If the capital construction investment income is less than that amount appropriated by the General Assembly, the secretary of the Finance and Administration Cabinet may, upon recommendation of the state budget director, direct the transfer of excess unappropriated general fund investment income to the capital construction investment income account. The transfer of general fund investment income revenues to the capital construction investment income account shall be made only when the actual general fund revenues are in excess of the revenue estimates under KRS 48.120 and shall be limited to the amount of the excess general fund revenues. The amount of the transfer shall not exceed the amount of the shortfall in the capital construction fund revenues.

(13) The authority granted by this section to the State Investment Commission shall not extend to any funds that are specifically provided by law to be invested by some other officer or agency of the state government.

(14) The authority granted by this section to the State Investment Commission shall only be exercised pursuant to the administrative regulations mandated by KRS 42.525.

(15) Each member of the State Investment Commission, with the exception of the Governor, shall post bond for his acts or omissions as a member thereof identical in amount and kind to that posted by the State Treasurer.

Section 20. The following KRS section is repealed:

134.382 Reduction of commission.

Section 21. The amendments contained in subsection (4) of Section 4 of this Act shall apply to settlements completed after December 31, 1997. The amendments contained in Section 5, subsection (4) of Section 10, Section 12, subsection (1) of Section 15, subsection (4) of Section 16, and Section 19 of this Act shall apply for sales of delinquent tax bills made on or after March 1, 1998. The remainder of the amendments contained in this Act shall apply for assessments made on or after January 1, 1998.

Section 22. Whereas the property tax administration calendar and the timelines established for the sale of delinquent tax bills necessitate that certain provisions of this Act be effective in March to ensure the proper administration of the property tax collection process, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

The Committee on Tourism Development and Energy reported **HB 521,** with Committee Substitute attached thereto **HB 572,** with Committee Amendment attached thereto, **HB 577, HB 631, HB 644,** with Committee Substitute attached thereto, **HB 673,** with Committee Substitute attached thereto, and **HCR 77** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 521, AN ACT relating to tourism development.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 154.29-010 is amended to read as follows:

As used in KRS 139.536 and KRS 154.29-010 to 154.29-060, unless the context clearly indicates otherwise:

(1) "Agreement" means a tourism attraction agreement entered into, pursuant to KRS 154.29-050, on behalf of the authority and an approved company on or before June 30, 2002, with respect to a tourism attraction project;

(2) "Approved company" means any eligible company approved by the secretary of the Tourism Cabinet and the authority pursuant to KRS 154.29-050 that is seeking to undertake a tourism attraction project;

(3) "Approved costs" means:

(a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, and installation of a tourism attraction project;

(b) The costs of acquiring real property or rights in real property and any costs incidental thereto;

(c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, and installation of a tourism attraction project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;

(d) All costs of architectural and engineering services, including, but not limited to: estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, and installation of a tourism attraction project;

(e) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a tourism attraction project;

(f) All costs required for the installation of utilities, including but not limited to: water, sewer, sewer treatment, gas, electricity and communications, and including off-site construction of the facilities paid for by the approved company; and

(g) All other costs comparable with those described in this subsection;

(4) "Authority" means the Kentucky Economic Development Finance Authority as set forth in KRS 154.20-010;

(5) "Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, or business trust, or any other entity operating or intending to operate a tourism attraction project, whether owned or leased, within the Commonwealth that meets the standards promulgated by the secretary of the Tourism Cabinet pursuant to KRS 154.29-030;

(6) "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under KRS 139.536 and KRS 154.29-010 to 154.29-060;

(7) "Inducements" means the Kentucky sales tax credit as prescribed in KRS 139.536;

(8) "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements of KRS 139.536 and KRS 154.29-010 to 154.29-060;

(9) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.005, or any board, commission, institution, or division exercising any function of the state that is not an independent municipal corporation or political subdivision;

(10) "Tourism attraction" means a cultural or historical site, recreation or entertainment facility, or area of natural phenomenon or scenic beauty. A tourism attraction shall not include any of the following:

(a) Lodging facilities, unless the facilities constitute a portion of a tourism attraction project and represent less than fifty percent (50%) of the total approved cost of the tourism attraction project***, except that lodging facilities may represent more than fifty percent (50%) of the total approved cost if the lodging facilities incorporate a historic structure of at least one hundred thousand (100,000) square feet and meet the requirements of the Department of Interior Standards for Treatment of Historic Properties***;

(b) Facilities that are primarily devoted to the retail sale of goods, unless the goods are created by individuals at the site of the tourism attraction project or if the sale of goods is incidental to the tourism attraction project; and

(c) Recreational facilities that do not serve as a likely destination where individuals who are not residents of the Commonwealth would remain overnight in commercial lodging at or near the tourism attraction project; and

(11) "Tourism attraction project" or "project" means the acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of ten (10) years, construction, and equipping of a tourism attraction; the construction, and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction, including but not limited to surveys; installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that shall allow the approved company to attract persons.

The Committee Substitute to **HB 521** is as follows:

AN ACT relating to tourism development.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 154.29-010 is amended to read as follows:

As used in KRS 139.536 and KRS 154.29-010 to 154.29-060, unless the context clearly indicates otherwise:

(1) "Agreement" means a tourism attraction agreement entered into, pursuant to KRS 154.29-050, on behalf of the authority and an approved company on or before June 30, 2002, with respect to a tourism attraction project;

(2) "Approved company" means any eligible company approved by the secretary of the Tourism Cabinet and the authority pursuant to KRS 154.29-050 that is seeking to undertake a tourism attraction project;

(3) "Approved costs" means:

(a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, and installation of a tourism attraction project;

(b) The costs of acquiring real property or rights in real property and any costs incidental thereto;

(c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, and installation of a tourism attraction project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;

(d) All costs of architectural and engineering services, including, but not limited to: estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, and installation of a tourism attraction project;

(e) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a tourism attraction project;

(f) All costs required for the installation of utilities, including but not limited to: water, sewer, sewer treatment, gas, electricity and communications, and including off-site construction of the facilities paid for by the approved company; and

(g) All other costs comparable with those described in this subsection;

(4) "Authority" means the Kentucky Economic Development Finance Authority as set forth in KRS 154.20-010;

(5) "Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, or business trust, or any other entity operating or intending to operate a tourism attraction project, whether owned or leased, within the Commonwealth that meets the standards promulgated by the secretary of the Tourism Cabinet pursuant to KRS 154.29-030;

(6) "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under KRS 139.536 and KRS 154.29-010 to 154.29-060;

(7) "Inducements" means the Kentucky sales tax credit as prescribed in KRS 139.536;

(8) "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements of KRS 139.536 and KRS 154.29-010 to 154.29-060;

(9) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.005, or any board, commission, institution, or division exercising any function of the state that is not an independent municipal corporation or political subdivision;

(10) "Tourism attraction" means a cultural or historical site, recreation or entertainment facility, or area of natural phenomenon or scenic beauty. A tourism attraction shall not include any of the following:

(a) Lodging facilities, unless the facilities constitute a portion of a tourism attraction project and represent less than fifty percent (50%) of the total approved cost of the tourism attraction project***, except that lodging facilities may represent more than fifty percent (50%) of the total approved cost if the lodging facilities incorporate a historic structure and meet the requirements of the Department of Interior Standards for Treatment of Historic Properties***;

(b) Facilities that are primarily devoted to the retail sale of goods, unless the goods are created by individuals at the site of the tourism attraction project or if the sale of goods is incidental to the tourism attraction project; and

(c) Recreational facilities that do not serve as a likely destination where individuals who are not residents of the Commonwealth would remain overnight in commercial lodging at or near the tourism attraction project; and

(11) "Tourism attraction project" or "project" means the acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of ten (10) years, construction, and equipping of a tourism attraction; the construction, and

installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction, including but not limited to surveys; installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that shall allow the approved company to attract persons.

HB 572, AN ACT relating to a certificate to extend or operate a utility.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 278.020 is amended to read as follows:

(1) No person, partnership, public or private corporation, or combination thereof shall ***furnish to the public or*** begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business, until ***that***[~~such~~] person has obtained from the Public Service Commission a certificate that public convenience and necessity require ***the service or***[~~such~~] construction. Upon the filing of an application for[~~ such~~] a certificate, and after any public hearing which the commission may in its discretion conduct for all interested parties, the commission may issue or refuse to issue the certificate, or issue it in part and refuse it in part, except that the commission shall not refuse or modify an application submitted under KRS 278.023 without consent by the parties to the agreement. The commission, when considering an application for a certificate to construct a base load electric generating facility, may consider the policy of the General Assembly to foster and encourage use of Kentucky coal by electric utilities serving the Commonwealth. Unless exercised within one (1) year from the grant thereof, exclusive of any delay due to the order of any court or failure to obtain any necessary grant or consent, the authority conferred by the issuance of the certificate of convenience and necessity shall be void, but the beginning of any new construction or facility in good faith within the time prescribed by the commission and the prosecution thereof with reasonable diligence shall constitute an exercise of authority under the certificate.

(2) No utility shall exercise any right or privilege under any franchise or permit, after the exercise of that right or privilege has been voluntarily suspended or discontinued for more than one (1) year, without first obtaining from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity authorizing the exercise of that right or privilege.

(3) No utility shall apply for or obtain any franchise, license, or permit from any city or other governmental agency until it has obtained from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity showing that there is a demand and need for the service sought to be rendered.

(4) No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

(5) No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. Any[~~ such~~] acquisition of control without[~~ such~~] prior authorization shall be void and of no effect. As used in this subsection, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise. Control shall be presumed to exist if any[~~ such~~] individual or entity, directly or indirectly, owns ten percent (10%) or more of the voting securities of the utility. This presumption may be rebutted by a showing that[~~ such~~] ownership does not in fact confer control. Application for any[~~ such~~] approval or authorization shall be made to the commission in writing, verified by oath or affirmation, and be in ***a***[~~ such~~] form and contain ***the***[~~such~~] information as the commission requires. The commission shall approve any[~~ such~~] proposed acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest. The commission may make[~~ such~~] investigation and hold[~~ such~~] hearings in the matter as it deems necessary, and thereafter may grant any application under this subsection in whole or in part and with[~~ such~~] modification and upon[~~ such~~] terms and conditions as it deems necessary or appropriate. The commission shall grant, modify, refuse, or prescribe appropriate terms and conditions with respect to every such application within sixty (60) days after the filing of the application therefor or on a later date mutually acceptable to the commission and the acquirer. In the absence of ***that***[~~any such~~] action within ***that***[~~such~~] period of time, any[~~ such~~] proposed acquisition shall be deemed to be approved.

(6) Subsection (5) of this section shall not apply to any acquisition of control of any:

(a) Utility which derives a greater percentage of its gross revenue from business in another jurisdiction than from business in this state if the commission determines that the other jurisdiction has statutes or rules which are applicable and are being applied and which afford protection to ratepayers in this state substantially equal to that afforded such ratepayers by subsection (5) of this section;

(b) Utility by an acquirer who directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, ***the***[~~such~~] utility, including any entity created at the direction of such utility for purposes of corporate reorganization; or

(c) Utility pursuant to the terms of any indebtedness of the utility, provided the issuance of[~~ such~~] indebtedness was approved by the commission.

(7) If any provision of this section or the application thereof to any person or circumstance is held invalid, ***the***[~~such~~] invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to that end the provisions are declared to be severable.

The Committee Amendment No. 1 to **HB 572** is as follows:

On page 1, line 3, by deleting "***furnish to the public or***" and by inserting "***commence providing utility service to or for the public or***" in lieu thereof.

HB 577, AN ACT relating to gas pipeline safety.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 278.992 is amended to read as follows:

(1) Any person who violates any ***minimum safety standard adopted by the United States Department of Transportation pursuant to the federal pipeline safety laws, 49 U.S.C. sec. 60101 et seq., or any amendments thereto, or any*** regulation adopted and filed pursuant to KRS Chapter 13A by the Public Service Commission governing the safety of pipeline facilities or the transportation of gas as those terms are defined in the Natural Gas Pipeline Safety Act[~~ of 1968, U. S. Congress~~], shall be subject to a civil penalty to be assessed by the Public Service Commission not to exceed ***twenty-five***[~~ten~~] thousand dollars ***($25,000)***[~~($10,000)~~] for each violation for each day that the violation persists. However, the maximum civil penalty shall not exceed five hundred thousand dollars ($500,000) for any related series of violations. Any civil penalty assessed for such a violation may be compromised by the commission. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of the violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the Commonwealth of Kentucky to the person charged or may be recovered in a civil action in the Franklin Circuit Court.

(2) Any person who willfully and knowingly defaces, damages, removes, or destroys any pipeline sign or right-of-way marker required by the Natural Gas Pipeline Safety Act or any regulation or order issued pursuant to it shall, upon conviction, be subject for each offense to a fine of not more than five thousand dollars ($5,000), imprisonment for a term not to exceed one (1) year, or both.

HB 631, AN ACT relating to designating Shelby County as the official Saddlebred Capital of Kentucky.

WHEREAS, Shelby County is recognized by many as the Saddlebred Capital of the World; and

WHEREAS, the Shelbyville Horse Show brings people from throughout the country each year to watch some of the finest saddlebreds in the world compete; and

WHEREAS, the first registered Saddlebred, Monte Cristo, Jr., was raised in Shelby County; and

WHEREAS, Shelby County is home to over thirty Saddlebred establishments including over 1,000 World Champions; and

WHEREAS, the horsemen and residents of Shelbyville and Shelby County have hosted the Shelbyville Horse Show for the past seven years; and

WHEREAS, the show has been recognized by the United Professional Horsemen's Association with the Chapter Honor Show for seven years in a row and as the National Honor Show in 1993;

NOW, THEREFORE,

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 2 IS CREATED TO READ AS FOLLOWS:

Shelby County is designated as the official Saddlebred Capital of Kentucky.

HB 644, AN ACT relating to a purchase of development rights program in urban-counties.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

(1) The General Assembly hereby finds and declares that it is a policy of the Commonwealth to retain agriculture and rural landscapes in urban counties.

(2) The General Assembly further finds and declares that the preservation of agriculture and rural landscapes contributes to the development of tourism and recreation.

(3) The General Assembly further finds and declares that the urban-county form of government promotes industrialization and commercialization, attended by rapid residential development, which threatens the preservation of agriculture and rural landscapes.

(4) The General Assembly further finds and declares that in urban counties a single government embraces the entire county and, by nature, has within its jurisdiction both substantial urban areas and substantial rural areas thereby creating the ability to distribute both the benefits and the financial obligations of a purchase of development rights program fairly among the constituents of a single government.

(5) The General Assembly further finds and declares that conferring responsibility upon the electorate in urban-county governments to make decisions regarding the establishment and funding of programs to retain and enhance agriculture and rural landscapes and to promote tourism and recreation is consistent with the broad home rule concepts embodied in this chapter.

SECTION 2. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 6, 7, and 8 of this Act, unless the context clearly indicates otherwise:

(1) "Conservation easement" means an interest in land, less than fee simple, which restricts or prevents the development or improvement of the land in the fashion provided in the instrument of conveyance by which the easement is created;

(2) "Development right" means an interest in real property established under a purchase of development rights program which is made severable from the parcel to which the interest is appurtenant and which may be purchased as provided for in the program; and

(3) "Purchase of development rights program" or "PDR program" or "program" means a comprehensive program providing for the establishment and purchase of development rights in accordance with the requirements of Sections 1 to 6, 7, and 8 of this Act.

SECTION 3. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

(1) An urban-county government is authorized to place before the public, via referendum according to the procedure established in Section 5 of this Act, the question of whether to fund a purchase of development rights program by means of one (1) or more of the following special tax levies which shall be in addition to all taxes otherwise permitted by law in the urban-county:

- *(a) An ad valorem tax not to exceed five cents ($0.05) per one hundred dollars ($100) of assessed value upon all taxable property in the urban-county, subject only to the aggregate limits on property taxes set forth in the Kentucky Constitution, but not subject to the recall provisions of KRS 132.017;*
- *(b) A license fee not to exceed one-fourth of one percent (0.25%) on franchises, trades, occupations and professions in accordance with KRS 92.280(2); and*
- *(c) A transient room tax as defined in Section 8 of this Act not to exceed one percent (1%) of rents.*

(2) The proposal put before the voters shall set forth the following information:

- *(a) General descriptions of the types and locations of the properties from which development rights may be purchased under the program; and in describing the types of property, general descriptions such as "agricultural," "agriculturally zoned," or "farm" shall be sufficient, and in indicating the locations, general descriptions such as "northern section" and "eastern quadrant" shall be sufficient; and*
- *(b) The type, rate and effective date, including the ending date if the levy is for a specific duration, of the special tax levy, or levies, from among those authorized in subsection (1) of this section, which is proposed to fund the program.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

(1) Within (180) days following the passage of a purchase of development rights proposal by referendum as provided for in Sections 3, 5, and 6 of this Act, an urban-county government shall establish a purchase of development rights program which, in addition to the matters approved by referendum, shall include:

- *(a) A statement of the purpose of the program;*

(b) A detailed map showing the locations of the properties from which development rights may be purchased;

(c) The restrictions upon the use and development of the properties from which development rights have been purchased, and the duration of those restrictions which may be perpetual as the equivalent of covenants running with the land;

(d) The mechanism, if any, for removing the restrictions;

(e) The procedure for valuation and transfer of the development rights. The instrument of transfer shall be an instrument drawn, executed, and recorded in accordance with KRS Chapter 382, which shall set forth the terms of the restrictions with specificity;

(f) The entity authorized by the urban-county government to operate the program;

(g) Any other provisions the urban-county government deems necessary or appropriate.

(2) The program may provide for the purchase of conservation easements or other comparable interests in real estate in addition to or in lieu of the purchase of development rights.

(3) The provisions of the program, except those elements adopted by referendum, may be amended from time to time by the urban-county government.

SECTION 5. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

The procedure for a refcrendum authorized by Section 3 of this Act shall be as follows:

(1) A purchase of development rights program proposal authorized by Sections 3 and 4 of this Act may be submitted to the voters of an urban-county by either a resolution of the legislative body or a petition meeting the requirements of this section. The resolution or petition shall set out the matters specified in subsection (1) of Section 3 of this Act. The proposal shall be drafted in such a way that a vote in favor of adoption shall be a vote in favor of the proposal.

(2) Any five (5) qualified voters of the urban-county may commence petition proceedings by filing with the county clerk an affidavit stating that they constitute the petition committee and will be responsible for circulating the petition and filing it in proper form. The affidavit shall state their names and addresses and specify the address to which all notices to the committee are to be sent. It shall set out in full the proposal to be considered by the voters. Promptly after the affidavit of the petition committee is filed, the county clerk shall notify the petition committee of all statutory requirements for petitions under this section and shall deliver a copy of the affidavit to the legislative body of the urban-county government.

(3) All papers of a petition shall be uniform in size and style and shall be assembled as one (1) instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Petitions shall be signed by registered voters of the urban-county government equal in number to at least twenty percent (20%) of the total number of votes cast in the urban-county in the last presidential election. When it is filed, each sheet of a petition shall have an affidavit executed by the circulator stating that he personally circulated the sheet, the number of signatures thereof, that all signatures were affixed in his presence, that he believes them to be the genuine signatures of registered voters in the urban-county and that each signer had an opportunity before signing to read the full text of the proposal. Petitions shall contain or have attached throughout their circulation the full text of the proposal.

(4) Within thirty (30) days after the petition is filed, the county clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall send a copy to the petition committee and to the urban-county government legislative body by registered mail. A petition that is certified insufficient for lack of the required number of valid signatures may be amended once if the petition committee files a notice of intention to amend it with the county clerk within five (5) days after receiving the copy of his certificate and files a supplemental petition certificate. The supplemental petition shall comply with the requirements of subsection (3) of this section, and within ten (10) days after it is filed, the county clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of the certificate to the petition committee and to the urban-county government legislative body by certified mail.

(5) A final determination as to the sufficiency of a petition shall be subject to review in the Circuit Court of the county and shall be limited to the validity of the county clerk's determination. A final determination of insufficiency shall not prejudice the filing in accordance with this section of a new petition for the same purpose.

(6) If, not later than the second Tuesday in August preceding the day established for a regular election, the county clerk receives a resolution adopted by the legislative body of the urban-county government requesting that the question be submitted to the voters or certifies that a petition submitted in accordance with this section is sufficient, the county clerk shall have prepared to place before the voters of the urban-county government at the next regular election the question, which shall be "Are you in favor of the proposal to establish a program in (name of county) to purchase development rights from (general description of types and locations of properties) to be funded by (type, rate, and effective date of special tax levy)? Yes....No...." The county clerk shall cause to be published in accordance with KRS

Chapter 424, at the same time as the remaining voter information, the full text of the proposal. In addition, the urban-county government shall publish, in accordance with KRS Chapter 424, a map showing the general location of the properties from which development rights may be purchased under the program. The county clerk shall cause to be posted in each polling place one (1) copy of the full text of the proposal.

(7) The provisions of general election law shall apply to a referendum conducted under this section. The certificate of the body authorized by law to canvass election returns shall be delivered to the mayor of the urban-county government and the certificate shall be entered upon the records of the urban-county government during the next regular meeting of the urban-county government legislative body.

SECTION 6. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

(1) At any time not earlier than three (3) years following the passage of a purchase of development rights proposal in a referendum authorized by Sections 3 and 5 of this Act, a referendum may be held on the question of whether to increase, decrease, or eliminate the funding sources of the program, either upon the adoption of a resolution by the legislative body of the urban-county government or upon the filing of a duly certified petition, according to the same procedures set forth in Section 5 of this Act.

(2) The passage of a referendum to decrease or eliminate the funding sources for a purchase of development rights program will not be legally effective prior to the satisfaction of all contractual obligations that have been assumed by pertinent contracting authorities in connection with the program.

Section 7. KRS 67A.850 is amended to read as follows:

Urban-county government may:

Exercise ad valorem property taxing powers pursuant to the Kentucky Constitution, Section 157, to the limits authorized therein for the class of city to which the largest city in the county belonged on the day prior to the date the urban-county government became effective. The taxing powers must be exercised by the urban-county government consistent with the Kentucky Constitution, Section 172A, and KRS 132.010, 132.023 and 132.027. Provided, in no way will this section and KRS 67A.860 allow an urban-county government to increase the taxes of any district without the urban-county government having first performed its obligations to provide services for such increases. *Within the privileges and limitations of this section, an urban-county government may impose an additional ad valorem tax, not to exceed five cents ($0.05) per one hundred dollars ($100), for the purpose of funding the purchase of development rights program provided for under Section 4 of this Act.*

Section 8. KRS 91A.390 is amended to read as follows:

(1) The commission shall annually submit to the local governing body or bodies which established it a request for funds for the operation of the commission. The local governing body or bodies shall include the commission in the annual budget and shall provide funds for the operation of the commission by imposing a transient room tax, not to exceed three percent (3%) of the rent for every occupancy of a suite, room, or rooms, charged by all persons, companies, corporations, or other like or similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or like or similar accommodations businesses. In addition to the three percent (3%), the local governing body may impose a special transient room tax not to exceed one percent (1%) for the sole purpose of meeting the operating expenses of a convention center. A transient room tax imposed by an urban-county government shall not exceed four percent (4%) of the rent for every occupancy of a suite, room, or rooms, charged by all persons, companies, corporations, or other like or similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or like or similar accommodations businesses. Transient room taxes shall not apply to the rental or leasing of an apartment supplied by an individual or business that regularly holds itself out as exclusively providing apartments. Apartment means a room or set of rooms, in an apartment building, fitted especially with a kitchen and usually leased as a dwelling for a minimum period of thirty (30) days or more. The local governing body or bodies that have established a commission by joint or separate action, shall enact an ordinance for the collection and the enforcement of the tax measure enacted pursuant to this section.

(2) A portion of the money collected from the imposition of this tax, as determined by the tax levying body, may be used to finance the cost of acquisition, construction, operation, and maintenance of facilities useful in the attraction and promotion of tourist and convention business and shall include athletic stadiums. The balance of the money collected from the imposition of this tax shall be used for the purposes set forth in KRS 91A.350. Proceeds of the tax shall not be used as a subsidy in any form to any hotel, motel, or restaurant. Money not expended by the commission during any fiscal year shall be used to make up a part of the commission's budget for its next fiscal year.

(3) *An urban-county government may impose an additional tax, not to exceed one percent (1%) of the room rents included in this subsection. This additional tax shall be collected and administered in the same manner as the regular tax with the exception that this additional tax shall be used for the purpose of funding the purchase of development rights program provided for under Section 4 of this Act.*

(4) The commission, with the approval of the tax levying body, may borrow money to pay its obligations that cannot be paid at maturity out of current revenue from the transient room tax, but shall not borrow a sum greater than can be repaid out of the revenue anticipated from the transient room tax during the year the money is borrowed. The commission may

pledge its securities for the repayment of any sum borrowed.

(5)[~~(4)~~] The fiscal court or legislative body of a city establishing a commission pursuant to subsection (1) or (2) of KRS 91A.350 and, in its own name, a commission established pursuant to subsection (1) of KRS 91A.350 is authorized and empowered to issue revenue bonds pursuant to KRS Chapter 58 for public projects. Bonds issued for the purposes of KRS 91A.350 to 91A.390, may be used to pay any cost for the acquisition of real estate, the construction of buildings and appurtenances, the preparation of plans and specifications, and legal and other services incidental to the project or to the issuance of the bonds. The payment of the bonds, with interest, may be secured by a pledge of and a first lien on all of the receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Bond and interest obligations issued pursuant to this section shall not constitute an indebtedness of the county or city. All bonds sold under the authority of this section shall be subject to competitive bidding as provided by law, and shall bear interest at a rate not to exceed that established for bonds issued for public projects under KRS Chapter 58.

(6)[~~(5)~~] A commission established pursuant to subsection (3) of KRS 91A.350 is authorized and empowered to issue revenue bonds in its own name, payable solely from its income and revenue, pursuant to KRS Chapter 58 for revenue bonds for public projects. Bonds issued for the purposes of KRS 91A.350 to 91A.390, may be used to pay any cost for the acquisition of real estate, the construction of buildings and appurtenances, the preparation of plans and specifications, and legal and other services incidental to the project or to the issuance of the bonds. The payment of the bonds, with interest, may be secured by a pledge of and a first lien on all of the receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Bond and interest obligations issued pursuant to this section shall not constitute an indebtedness of the county. All bonds sold pursuant to this section shall be subject to competitive bidding as provided by law, and shall not bear interest at rates exceeding those for bonds issued for public projects under KRS Chapter 58.

Section 9. KRS 91A.392 is amended to read as follows:

(1) In addition to the three percent (3%) transient room tax authorized by KRS 91A.390 and the one percent (1%) transient room tax authorized by KRS 153.440, the fiscal court in a county containing a city of the first class may levy an additional transient room tax not to exceed two percent (2%) of the rent for every occupancy of a suite, room, or rooms charged by all persons, companies, corporations, or other similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or similar accommodations businesses.

(2) All money collected from the tax authorized by this section shall be applied toward the retirement of bonds issued pursuant to KRS 91A.390*(5)*[~~(4)~~] to finance in part the expansion of a government-owned convention facility located in the central business district of the city of the first class located in the county.

(3) After the retirement of the bonds provided for in this section, the additional transient room tax levied pursuant to this section shall be void, and the fiscal court shall take action to repeal the ordinance which levied the tax.

The Committee Substitute to **HB 644** is as follows:

AN ACT relating to a purchase of development rights program in urban-counties.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

(1) The General Assembly hereby finds and declares that it is a policy of the Commonwealth to retain agriculture and rural landscapes in urban counties.

(2) The General Assembly further finds and declares that the preservation of agriculture and rural landscapes contributes to the development of tourism and recreation.

(3) The General Assembly further finds and declares that the urban-county form of government promotes industrialization and commercialization, attended by rapid residential development, which threatens the preservation of agriculture and rural landscapes.

(4) The General Assembly further finds and declares that in urban counties a single government embraces the entire county and, by nature, has within its jurisdiction both substantial urban areas and substantial rural areas thereby creating the ability to distribute both the benefits and the financial obligations of a purchase of development rights program fairly among the constituents of a single government.

(5) The General Assembly further finds and declares that conferring responsibility upon the electorate in urban-county governments to make decisions regarding the establishment and funding of programs to retain and enhance agriculture and rural landscapes and to promote tourism and recreation is consistent with the broad home rule concepts embodied in this chapter.

SECTION 2. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 6, 7, and 8 of this Act, unless the context clearly indicates otherwise:

(1) "Conservation easement" means an interest in land, less than fee simple, which restricts or prevents the development or improvement of the land in the fashion provided in the instrument of conveyance by which the easement is created;

(2) "Development right" means an interest in real property established under a purchase of development rights program which is made severable from the parcel to which the interest is appurtenant and which may be purchased as provided for in the program; and

(3) "Purchase of development rights program" or "PDR program" or "program" means a comprehensive program providing for the establishment and purchase of development rights in accordance with the requirements of Sections 1 to 6, 7, and 8 of this Act.

SECTION 3. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

(1) An urban-county government is authorized to place before the public, via referendum according to the procedure established in Section 5 of this Act, the question of whether to fund a purchase of development rights program by means of one (1) or more of the following special tax levies which shall be in addition to all taxes otherwise permitted by law in the urban-county:

  (a) An ad valorem tax not to exceed five cents ($0.05) per one hundred dollars ($100) of assessed value upon all taxable property in the urban-county, subject only to the aggregate limits on property taxes set forth in the Kentucky Constitution, but not subject to the recall provisions of KRS 132.017;

  (b) A license fee not to exceed one-eighth of one percent (0.125%) on franchises, trades, occupations and professions in accordance with KRS 92.280(2), except that no fee shall be collected from any individual who is not a resident of the urban-county; and

  (c) A transient room tax as defined in Section 8 of this Act not to exceed one percent (1%) of rents.

(2) The proposal put before the voters shall set forth the following information:

  (a) General descriptions of the types and locations of the properties from which development rights may be purchased under the program; and in describing the types of property, general descriptions such as "agricultural," "agriculturally zoned," or "farm" shall be sufficient, and in indicating the locations, general descriptions such as "northern section" and "eastern quadrant" shall be sufficient; and

  (b) The type, rate and effective date, including the ending date if the levy is for a specific duration, of the special tax levy, or levies, from among those authorized in subsection (1) of this section, which is proposed to fund the program.

SECTION 4. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

(1) Within one hundred eighty (180) days following the passage of a purchase of development rights proposal by referendum as provided for in Sections 3, 5, and 6 of this Act, an urban-county government shall establish a purchase of development rights program which, in addition to the matters approved by referendum, shall include:

  (a) A statement of the purpose of the program;

  (b) A detailed map showing the locations of the properties from which development rights may be purchased;

  (c) The restrictions upon the use and development of the properties from which development rights have been purchased, and the duration of those restrictions which may be perpetual as the equivalent of covenants running with the land;

  (d) The mechanism, if any, for removing the restrictions;

  (e) The procedure for valuation and transfer of the development rights. The instrument of transfer shall be an instrument drawn, executed, and recorded in accordance with KRS Chapter 382, which shall set forth the terms of the restrictions with specificity;

  (f) The entity authorized by the urban-county government to operate the program;

  (g) Any other provisions the urban-county government deems necessary or appropriate.

(2) The program may provide for the purchase of conservation easements or other comparable interests in real estate in addition to or in lieu of the purchase of development rights.

(3) The provisions of the program, except those elements adopted by referendum, may be amended from time to time by the urban-county government.

SECTION 5. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

The procedure for a referendum authorized by Section 3 of this Act shall be as follows:

(1) A purchase of development rights program proposal authorized by Sections 3 and 4 of this Act may be submitted to the voters of an urban-county by either a resolution of the legislative body or a petition meeting the requirements of this section. The resolution or petition shall set out the matters specified in subsection (1) of Section 3 of this Act.

The proposal shall be drafted in such a way that a vote in favor of adoption shall be a vote in favor of the proposal.

(2) Any five (5) qualified voters of the urban-county may commence petition proceedings by filing with the county clerk an affidavit stating that they constitute the petition committee and will be responsible for circulating the petition and filing it in proper form. The affidavit shall state their names and addresses and specify the address to which all notices to the committee are to be sent. It shall set out in full the proposal to be considered by the voters. Promptly after the affidavit of the petition committee is filed, the county clerk shall notify the petition committee of all statutory requirements for petitions under this section and shall deliver a copy of the affidavit to the legislative body of the urban-county government.

(3) All papers of a petition shall be uniform in size and style and shall be assembled as one (1) instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Petitions shall be signed by registered voters of the urban-county government equal in number to at least ten percent (10%) of the total number of votes cast in the urban-county in the last presidential election. When it is filed, each sheet of a petition shall have an affidavit executed by the circulator stating that he personally circulated the sheet, the number of signatures thereof, that all signatures were affixed in his presence, that he believes them to be the genuine signatures of registered voters in the urban-county and that each signer had an opportunity before signing to read the full text of the proposal. Petitions shall contain or have attached throughout their circulation the full text of the proposal.

(4) Within thirty (30) days after the petition is filed, the county clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall send a copy to the petition committee and to the urban-county government legislative body by registered mail. A petition that is certified insufficient for lack of the required number of valid signatures may be amended once if the petition committee files a notice of intention to amend it with the county clerk within five (5) days after receiving the copy of his certificate and files a supplemental petition certificate. The supplemental petition shall comply with the requirements of subsection (3) of this section, and within ten (10) days after it is filed, the county clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of the certificate to the petition committee and to the urban-county government legislative body by certified mail.

(5) A final determination as to the sufficiency of a petition shall be subject to review in the Circuit Court of the county and shall be limited to the validity of the county clerk's determination. A final determination of insufficiency shall not prejudice the filing in accordance with this section of a new petition for the same purpose.

(6) If, not later than the second Tuesday in August preceding the day established for a regular election, the county clerk receives a resolution adopted by the legislative body of the urban-county government requesting that the question be submitted to the voters or certifies that a petition submitted in accordance with this section is sufficient, the county clerk shall have prepared to place before the voters of the urban-county government at the next regular election the question, which shall be "Are you in favor of the proposal to establish a program in (name of county) to purchase development rights from (general description of types and locations of properties) to be funded by (type, rate, and effective date of special tax levy)? Yes....No...." The county clerk shall cause to be published in accordance with KRS Chapter 424, at the same time as the remaining voter information, the full text of the proposal. In addition, the urban-county government shall publish, in accordance with KRS Chapter 424, a map showing the general location of the properties from which development rights may be purchased under the program. The county clerk shall cause to be posted in each polling place one (1) copy of the full text of the proposal.

(7) The provisions of general election law shall apply to a referendum conducted under this section. The certificate of the body authorized by law to canvass election returns shall be delivered to the mayor of the urban-county government and the certificate shall be entered upon the records of the urban-county government during the next regular meeting of the urban-county government legislative body.

SECTION 6. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

(1) At any time not earlier than five (5) years following the passage of a purchase of development rights proposal in a referendum authorized by Sections 3 and 5 of this Act, a referendum may be held on the question of whether to increase, decrease, or eliminate the funding sources of the program, either upon the adoption of a resolution by the legislative body of the urban-county government or upon the filing of a duly certified petition, according to the same procedures set forth in Section 5 of this Act.

(2) The passage of a referendum to decrease or eliminate the funding sources for a purchase of development rights program will not be legally effective prior to the satisfaction of all contractual obligations that have been assumed by pertinent contracting authorities in connection with the program.

Section 7. KRS 67A.850 is amended to read as follows:

Urban-county government may:

Exercise ad valorem property taxing powers pursuant to the Kentucky Constitution, Section 157, to the limits authorized therein for the class of city to which the largest city in the county belonged on the day prior to the date the urban-county government became effective. The taxing powers must be exercised by the urban-county government consistent with the Kentucky Constitution, Section 172A, and KRS 132.010, 132.023 and 132.027. Provided, in no way will this section and KRS 67A.860 allow an urban-county government to increase the taxes of any district without the urban-county government having first performed its obligations to provide services for such increases. ***Within the privileges and limitations of this section, an urban-county government may impose an additional ad valorem tax, not to exceed five cents ($0.05) per one hundred dollars ($100), for the purpose of funding the purchase of development rights program provided for under Section 4 of this Act.***

Section 8. KRS 91A.390 is amended to read as follows:

(1) The commission shall annually submit to the local governing body or bodies which established it a request for funds for the operation of the commission. The local governing body or bodies shall include the commission in the annual budget and shall provide funds for the operation of the commission by imposing a transient room tax, not to exceed three percent (3%) of the rent for every occupancy of a suite, room, or rooms, charged by all persons, companies, corporations, or other like or similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or like or similar accommodations businesses. In addition to the three percent (3%), the local governing body may impose a special transient room tax not to exceed one percent (1%) for the sole purpose of meeting the operating expenses of a convention center. A transient room tax imposed by an urban-county government shall not exceed four percent (4%) of the rent for every occupancy of a suite, room, or rooms, charged by all persons, companies, corporations, or other like or similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or like or similar accommodations businesses. Transient room taxes shall not apply to the rental or leasing of an apartment supplied by an individual or business that regularly holds itself out as exclusively providing apartments. Apartment means a room or set of rooms, in an apartment building, fitted especially with a kitchen and usually leased as a dwelling for a minimum period of thirty (30) days or more. The local governing body or bodies that have established a commission by joint or separate action, shall enact an ordinance for the collection and the enforcement of the tax measure enacted pursuant to this section.

(2) A portion of the money collected from the imposition of this tax, as determined by the tax levying body, may be used to finance the cost of acquisition, construction, operation, and maintenance of facilities useful in the attraction and promotion of tourist and convention business and shall include athletic stadiums. The balance of the money collected from the imposition of this tax shall be used for the purposes set forth in KRS 91A.350. Proceeds of the tax shall not be used as a subsidy in any form to any hotel, motel, or restaurant. Money not expended by the commission during any fiscal year shall be used to make up a part of the commission's budget for its next fiscal year.

(3) ***An urban-county government may impose an additional tax, not to exceed one percent (1%) of the room rents included in this subsection. This additional tax shall be collected and administered in the same manner as the regular tax with the exception that this additional tax shall be used for the purpose of funding the purchase of development rights program provided for under Section 4 of this Act.***

(4) The commission, with the approval of the tax levying body, may borrow money to pay its obligations that cannot be paid at maturity out of current revenue from the transient room tax, but shall not borrow a sum greater than can be repaid out of the revenue anticipated from the transient room tax during the year the money is borrowed. The commission may pledge its securities for the repayment of any sum borrowed.

(5)[~~(4)~~] The fiscal court or legislative body of a city establishing a commission pursuant to subsection (1) or (2) of KRS 91A.350 and, in its own name, a commission established pursuant to subsection (1) of KRS 91A.350 is authorized and empowered to issue revenue bonds pursuant to KRS Chapter 58 for public projects. Bonds issued for the purposes of KRS 91A.350 to 91A.390, may be used to pay any cost for the acquisition of real estate, the construction of buildings and appurtenances, the preparation of plans and specifications, and legal and other services incidental to the project or to the issuance of the bonds. The payment of the bonds, with interest, may be secured by a pledge of and a first lien on all of the receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Bond and interest obligations issued pursuant to this section shall not constitute an indebtedness of the county or city. All bonds sold under the authority of this section shall be subject to competitive bidding as provided by law, and shall bear interest at a rate not to exceed that established for bonds issued for public projects under KRS Chapter 58.

(6)[~~(5)~~] A commission established pursuant to subsection (3) of KRS 91A.350 is authorized and empowered to issue revenue bonds in its own name, payable solely from its income and revenue, pursuant to KRS Chapter 58 for revenue bonds for public projects. Bonds issued for the purposes of KRS 91A.350 to 91A.390, may be used to pay any cost for the acquisition of real estate, the construction of buildings and appurtenances, the preparation of plans and specifications, and legal and other services incidental to the project or to the issuance of the bonds. The payment of the bonds, with interest, may be secured by a pledge of and a first lien on all of the receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Bond and interest obligations issued pursuant to this section shall not constitute an indebtedness of the county. All bonds sold pursuant to this section shall be subject to competitive bidding as provided by law, and shall not bear interest at rates exceeding those for bonds issued for public projects under KRS Chapter 58.

Section 9. KRS 91A.392 is amended to read as follows:

(1) In addition to the three percent (3%) transient room tax authorized by KRS 91A.390 and the one percent (1%) transient room tax authorized by KRS 153.440, the fiscal court in a county containing a city of the first class may levy an additional transient room tax not to exceed two percent (2%) of the rent for every occupancy of a suite, room, or rooms charged by all persons, companies, corporations, or other similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or similar accommodations businesses.

(2) All money collected from the tax authorized by this section shall be applied toward the retirement of bonds issued pursuant to KRS 91A.390***(5)***[~~(4)~~] to finance in part the expansion of a government-owned convention facility located in the central business district of the city of the first class located in the county.

(3) After the retirement of the bonds provided for in this section, the additional transient room tax levied pursuant to this section shall be void, and the fiscal court shall take action to repeal the ordinance which levied the tax.

HB 673, AN ACT relating to wireless enhanced emergency 911 systems.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 12 of this Act, unless the context requires otherwise:

(1) "Administrator" means the state administrator of CMRS emergency telecommunications.

(2) "Automatic location identification", or "ALI" means an enhanced 911 service capability that enables the automatic display of information defining the approximate geographic location of the wireless telephone used to place a 911 call and includes the term "pseudo-automatic number identification."

(3) "Automatic number identification", or "ANI" means an enhanced 911 service capability that enables the automatic display on an ALI screen of the ten-digit, or equivalent, wireless telephone number used to place a 911 call.

(4) "CMRS" means commercial mobile radio service under Sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. sec. 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, as it existed on August 10, 1993. The term includes the term "wireless" and service provided by any wireless real time two-way voice communication device, including radio-telephone communications used in cellular telephone service, personal communications service, and the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line.

(5) "CMRS Board" or "board" means the Commercial Mobile Radio Service Emergency Telecommunications Board of Kentucky.

(6) "CMRS connection" means a mobile handset telephone number assigned to a CMRS customer.

(7) "CMRS customer" means a person to whom a mobile handset telephone number is assigned and to whom CMRS is provided in return for compensation.

(8) "CMRS Fund" means the commercial mobile radio service emergency telecommunications fund.

(9) "CMRS provider" means a person or entity who provides CMRS to an end user, including resellers.

(10) "CMRS service charge" means the CMRS emergency telephone service charge levied under subsection (3) of Section 5 of this Act and collected under Section 8 of this Act.

(11) "FCC order" means the Order of the Federal Communications Commission, FCC Docket No. 94-102, adopted effective October 1, 1996, including any subsequent amendments or modifications thereof.

(12) "Local exchange carrier" or "LEC" means any person or entity who is authorized to provide telephone exchange service or exchange access in the Commonwealth.

(13) "Local government" means any city, county, charter county, or urban-county government of the Commonwealth, or any other governmental entity maintaining a PSAP.

(14) "Mobile telephone handset telephone number" means the ten (10) digit number assigned to a CMRS connection.

(15) "Proprietary information" means information held as private property, including customer lists and other related information, technology descriptions, technical information, or trade secrets.

(16) "Pseudo-automatic number identification" means a wireless enhanced 911 service capability that enables the automatic display of the number of the cell site or cell face.

(17) "Public safety answering point" or "PSAP" means a communications facility that is assigned the responsibility to receive 911 calls originating in a given area and, as appropriate, to dispatch public safety services or to extend, transfer, or relay 911 calls to appropriate public safety agencies.

(18) "Service supplier" means a person or entity who provides local exchange telephone service to a telephone subscriber.

(19) "Wireless enhanced 911 system," "wireless E911 system," "wireless enhanced 911 service," or "wireless E911 service" means an emergency telephone system that provides the user of the CMRS connection with wireless 911 service and, in addition, directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated and provides the capability for automatic number identification and automatic location identification features in accordance with the requirements of the FCC order.

SECTION 2. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby created the Commercial Mobile Radio Service Emergency Telecommunications Board of Kentucky, the "CMRS Board," consisting of eight (8) members, appointed by the Governor as follows: three (3) members shall be employed by or representative of the interest of CMRS providers; one (1) member shall be a mayor of a city of the first or second class or urban-county government or their designee containing a public safety answering point; one (1) nonvoting member shall be appointed from a list of local exchange landline telephone companies' representatives submitted by the Kentucky Telephone Association; and one (1) member shall be appointed from lists of candidates submitted to the Governor by the Kentucky Emergency Number Association and the Association of Public Communications Officials. The commissioner of the State Police, or the commissioner's designee, and the CMRS emergency telecommunications administrator also shall be members of the board. Any vacancy on the board shall be filled in the same manner as the original appointment.

(2) The commissioner and administrator shall serve by virtue of their office. The other members shall be appointed no later than August 15, 1998, for a term of four (4) years and until their successors are appointed and qualified, except that of the first appointments, one (1) shall be for a term of one (1) year, one (1) shall be for a term of two (2) years, one (1) for a term of three (3) years, and two (2) shall be for a term of four (4) years.

(3) In addition to the administrator, appointed by the Governor under Section 3 of this Act, and other staff authorized under Section 5 of this Act, the Finance and Administration Cabinet shall provide staff services and carry out administrative duties and functions as directed by the board. The board shall be attached to the Finance and Administration Cabinet for administrative purposes only and shall operate as an independent entity within state government.

(4) The board members shall serve without compensation but shall be reimbursed in accordance with KRS 45.101 for expenses incurred in connection with their official duties as members of the board.

(5) All administrative costs and expenses incurred in the operation of the board, including payments under subsection (4) of this section, shall be paid from that portion of the CMRS fund that is authorized under Section 6 of this Act to be used by the board for administrative purposes.

SECTION 3. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) The Governor shall appoint a state administrator of commercial mobile radio service emergency telecommunications, subject to confirmation by the Senate, from a list of no more than three (3) candidates recommended by the CMRS Board. The administrator shall serve at the pleasure of the Governor. Vacancies shall be filled in the same manner as the original appointment. The CMRS Board shall set the administrator's compensation, which shall be paid from that portion of the CMRS fund that is authorized under subsection (1) of Section 6 of this Act to be used by the board for administrative purposes.

(2) The administrator of CMRS emergency telecommunications shall serve as a member of the CMRS Board, and as the coordinator and administrative head of the board and shall conduct the day-to-day operations of the board.

(3) The administrator shall, with the advice of the board, coordinate and direct a statewide effort to expand and improve wireless enhanced emergency telecommunications capabilities and responses throughout the state, including but not limited to the implementation of wireless E911 service requirements of the FCC order and rules and regulations adopted in carrying out that order. In this regard, the administrator shall:

(a) Obtain, maintain, and disseminate information relating to emergency telecommunications technology, advances, capabilities, and techniques;

(b) Coordinate and assist in the implementation of advancements and new technology in the operation of emergency telecommunications in the state; and

(c) Implement compliance throughout the state with the wireless E911 service requirements established by the FCC order and any rules or regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC order.

SECTION 4. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

There is established the commercial mobile radio service emergency telecommunications fund, the "CMRS fund," an insured, interest-bearing account to be administered and maintained by the CMRS Board. The CMRS service charge shall *have uniform application within the boundaries of the Commonwealth. No charge other than the CMRS service charge is authorized to be levied by any person or entity for providing wireless 911 service or wireless E911 service. The board shall deposit all revenues derived under Section 8 of this Act into the fund, and shall direct disbursements from the fund according to the provisions of Section 6 of this Act. Moneys in the CMRS fund shall not be the property of the Commonwealth and shall not be subject to appropriation by the General Assembly. Moneys deposited or to be deposited into the CMRS fund shall not:*

(1) Be loaned to the Commonwealth or to any instrumentality or agency thereof;

(2) Be subject to transfer to the Commonwealth or any agency or instrumentality thereof, except for purposes specifically authorized by Sections 1 to 12 of this Act; or

(3) Be expended for any purpose other than a purpose authorized by Sections 1 to 12 of this Act.

SECTION 5. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

The board shall administer the provisions of Sections 1 to 12 of this Act, and shall have the following powers and duties:

(1) To review, evaluate, and approve or disapprove the plans or plan modifications that are submitted to the board for complying with the wireless E911 service requirements established by the FCC order and by any rules or regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC order;

(2) To develop standards to be followed by the board in reviewing, evaluating, approving, or disapproving the plans or plan modifications that are submitted to the board;

(3) To collect the CMRS service charge from each CMRS connection within the Commonwealth. The CMRS service charge shall be seventy cents ($0.70) per month per CMRS connection, and shall be collected in accordance with Section 8 of this Act beginning August 15, 1998. The amount of the CMRS service charge shall not be increased except by act of the General Assembly;

(4) To review the rate of the CMRS service charge at least once every eighteen (18) months and, at its discretion, to decrease the rate or recommend that the General Assembly increase the rate if the board determines that changing the rate is necessary to achieve the purposes of Sections 1 to 12 of this Act. The first cost study shall be completed on or before July 1, 1999, and shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and the board shall recommend, on the basis of the cost study, whether legislation to increase the CMRS service charge should be proposed during the 2000 Regular Session of the General Assembly;

(5) To administer and maintain the CMRS fund according to the provisions of Section 4 of this Act, and promptly to deposit all revenues from the CMRS service charge into the CMRS fund;

(6) To make disbursements from the CMRS fund, according to the allocations and requirements established in Section 6 of this Act;

(7) To establish procedures and guidelines to be followed by the board in reviewing, evaluating, and approving or disapproving disbursements from the CMRS fund and requests for disbursements made in accordance with Section 6 of this Act;

(8) To resolve conflicts regarding reimbursable costs and expenses under subsections (2) and (3) of Section 6 of this Act;

(9) To submit annual reports to the Auditor of Public Accounts no later than sixty (60) days after the close of each fiscal year, which shall provide an accounting for all CMRS service charges deposited into the CMRS fund during the preceding fiscal year and all disbursements to CMRS providers and PSAPs during the preceding fiscal year;

(10) To employ consultants, engineers, and other persons and employees as may be, in the judgment of the board, essential to the board's operations, functions, and responsibilities, and to fix and pay their compensation from funds available to the CMRS board;

(11) To acquire, by gift, purchase, installment purchase, or lease, any equipment necessary to carry out the board's purposes and duties;

(12) To retain any and all information, including all proprietary information, that is submitted to the board by CMRS providers and PSAPs, for the purposes of maintaining it and verifying its accuracy;

(13) To retain, with approval by the Auditor of Public Accounts, an independent certified public accountant who shall audit, once every eighteen (18) months, the books of the board, CMRS providers, and PSAPs eligible to request or receive disbursements from the CMRS fund under Section 6 of this Act for the following purposes:

  (a) To verify the accuracy of collection, receipts, and disbursements of all revenues derived from the CMRS service charge and the number of wireless E911 calls received by each PSAP eligible to request or receive disbursements from the CMRS fund; and

  (b) To determine whether the revenues generated by the CMRS service charge equal, exceed, or are less than the costs incurred in order to comply with the FCC order.

The independent certified public accountant shall make a report of the audits to the board and to the appropriate chief executive officer or officers of the CMRS providers and PSAPs. The board shall incorporate the auditor's findings in its studies of the CMRS service charge required by subsection (4) of this section. All information with respect to the audits shall be released to the public or published only in aggregate amounts which do not identify or allow identification of numbers of subscribers or revenues attributable to individual CMRS providers;

(14) To ensure that all carriers have an equal opportunity to participate in the wireless E911 system; and

(15) To ensure that wireless E911 systems are compatible with wireline E911 systems.

SECTION 6. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

The moneys in the CMRS fund shall be apportioned among the approved uses of the fund as specified in this section. The board shall make individual disbursements from the fund upon such terms and conditions necessary in view of the amount of revenues on deposit at the time each request for disbursement is reviewed and approved.

(1) Not more than two and one-half percent (2.5%) of the total monthly revenues deposited into the CMRS fund shall be disbursed or reserved for disbursement by the board to pay the administrative costs and expenses incurred in the operation of the board, including the compensation of the administrator and expenses incurred pursuant to subsections (10), (11), and (13) of Section 5 of this Act.

(2) From the balance of the total monthly revenues deposited into the CMRS fund after the amounts disbursed or reserved for disbursement under subsection (1) of this section have been subtracted, fifty percent (50%) shall be distributed to PSAPs eligible to receive disbursement from the CMRS fund under subsection (4) of this section who actually request disbursement, as follows:

(a) Twenty-five percent (25%) shall be distributed according to the "PSAP pro rata formula," whereby each receives a percentage determined by dividing one (1) by the total number of PSAPs eligible to request and actually requesting disbursements under subsection (4) of this section; and

(b) Twenty-five percent (25%) shall be distributed according to the "PSAP volume formula," whereby each receives a percentage determined by dividing the number of wireless E911 calls received by that PSAP in the previous calendar year by the total number of wireless E911 calls received in the previous calendar year by all PSAPs located within the boundaries of the Commonwealth that are eligible to receive and actually requesting disbursements under subsection (4) of this section.

All amounts distributed to PSAPs under this subsection shall be used by the PSAPs solely for the purposes of answering, routing, and properly disposing of CMRS 911 calls, and of complying with the wireless E911 service requirements established by the FCC order and any rules and regulations which are or may be adopted by the Federal Communications Commission pursuant to the FCC order, including the payment of costs and expenses incurred in designing, upgrading, purchasing, leasing, programming, testing, installing, or maintaining all necessary data, hardware, and software required in order to provide wireless E911 service.

(3) The balance of the total monthly revenues deposited into the CMRS fund which remains after the disbursements or disbursement reservations prescribed by subsections (1) and (2) of this section have been made shall be distributed to CMRS providers licensed to do business in the Commonwealth solely for the purpose of reimbursing the actual expenses incurred by the CMRS providers in complying with the wireless E911 service requirements established by the FCC order and any rules and regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC order, including, but not limited to, costs and expenses incurred for designing, upgrading, purchasing, leasing, programming, testing, installing, or maintaining all necessary data, hardware, and software required in order to provide wireless E911 service. Sworn invoices shall be presented to the board in connection with any request for reimbursement under this subsection, and approval by a majority vote of the board shall be required prior to any disbursement, which approval shall not be withheld unreasonably. In no event shall any invoice for reimbursement be approved for payment of costs that are not related to compliance with requirements established by the FCC order, or for payment of any costs incurred by a CMRS provider exceeding one hundred twenty-five percent (125%) of the CMRS emergency service charges remitted by that CMRS provider, unless prior approval for the expenditures was given by the CMRS Board. If the total amount of invoices submitted to the CMRS Board and approved for payment exceeds the amount in the CMRS fund in any month. CMRS providers that have invoices approved for payment shall receive a pro rata share of the fund available that month, based on approved invoices, and the balance of the payments shall be carried over to the following months until all of the approved payments are made.

(4) Notwithstanding any other provision of the law, no PSAP shall be eligible to request or receive a disbursement from the CMRS fund under subsection (2) of this section unless and until the PSAP:

(a) Is expressly certified as a PSAP by the CMRS Board, upon written application to the CMRS Board;

(b) Demonstrates that the PSAP is located within the boundaries of a local government that has adopted an ordinance either imposing a special tax, license, or fee as authorized by KRS 65.760(3) or establishing other

means of funding wireline 911 emergency telephone service;

(c) Demonstrates that the administrator of the PSAP sent a request for wireless, E911 service to a CMRS provider, and that the infrastructure of the local exchange carrier will support wireless E911 service;

(d) Provides an accounting of the number of wireless E911 calls received by the PSAP during the prior calendar year; and

(e) Either demonstrates that the PSAP has made the investment which is necessary to allow the PSAP to receive and utilize the data elements associated with wireless E911 service, or provides to the board a binding resolution, duly adopted by the governing authority of the PSAP, committing the PSAP to expend funds to lease or purchase emergency telephone equipment, including necessary computer hardware and software, for database provisioning, for addressing, and for the other nonrecurring costs of establishing wireless E911 service.

SECTION 7. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) The CMRS Board shall implement the provisions of Sections 1 to 12 of this Act through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A.

(2) As soon as practicable after its creation, the board shall promulgate regulations:

(a) Establishing procedures for the submission of plans or modifications of plans to the board, for its review and approval or disapproval, for complying with the wireless E911 service requirements established by the FCC order and any rules and regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC order, including, but not limited to, projections of anticipated costs and expenses necessary for designing, upgrading, purchasing, leasing, programming, testing, installing, or maintaining on an ongoing basis all necessary data, hardware, and software required in order to provide this service;

(b) Establishing procedures and guidelines to be followed by the board in reviewing, evaluating, and approving or disapproving the plans or modifications of plans that are submitted to it in accordance with the procedures promulgated under paragraph (a) of this subsection;

(c) Establishing procedures and guidelines to be followed by the board in reviewing, evaluating, and approving or disapproving disbursements from the CMRS fund and requests for disbursements under subsection (2) and (3) of Section 6 of this Act; and

(d) Establishing procedures and guidelines for resolving disputes regarding reimbursable costs and expenses under subsections (2) and (3) of Section 6 of this Act.

SECTION 8. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) Each CMRS provider shall act as a collection agent for the CMRS fund and shall, as part of the provider's normal monthly billing process, collect the CMRS service charges levied upon CMRS connections under subsection (2) of Section 5 of this Act from each CMRS connection to whom the billing provider provides CMRS. Each billing provider shall list the CMRS service charge as a separate entry on each bill which includes a CMRS service charge. If a CMRS provider receives a partial payment for a monthly bill from a CMRS customer, the provider shall first apply the payment against the amount the CMRS customer owes the CMRS provider.

(2) A CMRS provider has no obligation to take any legal action to enforce the collection of the CMRS service charges for which any CMRS customer is billed. Collection actions to enforce the collection of the CMRS service charge against any CMRS customer may, however, be initiated by the state, on behalf of the board, in the Circuit Court of the county where the bill for CMRS service is regularly delivered, and the reasonable costs and attorneys' fees which are incurred in connection with any such collection action may be awarded by the court to the prevailing party in the action.

(3) State and local taxes shall not apply to CMRS service charges.

(4) To reimburse itself for the cost of collecting and remitting the CMRS service charge, each CMRS provider may deduct and retain from the CMRS service charges it collects during each calendar month an amount not to exceed one and one-half percent (1.5%) of the gross aggregate amount of CMRS service charges it collected that month.

(5) All CMRS service charges imposed under Sections 1 to 12 of this Act collected by each CMRS provider, less the administrative fee described in subsection (4) of this section, are due and payable to the board monthly and shall be remitted on or before sixty (60) days after the end of the calendar month. Collection actions may be initiated by the state, on behalf of the board, in the Franklin Circuit Court or any other court of competent jurisdiction, and the reasonable costs and attorneys' fees which are incurred in connection with any such collection action may be awarded by the court to the prevailing party in the action.

SECTION 9. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

Not withstanding any other provision of law, no CMRS provider or service supplier, nor their employees, directors, officers, or agents, except in cases of wanton and willful misconduct or bad faith, shall be liable for any damages in a civil action or subject to criminal prosecution resulting from death or injury to any person or from damage to property incurred by any person in connection with developing, adopting, establishing, participating in, implementing, maintaining, or providing access to a CMRS system for the purposes of providing wireless 911 service or E911 service in compliance with the wireless E911 service requirements established by the FCC order and any rules and regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC orders: in connection with the quality of the service; in connection with ensuring that any 911 call goes through properly; or in connection with providing access to CMRS service in connection with providing wireless 911 service or E911 service.

SECTION 10. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

Each CMRS provider shall provide customer mobile handset telephone numbers and names to PSAPs when required by the board. Funds from the CMRS fund may be used to pay for the costs associated with providing this information. Although customer mobile handset telephone numbers and names shall be available to PSAPs, and to the board, this information shall remain the property of the disclosing CMRS provider and shall be used only in providing emergency response services to 911 calls. Mobile handset telephone numbers and names which are required to be provided under this section constitute confidential proprietary information and shall not be released to any person for purposes other than for including the numbers and names in the emergency telephone system database and for providing the numbers and names to permit a response to police, fire, medical, or other emergency situations. Notwithstanding any other provision of the law, no proprietary information provided to PSAPs under this section shall be subject to subpoena of the PSAP or otherwise released to any person other than to the submitting CMRS provider, the administrator, the board, and the independent certified public accountant retained by the board under subsection (13) of Section 5 of this Act without the express permission of the submitting CMRS provider. General information collected by the independent certified public accountant shall only be released or published in aggregate amounts which do not identify or allow identification of numbers of subscribers or revenues attributable to an individual CMRS provider.

SECTION 11. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

Wireless emergency telephone service shall not be used for personal use but shall be used solely for the purpose of communications by the public in emergency situations. Any person who knowingly uses or attempts to use wireless emergency telephone service for a purpose other than obtaining public safety assistance or who knowingly uses or attempts to use wireless emergency telephone service in an effort to avoid any CMRS charges shall be guilty of a Class A misdemeanor. If the value of the wireless emergency telephone service obtained in a manner prohibited by this section or the value of the CMRS charges exceeds one hundred dollars ($100), the offense may be prosecuted as a Class D felony.

SECTION 12. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 12 of this Act shall not be construed as enabling the Commonwealth of Kentucky, including the Public Service Commission of Kentucky, to regulate CMRS in contravention of Section 332(c)(3) of the Communications Act of 1934, as amended, 47 U.S.C. sec. 332(c)(3).

Section 13. KRS 65.750 is amended to read as follows:

As used in KRS 65.755 and 65.760*:*~~[,]~~

(1) "911 emergency telephone service" means a telephone service which provides the user of the public telephone system the ability to *place calls to a public safety answering point on a twenty-four (24) hour basis and* reach local emergency service agencies~~[on a twenty-four (24) hour basis,]~~ by dialing the digits 9-1-1. Such a service is capable, at minimum, of transmitting requests for law enforcement, firefighting, and emergency medical and ambulance services to a public safety agency or other provider that provides the requested service at the place where the call originates. A 911 emergency telephone service may also provide for other emergency services. *The term "911 emergency telephone service" includes the term wireline "enhanced 911 system," which means an emergency telephone system that provides the caller with wireline emergency 911 system service and, in addition, directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated and provides the capability for automatic number identification, pseudo-automatic number identification, and automatic location identification features. The term "911 emergency telephone service" does not include the term "wireless enhanced 911 system," "wireless enhanced 911 service," or "wireless E911 service" as used in Sections 1 to 12 of this Act.*

(2) For the purposes of this section:

(a) "Automatic location identification", or "ALI" means an enhanced 911 service capability that enables the automatic display of information defining the approximate geographic location of the wireless telephone used to place a 911 call and includes the term "pseudo-automatic number identification."

(b) "Automatic number identification", or "ANI" means an enhanced 911 service capability that enables the automatic display on the ALI screen of the ten (10) digit, or equivalent, wireless telephone number used to place a 911 call.

(c) "Pseudo-automatic number identification" means a wireless enhanced 911 service capability that enables the automatic display of the number of the cell site or cell face.

(d) "Public safety answering point" or "PSAP" means a communication facility that is assigned the responsibility to receive 911 calls originating in a given area and, as appropriate, to dispatch public safety services or to extend, transfer, or relay 911 calls to appropriate public safety agencies.

The Committee Substitute to **HB 673** is as follows:

AN ACT relating to wireless enhanced emergency 911 systems.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 12 of this Act, unless the context requires otherwise:

(1) "Administrator" means the state administrator of CMRS emergency telecommunications.

(2) "Automatic location identification", or "ALI" means an enhanced 911 service capability that enables the automatic display of information defining the approximate geographic location of the wireless telephone used to place a 911 call and includes the term "pseudo-automatic number identification."

(3) "Automatic number identification", or "ANI" means an enhanced 911 service capability that enables the automatic display on an ALI screen of the ten-digit, or equivalent, wireless telephone number used to place a 911 call.

(4) "CMRS" means commercial mobile radio service under Sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. sec. 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, as it existed on August 10, 1993. The term includes the term "wireless" and service provided by any wireless real time two-way voice communication device, including radio-telephone communications used in cellular telephone service, personal communications service, and the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line.

(5) "CMRS Board" or "board" means the Commercial Mobile Radio Service Emergency Telecommunications Board of Kentucky.

(6) "CMRS connection" means a mobile handset telephone number assigned to a CMRS customer.

(7) "CMRS customer" means a person to whom a mobile handset telephone number is assigned and to whom CMRS is provided in return for compensation.

(8) "CMRS Fund" means the commercial mobile radio service emergency telecommunications fund.

(9) "CMRS provider" means a person or entity who provides CMRS to an end user, including resellers.

(10) "CMRS service charge" means the CMRS emergency telephone service charge levied under subsection (3) of Section 5 of this Act and collected under Section 8 of this Act.

(11) "FCC order" means the Order of the Federal Communications Commission, FCC Docket No. 94-102, adopted effective October 1, 1996, including any subsequent amendments or modifications thereof.

(12) "Local exchange carrier" or "LEC" means any person or entity who is authorized to provide telephone exchange service or exchange access in the Commonwealth.

(13) "Local government" means any city, county, charter county, or urban-county government of the Commonwealth, or any other governmental entity maintaining a PSAP.

(14) "Mobile telephone handset telephone number" means the ten (10) digit number assigned to a CMRS connection.

(15) "Proprietary information" means information held as private property, including customer lists and other related information, technology descriptions, technical information, or trade secrets.

(16) "Pseudo-automatic number identification" means a wireless enhanced 911 service capability that enables the automatic display of the number of the cell site or cell face.

(17) "Public safety answering point" or "PSAP" means a communications facility that is assigned the responsibility to receive 911 calls originating in a given area and, as appropriate, to dispatch public safety services or to extend, transfer, or relay 911 calls to appropriate public safety agencies.

(18) "Service supplier" means a person or entity who provides local exchange telephone service to a telephone subscriber.

(19) "Wireless enhanced 911 system," "wireless E911 system," "wireless enhanced 911 service," or "wireless E911 service" means an emergency telephone system that provides the user of the CMRS connection with wireless 911

service and, in addition, directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated and provides the capability for automatic number identification and automatic location identification features in accordance with the requirements of the FCC order.

SECTION 2. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby created the Commercial Mobile Radio Service Emergency Telecommunications Board of Kentucky, the "CMRS Board," consisting of eight (8) members, appointed by the Governor as follows: three (3) members shall be employed by or representative of the interest of CMRS providers; one (1) member shall be a mayor of a city of the first or second class or urban-county government or their designee containing a public safety answering point; one (1) nonvoting member shall be appointed from a list of local exchange landline telephone companies' representatives submitted by the Kentucky Telephone Association; and one (1) member shall be appointed from lists of candidates submitted to the Governor by the Kentucky Emergency Number Association and the Association of Public Communications Officials. The commissioner of the State Police, or the commissioner's designee, and the CMRS emergency telecommunications administrator also shall be members of the board. Any vacancy on the board shall be filled in the same manner as the original appointment.

(2) The commissioner and administrator shall serve by virtue of their office. The other members shall be appointed no later than August 15, 1998, for a term of four (4) years and until their successors are appointed and qualified, except that of the first appointments, one (1) shall be for a term of one (1) year, one (1) shall be for a term of two (2) years, one (1) for a term of three (3) years, and two (2) shall be for a term of four (4) years.

(3) In addition to the administrator, appointed by the Governor under Section 3 of this Act, and other staff authorized under Section 5 of this Act, the Finance and Administration Cabinet shall provide staff services and carry out administrative duties and functions as directed by the board. The board shall be attached to the Finance and Administration Cabinet for administrative purposes only and shall operate as an independent entity within state government.

(4) The board members shall serve without compensation but shall be reimbursed in accordance with KRS 45.101 for expenses incurred in connection with their official duties as members of the board.

(5) All administrative costs and expenses incurred in the operation of the board, including payments under subsection (4) of this section, shall be paid from that portion of the CMRS fund that is authorized under Section 6 of this Act to be used by the board for administrative purposes.

SECTION 3. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) The Governor shall appoint a state administrator of commercial mobile radio service emergency telecommunications, subject to confirmation by the Senate, from a list of no more than three (3) candidates recommended by the CMRS Board. The administrator shall serve at the pleasure of the Governor. Vacancies shall be filled in the same manner as the original appointment. The CMRS Board shall set the administrator's compensation, which shall be paid from that portion of the CMRS fund that is authorized under subsection (1) of Section 6 of this Act to be used by the board for administrative purposes.

(2) The administrator of CMRS emergency telecommunications shall serve as a member of the CMRS Board, and as the coordinator and administrative head of the board and shall conduct the day-to-day operations of the board.

(3) The administrator shall, with the advice of the board, coordinate and direct a statewide effort to expand and improve wireless enhanced emergency telecommunications capabilities and responses throughout the state, including but not limited to the implementation of wireless E911 service requirements of the FCC order and rules and regulations adopted in carrying out that order. In this regard, the administrator shall:

(a) Obtain, maintain, and disseminate information relating to emergency telecommunications technology, advances, capabilities, and techniques;

(b) Coordinate and assist in the implementation of advancements and new technology in the operation of emergency telecommunications in the state; and

(c) Implement compliance throughout the state with the wireless E911 service requirements established by the FCC order and any rules or regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC order.

SECTION 4. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

There is established the commercial mobile radio service emergency telecommunications fund, the "CMRS fund," an insured, interest-bearing account to be administered and maintained by the CMRS Board. The CMRS service charge shall have uniform application within the boundaries of the Commonwealth. No charge other than the CMRS service charge is authorized to be levied by any person or entity for providing wireless 911 service or wireless E911 service. The board shall deposit all revenues derived under Section 8 of this Act into the fund, and shall direct disbursements from the fund according to the provisions of Section 6 of this Act. Moneys in the CMRS fund shall not be the property of the

Commonwealth and shall not be subject to appropriation by the General Assembly. Moneys deposited or to be deposited into the CMRS fund shall not:

(1) Be loaned to the Commonwealth or to any instrumentality or agency thereof;

(2) Be subject to transfer to the Commonwealth or any agency or instrumentality thereof, except for purposes specifically authorized by Sections 1 to 12 of this Act; or

(3) Be expended for any purpose other than a purpose authorized by Sections 1 to 12 of this Act.

SECTION 5. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

The board shall administer the provisions of Sections 1 to 12 of this Act, and shall have the following powers and duties:

(1) To review, evaluate, and approve or disapprove the plans or plan modifications that are submitted to the board for complying with the wireless E911 service requirements established by the FCC order and by any rules or regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC order;

(2) To develop standards to be followed by the board in reviewing, evaluating, approving, or disapproving the plans or plan modifications that are submitted to the board;

(3) To collect the CMRS service charge from each CMRS connection within the Commonwealth. The CMRS service charge shall be seventy cents ($0.70) per month per CMRS connection, and shall be collected in accordance with Section 8 of this Act beginning August 15, 1998. The amount of the CMRS service charge shall not be increased except by act of the General Assembly;

(4) To review the rate of the CMRS service charge at least once every eighteen (18) months and, at its discretion, to decrease the rate or recommend that the General Assembly increase the rate if the board determines that changing the rate is necessary to achieve the purposes of Sections 1 to 12 of this Act. The first cost study shall be completed on or before July 1, 1999, and shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and the board shall recommend, on the basis of the cost study, whether legislation to increase the CMRS service charge should be proposed during the 2000 Regular Session of the General Assembly;

(5) To administer and maintain the CMRS fund according to the provisions of Section 4 of this Act, and promptly to deposit all revenues from the CMRS service charge into the CMRS fund;

(6) To make disbursements from the CMRS fund, according to the allocations and requirements established in Section 6 of this Act;

(7) To establish procedures and guidelines to be followed by the board in reviewing, evaluating, and approving or disapproving disbursements from the CMRS fund and requests for disbursements made in accordance with Section 6 of this Act;

(8) To resolve conflicts regarding reimbursable costs and expenses under subsections (2) and (3) of Section 6 of this Act;

(9) To submit annual reports to the Auditor of Public Accounts no later than sixty (60) days after the close of each fiscal year, which shall provide an accounting for all CMRS service charges deposited into the CMRS fund during the preceding fiscal year and all disbursements to CMRS providers and PSAPs during the preceding fiscal year;

(10) To employ consultants, engineers, and other persons and employees as may be, in the judgment of the board, essential to the board's operations, functions, and responsibilities, and to fix and pay their compensation from funds available to the CMRS board;

(11) To acquire, by gift, purchase, installment purchase, or lease, any equipment necessary to carry out the board's purposes and duties;

(12) To retain any and all information, including all proprietary information, that is submitted to the board by CMRS providers and PSAPs, for the purposes of maintaining it and verifying its accuracy;

(13) To retain, with approval by the Auditor of Public Accounts, an independent certified public accountant who shall audit, once every eighteen (18) months, the books of the board, CMRS providers, and PSAPs eligible to request or receive disbursements from the CMRS fund under Section 6 of this Act for the following purposes:

  (a) To verify the accuracy of collection, receipts, and disbursements of all revenues derived from the CMRS service charge and the number of wireless E911 calls received by each PSAP eligible to request or receive disbursements from the CMRS fund; and

  (b) To determine whether the revenues generated by the CMRS service charge equal, exceed, or are less than the costs incurred in order to comply with the FCC order.

The independent certified public accountant shall make a report of the audits to the board and to the appropriate chief executive officer or officers of the CMRS providers and PSAPs. The board shall incorporate the auditor's findings in its studies of the CMRS service charge required by subsection (4) of this section. All information with *respect to the audits shall be released to the public or published only in aggregate amounts which do not identify or allow identification of numbers of subscribers or revenues attributable to individual CMRS providers;*

(14) To ensure that all carriers have an equal opportunity to participate in the wireless E911 system; and

(15) To ensure that wireless E911 systems are compatible with wireline E911 systems.

SECTION 6. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

The moneys in the CMRS fund shall be apportioned among the approved uses of the fund as specified in this section. The board shall make individual disbursements from the fund upon such terms and conditions necessary in view of the amount of revenues on deposit at the time each request for disbursement is reviewed and approved.

(1) Not more than two and one-half percent (2.5%) of the total monthly revenues deposited into the CMRS fund shall be disbursed or reserved for disbursement by the board to pay the administrative costs and expenses incurred in the operation of the board, including the compensation of the administrator and expenses incurred pursuant to subsections (10), (11), and (13) of Section 5 of this Act.

(2) From the balance of the total monthly revenues deposited into the CMRS fund after the amounts disbursed or reserved for disbursement under subsection (1) of this section have been subtracted, fifty percent (50%) shall be distributed to PSAPs eligible to receive disbursement from the CMRS fund under subsection (4) of this section who actually request disbursement, as follows:

(a) Twenty-five percent (25%) shall be distributed according to the "PSAP pro rata formula," whereby each receives a percentage determined by dividing one (1) by the total number of PSAPs eligible to request and actually requesting disbursements under subsection (4) of this section; and

(b) Twenty-five percent (25%) shall be distributed according to the "PSAP volume formula," whereby each receives a percentage determined by dividing the number of wireless E911 calls received by that PSAP in the previous quarter by the total number of wireless E911 calls received in the previous quarter by all PSAPs located within the boundaries of the Commonwealth that are eligible to receive and actually requesting disbursements under subsection (4) of this section.

All amounts distributed to PSAPs under this subsection shall be used by the PSAPs solely for the purposes of answering, routing, and properly disposing of CMRS 911 calls, and of complying with the wireless E911 service requirements established by the FCC order and any rules and regulations which are or may be adopted by the Federal Communications Commission pursuant to the FCC order, including the payment of costs and expenses incurred in designing, upgrading, purchasing, leasing, programming, testing, installing, or maintaining all necessary data, hardware, and software required in order to provide wireless E911 service.

(3) The balance of the total monthly revenues deposited into the CMRS fund which remains after the disbursements or disbursement reservations prescribed by subsections (1) and (2) of this section have been made shall be distributed to CMRS providers licensed to do business in the Commonwealth solely for the purpose of reimbursing the actual expenses incurred by the CMRS providers in complying with the wireless E911 service requirements established by the FCC order and any rules and regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC order, including, but not limited to, costs and expenses incurred for designing, upgrading, purchasing, leasing, programming, testing, installing, or maintaining all necessary data, hardware, and software required in order to provide wireless E911 service. Sworn invoices shall be presented to the board in connection with any request for reimbursement under this subsection, and approval by a majority vote of the board shall be required prior to any disbursement, which approval shall not be withheld unreasonably. In no event shall any invoice for reimbursement be approved for payment of costs that are not related to compliance with requirements established by the FCC order, or for payment of any costs incurred by a CMRS provider exceeding one hundred twenty-five percent (125%) of the CMRS emergency service charges remitted by that CMRS provider, unless prior approval for the expenditures was given by the CMRS Board. If the total amount of invoices submitted to the CMRS Board and approved for payment exceeds the amount in the CMRS fund in any month, CMRS providers that have invoices approved for payment shall receive a pro rata share of the fund available that month, based on approved invoices, and the balance of the payments shall be carried over to the following months until all of the approved payments are made.

(4) Notwithstanding any other provision of the law, no PSAP shall be eligible to request or receive a disbursement from the CMRS fund under subsection (2) of this section unless and until the PSAP:

(a) Is expressly certified as a PSAP by the CMRS Board, upon written application to the CMRS Board;

(b) Demonstrates that the PSAP is located within the boundaries of a local government that has adopted an ordinance either imposing a special tax, license, or fee as authorized by KRS 65.760(3) or establishing other means of funding wireline 911 emergency telephone service;

(c) Demonstrates that the administrator of the PSAP sent a request for wireless, E911 service to a CMRS

provider, and that the infrastructure of the local exchange carrier will support wireless E911 service;

(d) Provides an accounting of the number of wireless E911 calls received by the PSAP during the prior calendar year; and

(e) Either demonstrates that the PSAP has made the investment which is necessary to allow the PSAP to receive and utilize the data elements associated with wireless E911 service, or provides to the board a binding resolution, duly adopted by the governing authority of the PSAP, committing the PSAP to expend funds to lease or purchase emergency telephone equipment, including necessary computer hardware and software, for database provisioning, for addressing, and for the other nonrecurring costs of establishing wireless E911 service.

SECTION 7. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) The CMRS Board shall implement the provisions of Sections 1 to 12 of this Act through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A.

(2) As soon as practicable after its creation, the board shall promulgate regulations:

(a) Establishing procedures for the submission of plans or modifications of plans to the board, for its review and approval or disapproval, for complying with the wireless E911 service requirements established by the FCC order and any rules and regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC order, including, but not limited to, projections of anticipated costs and expenses necessary for designing, upgrading, purchasing, leasing, programming, testing, installing, or maintaining on an ongoing basis all necessary data, hardware, and software required in order to provide this service;

(b) Establishing procedures and guidelines to be followed by the board in reviewing, evaluating, and approving or disapproving the plans or modifications of plans that are submitted to it in accordance with the procedures promulgated under paragraph (a) of this subsection;

(c) Establishing procedures and guidelines to be followed by the board in reviewing, evaluating, and approving or disapproving disbursements from the CMRS fund and requests for disbursements under subsection (2) and (3) of Section 6 of this Act; and

(d) Establishing procedures and guidelines for resolving disputes regarding reimbursable costs and expenses under subsections (2) and (3) of Section 6 of this Act.

SECTION 8. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) Each CMRS provider shall act as a collection agent for the CMRS fund and shall, as part of the provider's normal monthly billing process, collect the CMRS service charges levied upon CMRS connections under subsection (2) of Section 5 of this Act from each CMRS connection to whom the billing provider provides CMRS. Each billing provider shall list the CMRS service charge as a separate entry on each bill which includes a CMRS service charge. If a CMRS provider receives a partial payment for a monthly bill from a CMRS customer, the provider shall first apply the payment against the amount the CMRS customer owes the CMRS provider.

(2) A CMRS provider has no obligation to take any legal action to enforce the collection of the CMRS service charges for which any CMRS customer is billed. Collection actions to enforce the collection of the CMRS service charge against any CMRS customer may, however, be initiated by the state, on behalf of the board, in the Circuit Court of the county where the bill for CMRS service is regularly delivered, and the reasonable costs and attorneys' fees which are incurred in connection with any such collection action may be awarded by the court to the prevailing party in the action.

(3) State and local taxes shall not apply to CMRS service charges.

(4) To reimburse itself for the cost of collecting and remitting the CMRS service charge, each CMRS provider may deduct and retain from the CMRS service charges it collects during each calendar month an amount not to exceed one and one-half percent (1.5%) of the gross aggregate amount of CMRS service charges it collected that month.

(5) All CMRS service charges imposed under Sections 1 to 12 of this Act collected by each CMRS provider, less the administrative fee described in subsection (4) of this section, are due and payable to the board monthly and shall be remitted on or before sixty (60) days after the end of the calendar month. Collection actions may be initiated by the state, on behalf of the board, in the Franklin Circuit Court or any other court of competent jurisdiction, and the reasonable costs and attorneys' fees which are incurred in connection with any such collection action may be awarded by the court to the prevailing party in the action.

SECTION 9. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

Not withstanding any other provision of law, no CMRS provider or service supplier, nor their employees, directors, officers, or agents, except in cases of negligence or wanton and willful misconduct or bad faith, shall be liable for any damages in a civil action or subject to criminal prosecution resulting from death or injury to any person or from damage to property *incurred by any person in connection with developing, adopting, establishing, participating in, implementing, maintaining, or providing access to a CMRS system for the purposes of providing wireless 911 service or E911 service in compliance with the wireless E911 service requirements established by the FCC order and any rules and regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC orders: in connection with the quality of the service; in connection with ensuring that any 911 call goes through properly; or in connection with providing access to CMRS service in connection with providing wireless 911 service or E911 service.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

Each CMRS provider shall provide customer mobile handset telephone numbers and names to PSAPs when required by the board. Each CMRS provider shall provide a quarterly report to the board of the number of calls the provider forwarded to each PSAP during that quarter. Funds from the CMRS fund may be used to pay for the costs associated with providing this information. Although customer mobile handset telephone numbers and names shall be available to PSAPs, and to the board, this information shall remain the property of the disclosing CMRS provider and shall be used only in providing emergency response services to 911 calls. Mobile handset telephone numbers and names which are required to be provided under this section constitute confidential proprietary information and shall not be released to any person for purposes other than for including the numbers and names in the emergency telephone system database and for providing the numbers and names to permit a response to police, fire, medical, or other emergency situations. Notwithstanding any other provision of the law, no proprietary information provided to PSAPs under this section shall be subject to subpoena of the PSAP or otherwise released to any person other than to the submitting CMRS provider, the administrator, the board, and the independent certified public accountant retained by the board under subsection (13) of Section 5 of this Act without the express permission of the submitting CMRS provider. General information collected by the independent certified public accountant shall only be released or published in aggregate amounts which do not identify or allow identification of numbers of subscribers or revenues attributable to an individual CMRS provider.

SECTION 11. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

Wireless emergency telephone service shall not be used for personal use but shall be used solely for the purpose of communications by the public in emergency situations. Any person who knowingly uses or attempts to use wireless emergency telephone service for a purpose other than obtaining public safety assistance or who knowingly uses or attempts to use wireless emergency telephone service in an effort to avoid any CMRS charges shall be guilty of a Class A misdemeanor. If the value of the wireless emergency telephone service obtained in a manner prohibited by this section or the value of the CMRS charges exceeds one hundred dollars ($100), the offense may be prosecuted as a Class D felony.

SECTION 12. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 12 of this Act shall not be construed as enabling the Commonwealth of Kentucky, including the Public Service Commission of Kentucky, to regulate CMRS in contravention of Section 332(c)(3) of the Communications Act of 1934, as amended, 47 U.S.C. sec. 332(c)(3).

Section 13. KRS 65.750 is amended to read as follows:

As used in KRS 65.755 and 65.760*:*[~~,~~]

(1) "911 emergency telephone service" means a telephone service which provides the user of the public telephone system the ability to *place calls to a public safety answering point on a twenty-four (24) hour basis and* reach local emergency service agencies[~~ on a twenty-four (24) hour basis,~~] by dialing the digits 9-1-1. Such a service is capable, at minimum, of transmitting requests for law enforcement, firefighting, and emergency medical and ambulance services to a public safety agency or other provider that provides the requested service at the place where the call originates. A 911 emergency telephone service may also provide for other emergency services. *The term "911 emergency telephone service" includes the term wireline "enhanced 911 system," which means an emergency telephone system that provides the caller with wireline emergency 911 system service and, in addition, directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated and provides the capability for automatic number identification, pseudo-automatic number identification, and automatic location identification features. The term "911 emergency telephone service" does not include the term "wireless enhanced 911 system," "wireless enhanced 911 service," or "wireless E911 service" as used in Sections 1 to 12 of this Act.*

(2) For the purposes of this section:

- *(a) "Automatic location identification", or "ALI" means an enhanced 911 service capability that enables the automatic display of information defining the approximate geographic location of the wireless telephone used to place a 911 call and includes the term "pseudo-automatic number identification."*
- *(b) "Automatic number identification", or "ANI" means an enhanced 911 service capability that enables the automatic display on the ALI screen of the ten (10) digit, or equivalent, wireless telephone number used to place a 911 call.*
- *(c) "Pseudo-automatic number identification" means a wireless enhanced 911 service capability that enables the automatic display of the number of the cell site or cell face.*

(d) "Public safety answering point" or "PSAP" means a communication facility that is assigned the responsibility to receive 911 calls originating in a given area and, as appropriate, to dispatch public safety services or to extend, transfer, or relay 911 calls to appropriate public safety agencies.

HCR 77, A CONCURRENT RESOLUTION directing the Legislative Research Commission to establish a special interim study committee to study the feasibility, benefits, and implementation of a strategy for a Rails to Trails Program throughout the Commonwealth.

WHEREAS, the conversion of abandoned or unused railroad right-of-way to pedestrian and nonmotorized vehicle roadways has become national policy through the National Trails Systems Act; and

WHEREAS, the Commonwealth of Kentucky has an abundance of abandoned and unused railroads; and

WHEREAS, Kentucky ranks 47th in the United States with only four miles of rail trails. Currently there are 1.65 miles at Cadiz, KY and 2 miles at Louisville. Significant opportunities are being lost; and

WHEREAS, the conversion of abandoned or unused railroads to trails has been shown to benefit tourism, business development, preservation of transportation options, historic preservation, recreation opportunities, health, and other public benefits;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The Legislative Research Commission shall establish a special interim study committee to study the feasibility, benefits, and implementation strategy for a Rails to Trails Program throughout the Commonwealth of Kentucky. The study committee shall be composed of fifteen members of the General Assembly with Senate and House co-chairs appointed by the Legislative Research Commission. The study committee shall include the Chair of the Senate Economic Development and Labor Committee, and the Chairs of both the House Economic Development Committee, and the House Tourism Development and Energy Committee.

Section 2. The special interim study committee shall report its findings and recommendations to the Legislative Research Commission by July 30, 1999.

Section 3. Staff services to be utilized in completing this study are estimated to cost $15,000. These staff services shall be provided from the regular Commission budget and are subject to the limitations and other research responsibilities of the Commission.

The Committee on Licensing and Occupations reported **HB 565**, with Committee Substitute attached thereto, **HB 602**, **HB 609**, **HB 632**, and **HB 649** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 565, AN ACT relating to alcoholic beverages.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 243 IS CREATED TO READ AS FOLLOWS:

The board may compel obedience to its lawful orders by injunction or other proper proceedings in Franklin Circuit Court or any other court of competent jurisdiction and the proceedings shall have priority over all pending cases.

Section 2. KRS 241.060 is amended to read as follows:

The board shall have the following functions, powers, and duties:

(1) To promulgate reasonable administrative regulations governing ***procedures***[~~the procedure~~] relative to ***the*** applications for and revocations of licenses***,***[~~ and relative to all other matters over which the board has jurisdiction, and for~~] the supervision and control of ***the use,*** manufacture, sale, transportation, storage, advertising, and trafficking of alcoholic beverages***, and all other matters over which the board has jurisdiction***. Administrative regulations need not be uniform in their application but may vary in accordance with reasonable classifications;

(2) To limit in its sound discretion the number of licenses of each kind or class to be issued in this state or any political subdivision, and restrict the locations of licensed premises. To this end***,*** the board may make reasonable division and subdivision of the state or any political subdivision into districts. Administrative regulations relating to the granting, refusal, and revocation of licenses may be different within the several divisions ***or***[~~of~~] subdivisions;

(3) To hold hearings[~~ to be conducted~~] in accordance with the provisions of KRS Chapter 13B. The department may pay witnesses the per diem and mileage provided in KRS 421.015;

(4) To conduct hearings and appeals under KRS 241.150, 241.200, 243.470, and 243.520 and render final orders upon the subjects of the hearings and appeals;

(5) ***To destroy evidence in the department's possession after all administrative and judicial proceedings are conducted;***

(6) To suspend, revoke, or cancel for cause, after a hearing in accordance with KRS Chapter 13B, any license issued under KRS 243.020 to 243.670;

(7)[~~(6)~~] To[~~ be required, if violation of KRS Chapter 241, KRS 243.020 to 243.670, or KRS Chapter 244 has taken place on the premises within the knowledge of the owner, or was committed or permitted in or upon premises owned by a licensee, to~~] prohibit the issuance of a license for the premises until the expiration of two (2) years from the time the offense was committed ***if a violation of KRS Chapter 241, KRS 243.020 to 243.670, or KRS Chapter 244 has taken place on the premises which the licensee knew of or should have known of, or was committed or permitted in or on the premises owned by the licensee***;

(8)[~~(7)~~] To suspend a license for any cause for which the board is authorized to exercise its discretion as to revoking a license; and

(9)[~~(8)~~] To promulgate administrative regulations and to provide forms that may be necessary to regulate the alcoholic beverage industry and to make KRS 244.380 to 244.470 effective.

Section 3. KRS 241.190 is amended to read as follows:

The functions of each city administrator shall be the same with respect to city licenses and regulations, as the functions of the board with respect to state licenses and regulations, except that no regulation adopted by a city administrator may be less stringent than the statutes relating to alcoholic beverage control, or than the regulations of the board[~~. No regulation of a city administrator shall become effective until it has been approved by the board~~].

Section 4. KRS 241.200 is amended to read as follows:

Appeals from the orders of each city administrator may be taken to the board, by filing with the board within ***thirty (30)***[~~ten (10)~~] days a certified copy of the orders of the city administrator. Matters at issue shall be heard by the board as upon an original proceeding. Appeals from orders of the city administrator shall be governed by KRS 243.550 to 243.590.

Section 5. KRS 241.250 is amended to read as follows:

The functions of each urban-county administrator shall be the same with respect to urban-county licenses and regulations, as the functions of the board with respect to state licenses and regulations, except that no regulation adopted by an urban-county administrator may be less stringent than the statutes relating to alcoholic beverage control, or than the regulations of the board[~~. No regulation of an urban-county administrator shall become effective until it has been approved by the board~~].

Section 6. KRS 241.260 is amended to read as follows:

Appeals from the orders of each urban-county administrator may be taken to the board by filing with the board within ***thirty (30)***[~~ten (10)~~] days a certified copy of the orders of the urban-county administrator. Matters at issue shall be heard by the board as upon an original proceeding. Appeals from orders of the urban-county administrator shall be governed by KRS 243.550 to 243.590.

Section 7. KRS 243.100 is amended to read as follows:

A natural[~~No~~] person shall ***not*** become a licensee under KRS 243.020 to 243.670 ***if he or she***[~~who~~]:

(1) ***(a)*** Has been convicted of any felony ***until five (5) years have passed from the date of conviction, release from custody or incarceration, parole, or termination of probation, whichever is later***[~~or misdemeanor directly or indirectly attributable to the use of alcoholic beverages, within two (2) years preceding the application~~];

(b) Has been convicted of any misdemeanor described under KRS 218A.050, 218A.060, 218A.070, 218A.080, 218A.090, 218A.100, 218A.110, 218A.120, or in the two (2) years immediately preceding the application;

(c) Has been convicted of any misdemeanor directly or indirectly attributable to the use of alcoholic beverages in the two (2) years immediately preceding the application;

(d)[~~(2)~~] Is under the age of twenty-one (21) years;

(e) Has had any license issued under this statute relating to the regulation of the manufacture, sale and transportation of alcoholic beverages revoked for cause or has been convicted of a violation of any such statute, until the expiration of two (2) years from the date of the revocation or conviction; or

(f)[~~(3)~~] Is not a citizen of the United States and has not had an actual, bona fide residence in this state for at least one (1) year before the date on which his ***or her*** application for a license is made. This subsection shall not apply to applicants for manufacturers' licenses, to applicants that are corporations authorized to do business in this state***,*** or to persons licensed on March 7, 1938***.***[~~;~~]

(2) [~~(4) Is~~]A partnership***, limited partnership, limited liability company,*** or corporation ***shall not be licensed if:***

(a) [~~, unless~~]Each member of the partnership or each of the directors, principal officers, or managers ***does not qualify under subsection (1)(a), (b), (c), and (d) of this section***[~~of the corporation has not been convicted of any misdemeanor or felony directly attributable to the use of alcoholic beverages, is twenty-one (21) years of age or~~

~~more and is a citizen of the United States~~];

(b)[~~(5)~~] ***It*** has had any license issued under this statute relating to the regulation of the manufacture, sale, and transportation of alcoholic beverages revoked for cause or has been convicted of a violation of any such statute, until the expiration of two (2) years from the date of the revocation or conviction; or

(c)[~~(6)~~]***It*** is a partnership or corporation, if any member of the partnership or any director***, manager,*** or principal officer of the corporation has had any license issued under any statute relating to the regulation of the manufacture, sale, and transportation of alcoholic beverages, revoked for cause or has been convicted of a violation of any such statute, until the expiration of ***the later of*** two (2) years from the date of the revocation or ***two (2) years from the date of*** conviction.

(3) The provisions of subsection (1)(a) and (b) shall apply to anyone applying for a new license under this chapter after July 15, 1998, but shall not apply to those who renew a license that was originally issued prior to July 15, 1998, or an application for a supplemental license where the original license was issued prior to July 15, 1998.

Section 8. KRS 243.250 is amended to read as follows:

A distilled spirits and wine retail drink license shall authorize the licensee to purchase, receive, possess, and sell distilled spirits and wine at retail by the drink for consumption on the licensed premises. ***The***[~~Such a~~] licensee shall purchase distilled spirits and wine only from licensed wholesalers and unless he ***or she*** also holds a retail package license he ***or she*** shall not buy or possess distilled spirits ***or wine*** in containers[~~ of a capacity~~] smaller than ***two***[~~seven~~] hundred[~~ fifty~~] ***(200)***[~~(750)~~] milliliters***. A licensee may purchase wine***[~~, but wine may be bought~~] in containers not smaller than one hundred (100) milliliters if the wine does not exceed fourteen percent (14%) alcohol by volume and the retail drink license is held by a restaurant or private club which receives a minimum of ***fifty***[~~forty~~] percent ***(50%)***[~~(40%)~~] of its income from the sale of food and has a minimum seating capacity of fifty (50) people at tables***. A licensee may buy mixed drinks***[~~, and mixed drinks may be bought~~] in containers of a capacity not smaller than three hundred fifty-five (355) milliliters, if the mixed drinks contain a substantial proportion of carbonated water. A retail drink license shall not authorize the ***licensee to sell***[~~sale of~~] distilled spirits or wine by the package.

Section 9. KRS 243.360 is amended to read as follows:

(1) ***Any person, corporation, partnership, or any other entity, except an applicant for the same license for the same premises, or an applicant for a special agent or solicitor's license, a bonded warehouse license, a freight forwarding license, a storage warehouse license, an industrial alcohol license, a nonindustrial alcohol license, a storage warehouse license, a nonbeverage alcohol license, a vendor license, a transporter's license, a Sunday license, or a temporary drink license shall, before applying for a license under KRS 243.030 and 243.040, advertise by publication under KRS 424.130(1)(b) his or her intention to apply for a license.***

(2) The notice shall conform in all material respects to the following requirements:

(a) The notice shall state: the name and address of the applicant if the applicant is an individual, the name and address of each partner and the name of the business and its address if the applicant is a partnership, and the name and address of each principal officer and director and the name and business address of the corporation if the applicant is a corporation;

(b) The notice shall specifically state the location of the premises for which the license is sought and the type of license being requested; and

(c) The notice shall state the date the application will be filed and shall contain the following statement: "Any person, association, corporation, or body politic may protest the granting of the license by writing the Department of Alcoholic Beverages, 1003 Twilight Trail, Suite A-2, Frankfort, Kentucky 40601, within thirty (30) days of the date of legal publication."

(3) A license shall not be issued until the thirty (30) day period in which a protest is permissible has expired. Any protest received after the thirty (30) day period has expired shall not be considered a valid legal protest by the board[~~Every person, except an applicant for renewal of the same license for the same premises, or an applicant for a special agent's or solicitor's license, an industrial alcohol license, a nonindustrial alcohol license, a bonded warehouse license, a freight forwarding license, a storage warehouse license or a temporary drink license shall, before applying for any license under KRS 243.030 or 243.040, advertise by publication pursuant to KRS Chapter 424 his intention to apply. The advertisement shall state the name and address of the applicant if he is an individual, the names and addresses of the members of partnership if the applicant is a partnership, as well as the name of the business and its address, or, if the applicant is a corporation, the names and addresses of the principal officers and directors of the corporation, as well as the name and address of the corporation itself, the location of the premises for which the license is sought, and the type of license to be applied for.~~

~~(2) The applicant shall attach to the application a newspaper clipping of the advertisement and proof of the publication as provided in KRS 424.170.~~

~~(3) The board shall not consider protests received more than thirty-seven (37) days after an application for a license under~~

~~KRS 243.030 is filed; nor shall it consider protests received more than seventeen (17) days after an application for a license under KRS 243.040 is filed; provided, however, that this subsection shall not apply to a church or a school which has not received actual notice as required by KRS 243.220]~~.

Section 10. KRS 243.390 is amended to read as follows:

(1) In addition to~~[such]~~ other information as the board may by ***administrative*** regulation require, every application for a license under KRS 243.020 to 243.670 shall contain the following information, given under oath:

(a) The name, age, ***Social Security number,*** address***,***~~[and]~~ residence***, and citizenship*** of each applicant~~[, and, if there is more than one (1) and they are partners, the partnership name and address, and the facts as to their citizenship]~~;

(b) ***If the applicant is a partner, the name, age, Social Security number, address, residence, and citizenship of each partner and the name and address of the partnership;***

(c) The name***, age, Social Security number,***~~[and]~~ address***, residence, and citizenship*** of each person interested~~[or to become interested]~~ in the business for which the license is sought, together with the nature of that interest, and, if the applicant is a corporation, ***limited partnership company, or limited liability company,*** the ***name, age, Social Security number, address, and residence***~~[names, addresses and ages]~~ of each officer, director***, member, partner,*** and managerial employee and the~~[facts as to their]~~ citizenship ***of each***, and the state under the laws of which the corporate applicant is incorporated ***or organized***. The department may require the names of all the stockholders ***and the percentage of stock held by each***;

(d)~~[(c)]~~The premises to be licensed, stating the street and number, if the premises ***has***~~[have]~~ a street number, and otherwise such a description ***that***~~[as]~~ will reasonably indicate the location of the premises~~[. The applicant shall also state the nature of his interest in the premises, and the name, age and address of any other person, either as principal or associate, who is interested with the applicant, either in the premises or in the business to be licensed, and the facts as to his citizenship]~~;

(e)~~[(d)]~~A statement that neither the applicant nor any other person referred to in this section has been convicted of***:*** any misdemeanor directly or indirectly attributable to~~[the use, manufacture, sale of or traffic in]~~ alcoholic beverages***; any violation of KRS 218A.050, 218A.060, 218A.070, 218A.080, 218A.090, 218A.100, 218A.110, 218A.120, or 218A.130 within the two (2) years immediately preceding the application;***~~[, or]~~ any felony, within ***five (5)***~~[two (2)]~~ years ***from the later of the date of parole or the date of conviction; or providing false information to the department*** preceding the application; and that ***the applicant or any other person referred to in this section***~~[he]~~ has not had any license that has been issued to him under any alcoholic beverage statute revoked for cause within two (2) years prior to the date of the application; and

(f)~~[(e)]~~ A statement that the applicant will in good faith abide by every ***state and local*** statute***, regulation,*** and ordinance relating to the manufacture, sale***, use of,*** and ***trafficking in***~~[transportation of]~~ alcoholic beverages~~[that may be in force in the location at which he seeks to do business, as well as all regulations of the board, and, if the applicant seeks to do business in a locality where local regulations are in effect, all regulations of the local alcoholic beverage control authority]~~.

(2) If, after a license has been issued, there is a change in any of the facts required to be set forth in the application, a verified supplemental statement in writing giving notice of the change shall be filed with the board within ten (10) days after the change.

(3) In giving any notice, or taking any action in reference to a license, the board may rely upon the information furnished in the application or in the supplemental statement connected with the application. ***This***~~[Such]~~ information, as against the licensee or applicant, shall be conclusively presumed to be correct. The information required to be furnished in the application or supplemental statement shall be deemed material in any prosecution for perjury.

Section 11. KRS 243.430 is amended to read as follows:

(1) ***The state administrator may reject any application for a license issued under KRS 243.030 and 243.040 if the application is incomplete or the correct fee has not been remitted with the application. In rejecting an application, the state administrator shall provide a written statement of the deficiencies contained in the application***~~[If the state administrator approves the application he shall issue the proper license]~~.

(2) ***A license for which public notice under Section 9 of this Act is required***~~[No retail drink, retail package, or special private club license]~~ shall ***not*** be issued in less than ***thirty (30)***~~[ten (10)]~~ days ***from the date the application is substantially complete, except the renewal of the license may be issued upon receipt of all necessary information by the state administrator with jurisdiction over the license***~~[or delivered in less than fifteen (15) days from the time the application and remittances were received by the state administrator; except that a retail package, retail drink, or special private club license shall not be issued to an applicant who has not held a license during the same or preceding license period, or for a premises for which a license has not been issued during the same or preceding license period, in less than twenty (20) days or delivered in less than thirty (30) days from the time the application and remittances were received by~~

~~the state administrator~~]. All remaining licenses provided for in KRS 243.030 shall be issued[~~ at any time~~] when, in the sound discretion of the distilled spirits administrator, all of the information necessary has been obtained.

Section 12. KRS 243.480 is amended to read as follows:

(1) Upon proceedings for the revocation of any license under KRS 243.520, the Alcoholic Beverage Control Board, or the local alcoholic beverage administrator, may in its or his ***or her*** discretion[~~, as the case may be,~~] order a suspension of the license for any cause for which it may, but is not required to, revoke the license under the provisions of KRS 243.490 and 243.500. However, the licensee may have the alternative, subject to the approval of the Alcoholic Beverage Control Board or the local alcoholic beverage administrator, to pay in lieu of part or all of the days of any suspension period, a sum as follows: Distillers, rectifiers, vintners, brewers, and blenders, one thousand dollars ($1,000) per day; wholesale liquor licensees, four hundred dollars ($400) per day; wholesale beer licensees, four hundred dollars ($400) per day; ***retail licensees authorized to sell distilled spirits, wine, or beer by the package or drink***[~~any license which by its terms authorize the sale of liquor by the drink~~], fifty dollars ($50) per day; ***and***[~~retail package liquor licensees, fifty dollars ($50) per day; retail beer licensees, twenty-five dollars ($25) per day;~~] all remaining licensees, ***fifty***[~~ten~~] dollars ***($50)***[~~($10)~~] per day.

(2) Payments in lieu of suspension collected by the Alcoholic Beverage Control Board shall be deposited in the State Treasury and credited to the general expenditure fund. Payments in lieu of suspension collected by local alcoholic beverage administrators shall be deposited and used as local alcoholic beverage license tax receipts are deposited and used.

(3) Appeals from orders of suspension and the procedure thereon shall be the same as are provided for orders of revocation in KRS ***Chapter 13B***[~~243.550 to 243.590~~].

Section 13. KRS 243.500 is amended to read as follows:

Any license issued under KRS 243.020 to 243.670 ***shall***[~~must~~] be revoked or suspended for the following causes:

(1) Conviction of the licensee or his agent or employee for selling any illegal beverages on the ***licensed*** premises[~~ licensed~~].

(2) Making any false, material statements in an application for a license ***or supplemental license***.

(3) Violation of the provisions of KRS 243.670.

(4) ***Conviction of the***[~~If, within a period of two (2) consecutive years, any~~] licensee or any of his clerks, servants, agents, or employees ***of:***

(a) [~~shall have been convicted of ~~]Two (2) violations of the terms and provisions of KRS Chapter 241, 243, or 244 or any act ***regulating***[~~heretofore or hereafter in effect relating to the regulation of~~] the manufacture, sale, and transportation of alcoholic beverages[~~ or if,~~] within ***two (2) consecutive years;***[~~such period, any licensee or any of his clerks, servants, agents, or employees shall have twice been convicted of any felony or of any misdemeanor directly or indirectly attributable to the use of intoxicating liquors, or of one (1) such felony and one (1) such misdemeanor~~]

(b) Two (2) misdemeanors directly or indirectly attributable to the use of intoxicating liquors within two (2) consecutive years; or

(c) Any felony.

(5) [~~Willful and deliberate ~~]Failure or default of a licensee to pay an excise tax or any part ***of the tax***[~~thereof,~~] or any penalties imposed by or under the provisions of any statutes, ordinances, or acts of Congress relative to taxation, or for a violation of any administrative regulations ***promulgated by***[~~of~~] the Revenue Cabinet made in pursuance thereof.

(6) Revocation of any license or permit provided in KRS 243.060, 243.070, 243.600, and 243.610, or granted under any act of Congress relative to the regulation of the manufacture, sale, and transportation of alcoholic beverages. Any license issued under KRS 243.020 to 243.670 ***shall***[~~must~~] be revoked or suspended ***if***[~~in the case of sale of alcoholic beverages by~~] the licensee ***sells the alcoholic beverages*** at a price in excess of the price set by federal or state regulations.

(7) Setting up, conducting, operating, or keeping, on the licensed premises, any gambling game, device, machine,[~~ or~~] contrivance,[~~ or~~] lottery***,***[~~ or~~] gift enterprise, [~~or ~~]handbook***,*** or facility for betting or transmitting bets on horse races; or permitting to be set up, conducted, operated, kept, or engaged in, on the licensed premises, any such game, device, machine, contrivance, lottery, gift enterprise, handbook, or facility. This section shall not apply to contests in which eligibility to participate is determined by chance and the ultimate winner is determined by skill and the licensee has no direct interest, or to the sale of lottery tickets sold under the provisions of KRS Chapter 154A.

(8) Conviction of the licensee, his agents, servants, or employees for:

(a) The sale or use upon the licensed premises of those items described in KRS 218A.050 to 218A.130 as controlled substances;

(b) Knowingly permitting the sale or use by patrons upon the licensed premises of those items described in KRS 218A.050 to 218A.130 as controlled substances***; or***

(c) Knowingly receiving stolen property upon the licensed premises.

Section 14. KRS 243.540 is amended to read as follows:

(1) ***If a license issued under KRS 243.020 to 243.670 is revoked, voluntarily surrendered, or subject to disposition by a court, or is not renewed by the licensee, or if an act of God requires the relocation or closure of the licensee's business the licensee's inventory shall be disposed of in accordance with the requirements set out in this section***[~~When a license issued under KRS 243.020 to 243.670 has been revoked the former licensee may, under the supervision of the state administrator, dispose of and transfer his stock of alcoholic beverages to a licensee, but such a disposition of stock on hand shall not be delayed longer than ninety (90) days in the case of distillers, rectifiers or vintners, longer than thirty (30) days in the case of wholesalers or distributors nor longer than twenty (20) days in the case of retailers~~].

(2) ***If a license issued by the department has been revoked, the former licensee may, under the supervision of the state administrator, dispose of and transfer his or her stock to another licensee if the disposition is completed within ninety (90) days and the licensee is a distiller, rectifier, vintner, or brewer. The disposition shall be completed within thirty (30) days if the licensee is a wholesaler or distributor or within twenty (20) days if the licensee is a retailer.***

(3) If a retail licensee in good standing with the department voluntarily ceases to operate his or her business, the following requirements shall apply to the disposition of the licensee's inventory:

(a) If the premises is still open to the public and the licensee has not yet surrendered the license, the licensee shall sell alcoholic beverages only to the public and shall not sell below costs;

(b) If a licensee has terminated his or her business and has surrendered his or her license to the department, he or she shall submit a written request for approval from the state administrator within ten (10) days in advance of the sale to dispose of the licensee's remaining inventory. The request shall identify the retailer who is purchasing the inventory, the proposed date of the sale , and the quantity, types, and brands of alcohol to be sold; and

(c) If a licensee has more than one (1) licensed retail premises and closes one (1) or more retail premises and seeks to transfer his or her inventory to another licensed retail premises he or she owns, he or she shall submit a request in writing to the state administrator at least ten (10) days before the inventory is transferred. The request shall identify the premises to which the alcohol is being transferred, the proposed date of the transfer, and the quantity, types, and brands of alcohol to be sold.

(4) If a retail licensee files for bankruptcy or is directed by a court to dispose of inventory to satisfy a lien or judgment, the inventory may be sold only to a retail alcoholic beverage licensee. The bankrupt licensee or the licensee subject to the court order shall notify the department of the sale and shall attach a copy of the court order or the judgment directing the sale and a list of the quantity, types, and brands of alcohol to be sold. Any licensee who purchases the inventory shall notify the department within five (5) days after the transfer of the specific inventory sold[~~Transfers under subsection (1) shall not be deemed violations of the provisions of KRS 243.120, 243.160, 243.250 or 243.300~~].

Section 15. KRS 243.630 is amended to read as follows:

(1) For purpose of this section "transfer" means:

(a) The transfer to a new person or entity of ten percent (10%) or more ownership interest in any license issued under KRS 243.020 to 243.670; or

(b) The transfer in bulk, and not in the ordinary course of business, of a major part of the fixtures, materials, supplies, merchandise, or other inventory of a licensee's business.

(2) Any[~~No~~] license issued under KRS 243.020 to 243.670 to any person for any licensed premises shall ***not*** be transferable or assignable to any other person or to any other premises or to any other part of the building containing the licensed premises, unless a transfer or assignment is authorized by the state administrator in the exercise of his sound discretion under KRS 243.640 or 243.650. For the purposes of this section each railroad dining car shall be deemed premises to be separately licensed.

(3) A licensee shall not acquire or otherwise dispose of any interest in a licensed premises or any license issued by the department, by sale of assets, stock, inventory, control or right of control, or activities on the licensed premises without prior approval of the state administrator. The state administrator shall grant approval if the person acquiring the interest meets the qualifications for a new applicant.

(4) Any acquisition of interest in a license without prior authorization shall be void.

(5) All applications for approval of a transfer shall be made in writing to the state administrator having jurisdiction over the license.

(6) Applications for approval of a transfer shall be made under oath or affirmation, shall be signed by both the transferor and the transferee, and shall contain such other information as the department may prescribe.

(7) The appropriate state administrator shall grant or deny the application within sixty (60) days of the date the application is substantially complete or on a later date that is mutually acceptable to the administrator and the transferee, but it shall not be acted upon before the end of the public protest period outlined in Section 9 of this Act.

(8) No licensee or other person seeking to acquire an interest in an existing license shall transfer control or assume control of any licensed premises by agreement or otherwise.

(9) A licensee shall not transfer his or her license or any interest in the license while any proceedings against the license or the licensee for a violation of any statute or regulation which may result in the suspension or revocation of the license are pending.

(10) A licensee shall not transfer his or her license or any interest he or she has in the license if the licensee owes a debt on the inventory to a wholesaler responsible for the collection and payment of the tax imposed under KRS 243.884.

(11) A licensee shall not transfer his or her license or any interest in the license if the licensee owes the Commonwealth of Kentucky for taxes as defined in subsection (5) of Section 13 of this Act. A transfer shall not take place until the department is notified by the Kentucky Revenue Cabinet that the licensee's indebtedness has been paid or resolved to the cabinet's satisfaction. This section shall not prohibit a transfer of a license or an interest in a license by a trustee in bankruptcy if all other requirements of this section are met.

Section 16. KRS 244.040 is amended to read as follows:

(1) *A*[~~No~~] brewer or distributor shall ***not*** sell[~~ any~~] alcoholic beverages to any person in this state for any consideration except for cash paid at or before the time of delivery.

For purposes of this section, "cash" includes the sale of malt beverages by electronic transfers if the following conditions are met:

(a) The use of electronic transfers shall be voluntary and shall be agreed to by the affected brewer, distributor, and retailer;

(b) The brewer shall not pay or credit back in any way to the distributor any share of the cost that is attributable to the electronic transfer;

(c) The distributor shall not pay or credit back in any way to the retailer any share of the cost that is attributable to the electronic fund transfer;

(d) The transfer of funds shall be initiated by the brewer or the distributor;

(e) The distributor may debit the retailer's bank account for the exact amount due based on the amount of alcoholic beverages delivered;

(f) Electronic fund transfers that are rejected or denied at the time of sale for any reason shall be treated in the same manner as checks drawn on insufficient funds; and

(g) Each participating retail licensee and each distributor maintain accurate records of all electronic fund transfers in accordance with department statutes and administrative regulations.

(2) *A*[~~No~~] brewer or distributor shall ***not*** furnish or deliver any ***returnable*** bottled malt beverage without collecting a minimum container charge or deposit of sixty cents ($0.60) per case of twenty-four (24) twelve-ounce bottles or *its*[~~the~~] equivalent[~~, thereof,~~] in the same manner that the price of the malt beverage is collected.

(3) This section shall not prohibit a licensee from crediting to a purchaser the actual prices charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid by the purchaser for containers or as a deposit on containers when the title is retained by the vendor, if the containers or packages have been returned to the brewer or distributor.

(4) No right of action shall exist to collect any claim for credit extended contrary to this section.

(5) This section shall not apply to sales by wholesalers or distributors to licensees that are private clubs or voluntary associations.

Section 17. KRS 244.080 is amended to read as follows:

A[~~No~~] retail licensee shall ***not*** sell, give away, or deliver any alcoholic beverages, or procure or permit any alcoholic beverages to be sold, given away, or delivered to:

(1) A minor, except that in any prosecution for selling alcoholic beverages to a minor it ***shall be***[~~is~~] an affirmative defense that the sale was induced by the use of false, fraudulent, or altered identification papers or other documents and that the appearance and character of the purchaser were such that his ***or her*** age could not have been ascertained by any other means and that the purchaser's appearance and character indicated strongly that he ***or she*** was of legal age to purchase alcoholic beverages. ***This***[~~Such~~] evidence may be introduced either in mitigation of the charge or as a defense to the charge itself.

(2) A person actually or apparently under the influence of alcoholic beverages.

(3) ***Anyone known to the seller or server to be*** an habitual drunkard or any person ***known to the seller or server to have been*** convicted of drunkenness as many as three (3) times within the most recent twelve (12) month period.

(4) Anyone known to the seller ***or server*** to have been convicted of any misdemeanor attributable directly or indirectly to the use of alcoholic beverages, or ***anyone known to the seller or server to have been convicted*** of a felony.

Section 18. KRS 244.085 is amended to read as follows:

(1) As used in KRS 244.083 and this section: "Premises" ***has the meaning it is given in KRS 241.010 and also*** means the place of business of a person licensed to sell alcoholic beverages including, in the case of drive-in establishments, the entire lot upon which the business establishment is situated.

(2) ***A***[~~No~~] person under 21 years of age shall ***not*** enter any premises licensed for the sale of alcoholic beverages for the purpose of purchasing or receiving any alcoholic beverages.

(3) ***A***[~~No~~] person under 21 years of age shall ***not*** possess for his or her own use, or purchase or attempt to purchase or have another purchase for him or her any alcoholic beverages. No person shall aid or assist any person under 21 years of age in purchasing or having delivered or served to him or her any alcoholic beverages.

(4) ***A***[~~No~~] person under 21 years of age shall ***not*** misrepresent his or her age for the purpose of inducing any licensee, or ***the licensee's agent, servant, or***[~~other~~] employee[~~ of any licensee~~], to sell or serve any alcoholic beverages to ***the underage***[~~such~~] person.

(5) ***A***[~~No~~] person under 21 years of age shall ***not*** use, or attempt to use any false, fraudulent, or altered identification card***,***[~~ or~~] paper***,*** or any other document to purchase or attempt to purchase or otherwise obtain any alcoholic beverage.

(6) Except as provided in Sections 19 and 20 of this Act, a licensee, or his or her agents, servants, or employees shall not permit any person under twenty-one (21) years of age to remain on any premises where alcoholic beverages are sold by the drink or consumed on the premises, unless:

(a) The usual and customary business of the establishment is a hotel, motel, restaurant, convention center, convention hotel complex, racetrack, simulcast facility, golf course, private club, park, fair, church, school, athletic complex, athletic arena, theater, distillery or brewery or winery tour, establishment where prebooked concerts with advance ticket sales are held, or any facility in which there is maintained in inventory on the premises for sale at retail no less than five thousand dollars ($5000) of food, groceries, and related products valued at cost. For purposes of this paragraph, house bands, disc jockeys, and karaoke are not considered concerts;

(b) All alcoholic beverage inventory is kept in a separate, locked department at all times when minors are on the premises; or

(c) Written approval has been granted by the department to allow minors on the premises until 10 p.m. where the sale of alcohol is incidental to a specific family or community event including, but not limited to, weddings, reunions, or festivals. The licensee's request shall be in writing and shall specifically describe the event for which approval is requested. The state administrator shall approve or deny the request in writing.

(7) Except as provided in subsection (6) of this section, a licensee or his or her agent, servant, or employee shall not allow any person under the age of twenty-one (21) to remain on any premises that sells alcoholic beverages by the package unless the underage person is accompanied by a parent or guardian or the usual and customary business of the establishment is a convenience store, grocery store, drugstore, or similar establishment.

(8) Except as provided in subsection (6) of this section, a person under the age of twenty-one (21) shall not remain on any premises that sells alcoholic beverages by the package unless he or she is accompanied by a parent or guardian or the usual and customary business of the establishment is a convenience store, grocery store, drugstore, or similar establishment.

Section 19. KRS 244.087 is amended to read as follows:

Persons at least eighteen (18) years of age may stock, arrange displays, accept payment for***,*** and sack malt beverages by the package, under the supervision of ***a person twenty (20) years of age or older***[~~an adult. Delivery of malt beverages away from the parking area of the licensed business premises shall not be performed by anyone under the age of twenty (20) years~~].

Section 20. KRS 244.090 is amended to read as follows:

(1) ***A***[~~No~~] person holding any license under KRS 243.020 to 243.670 shall ***not*** knowingly employ in connection with his ***or her*** business, any person who:

(a) Has been[~~ twice~~] convicted of any felony[~~, misdemeanor or offense or one (1) felony and one (1) misdemeanor directly or indirectly attributable to the use of intoxicating liquors,~~] within the last two (2) years***. The provisions of this paragraph shall apply to any new applicant for a license issued under this chapter after July 15, 1998, but shall not apply to renewals of licenses that were originally issued prior to July 15, 1998, or supplemental licenses related to an original license if the original license was issued prior to July 15, 1998***;

(b) ***Has been twice convicted of any misdemeanor or offense directly or indirectly attributable to the use of intoxicating liquors within the last two (2) years;***

(c) Is under the age of twenty (20) years, ***unless the person is employed:***[~~except;~~]

1. In a bottling house or room of a licensed distiller, vintner***,***[~~ or~~] brewer***,*** or rectifier;
2. In an office of a wholesaler or manufacturer ***that is*** maintained in a building separate from the warehouses or factory or as provided in KRS 244.087; or
3. In any of the following establishments***,*** if ***the*** employment is in a capacity that does not involve the sale or serving of alcoholic beverages:
    a. A restaurant that derives at least ***fifty***[~~thirty-five~~] percent ***(50%)***[~~(35%)~~] of its gross sales from the sale of food ***for consumption on the licensed premises***; or
    b. Any other establishment with alcoholic beverage sales not exceeding fifty percent (50%) of its gross sales***.***[~~;~~

~~(c) Is not a citizen of the United States; or~~]

(d) Within two (2) years prior to the date of his employment, has had any license issued under KRS 243.020 to 243.670 or under any other act or ordinance relating to the regulation of the manufacture, sale***,*** or transportation of alcoholic beverages revoked for cause.

(2) Violation of this section shall subject both employer and employee to penalties provided in this chapter, and shall be cause for revocation of license.

Section 21. KRS 244.290 is amended to read as follows:

(1) ***A***[~~No~~] premises ***that is licensed to sell***[~~for which there has been granted a license for the sale of~~] distilled spirits or wine at retail shall ***not*** be permitted to remain open[~~ for any purpose between midnight and 8 a.m., or at any time during the twenty-four (24) hours of a Sunday, or~~] during the hours the polls are open on any regular or primary election day ***unless the licensee provides a separate locked department in which all stock of distilled spirits and wine are kept during the hours the polls are open***[~~, provided, that if a licensee provides a separate department within his licensed premises capable of being locked and closed off, within which is kept all stocks of distilled spirits and wine, and all fixtures and apparatus connected with his business as a licensee, and said department is kept locked during the times mentioned above, he shall be deemed to have complied with this section; except that the city council, board of aldermen, or other municipal legislative body of cities of the first, second, third, or fourth class in which traffic in distilled spirits and wine is permitted under KRS Chapter 242 shall have the exclusive right and power, by ordinance duly enacted, to establish the hours and times in which distilled spirits and wine may be sold within its jurisdictional boundaries, and except further that the fiscal court of each county in which cities of the first, second, third, or fourth class are located shall have the exclusive right and power to establish the hours and times in which distilled spirits and wine may be sold over that portion of the county which lies without the corporate limits of such cities, except any portion in which distilled spirits and wine are prohibited from being sold. Provided, however, that no distilled spirits or wine may be sold in any portion of the counties containing cities of the first, second, third, or fourth class during the twenty-four (24) hours between 6 a.m. Sunday and 6 a.m. Monday, except as provided in KRS 243.050 and subsections (2), (4), and (6) of this section, and that no distilled spirits or wine may be sold on any primary or regular election day while the polls are still open; and provided, also, that all stocks of distilled spirits and wine must be kept locked during the hours which the licensee is prohibited from selling same~~].

(2) In any county containing a city of the first or second class in which the sale of distilled spirits and wine ***by the drink*** is permitted under KRS Chapter 242, an election on the question of permitting the sale of distilled spirits and wine by the drink on Sunday may be held as provided in KRS ***Chapter 242.***[~~242.020 to 242.040 and 242.060 to 242.120. In any election, the form of the proposition shall be, "Are you in favor of the sale of distilled spirits and wine by the drink between the hours of one p.m. and midnight on Sunday in (name of county)?"~~]

(3) Except as provided in Section 27 of this Act, a premise for which there has been granted a license for the sale of distilled spirits or wine at retail shall not remain open for any purposes between midnight and 6 a.m. or at any time during the twenty-four (24) hours of a Sunday, unless:

(a) The licensee provides a separate locked department in which all stocks of distilled spirits and wine are kept during those times; or

(b) The legislative body of a city of the first, second, third, or fourth class, or the fiscal court of a county containing a city of the first, second, third, or fourth class, has otherwise established the hours and times in which distilled spirits and wine may be sold within its jurisdictional boundaries.

(4)[~~(3)~~] In any county containing a city of the first or second class ***or any city located therein*** in which the sale of distilled spirits and wine[~~ by the drink~~] is permitted ***under KRS Chapter 242, the legislative body of the city or county may, by ordinance, permit the sale of distilled spirits and wine by the drink on Sunday from 1 p.m. until the designated***

closing hour of that locality at hotels, motels, or restaurants which:

(a) ***Have dining facilities with a minimum seating capacity of one hundred (100) people at tables; and***

(b) ***Receive at least fifty percent (50%) or more of their gross annual income from the dining facilities from the sale of food***[~~on Sunday as provided in subsections (2) and (4) of this section, holders of distilled spirits and wine retail drink licenses may apply to the administrator of the distilled spirits unit for a special Sunday sale retail drink license. Upon receipt of an application and payment of the prescribed fee, the administrator shall issue a license~~].

(5)[~~(4)~~] In any county containing a city of the first[~~ or second class~~] or in any city located therein in which ***the*** sale of distilled spirits and wine is permitted under KRS Chapter 242, the ***distilled spirits administrator may issue a license to holders of a distilled spirits and wine retail drink quota license or a special private club license which permits the sale of distilled spirits and wine by the drink on Sunday from 1 p.m. until the prevailing time for that locality***[~~respective legislative body of such city or fiscal court, of such areas, shall have the power by duly enacted ordinance, to permit the sale of distilled spirits and wine by the drink on Sunday from 1 p.m. until a closing hour to be established by the legislative body of the area concerned, by hotels, motels, and restaurants which are licensed for the retail sale of distilled spirits and wine by the drink and which have dining facilities with a minimum seating capacity of one hundred (100) people at tables and which receive at least fifty percent (50%) or more of their gross annual income from their dining facilities by the sale of food~~].

[~~(5) (a) Any hotel, motel, restaurant operation, convention center, or commercial airport which sells liquor on Sunday shall pay each of its employees wages at a rate of not less than the minimum wage as set forth in KRS 337.275(1), the provisions of KRS 337.275(2) and KRS 337.010(2)(a)6. notwithstanding.~~

~~(b) No employer shall use all or part of any tips or gratuities received by employees toward the payment of the statutory minimum wage as required under KRS 337.275(1). Nothing, however, shall prevent employees from entering into an agreement to divide tips or gratuities among themselves.~~]

(6) Any city of the fourth class or county containing a city of the fourth class which has enacted a comprehensive, regulatory ordinance relating to the licensing and operation of hotels, motels, inns, or restaurants for the sale of alcoholic beverages by the drink ***under***[~~as provided in~~] KRS 242.185(1), may also regulate and provide[~~ by ordinance~~] for the ***limited***[~~special~~] sale of distilled spirits and wine by the drink ***on Sundays if:***

(a) ***The limited Sunday drink***[~~as authorized by subsections (2) and (4) of this section. Such special~~] licenses ***are***[~~shall only be~~] issued ***only*** to those hotels, motels, inns, or restaurants authorized to sell alcoholic beverages by the drink ***under***[~~as provided in~~] KRS 242.185(3)***; and***

(b) ***The***[~~,~~] holders of distilled spirits and wine retail drink licenses ***have applied***[~~may apply~~] to the ***state*** administrator ***and meet all other legal requirements for obtaining a limited Sunday liquor by the drink license***[~~of the distilled spirits unit for the special retail drink license. Upon receipt of an application and payment of the prescribed fee, the administrator shall issue a license~~].

Section 22. KRS 244.295 is amended to read as follows:

(1) In any county containing an urban-county government, ***a***[~~no~~] premises ***that***[~~for which there~~] has been granted a license for the sale of distilled spirits or wine at retail shall ***not*** be permitted to remain open for any purpose between ***6 p.m.***[~~midnight~~] and 8 a.m., or at any time during the twenty-four (24) hours of a Sunday, or during the hours the polls are open on any regular ***or***[~~,~~] primary[~~, school or special~~] election day ***unless the***[~~, provided, that if a~~] licensee provides a separate department within his licensed premises capable of being locked and closed off, within which is kept all stocks of distilled spirits and wine, and all fixtures and apparatus connected with his business as a licensee, and ***the***[~~said~~] department is kept locked during the time mentioned above***. The licensee***[~~, he~~] shall be deemed to have complied with this section; except that the legislative body of an urban-county government in which traffic in distilled spirits and wine is permitted under KRS Chapter 242 shall have the exclusive right and power, by ordinance[~~ duly enacted~~], to establish the hours and times in which distilled spirits and wine may be sold within its jurisdictional boundaries. Provided, however,[~~ that no~~] distilled spirits or wine may ***not*** be sold in any portion of a county containing an urban-county government during the twenty-four (24) hours between 6 a.m. Sunday and 6 a.m. Monday, except as provided in subsections (2) and (3) of this section, and[~~ that no~~] distilled spirits or wine may ***not*** be sold on any election day while the polls are still open; and provided, also, that all stocks of distilled spirits and wine must be kept locked during the hours in which the licensee is prohibited from selling same.

(2) In any county containing an urban-county government in which the sale of distilled spirits and wine is permitted under KRS Chapter 242, an election on the question of permitting the sale of distilled spirits and wine by the drink on Sunday may be held as provided in KRS 242.020 to 242.040 and 242.060 to 242.120. In any election, the form of the proposition shall be, "Are you in favor of the sale of distilled spirits and wine by the drink between the hours of one p.m. and midnight on Sunday in (name of county)?"

(3) In any county containing an urban-county government in which the sale of distilled spirits and wine is permitted under

KRS Chapter 242, the legislative body of such urban-county government may by resolution or ordinance submit to the electorate a proposal to permit the sale of distilled spirits and wine by the drink, on Sunday from 1 p.m. until a closing hour specified in the proposal, by hotels, motels, convention centers, ***convention hotel complexes,*** restaurants***,*** ***racetracks,*** and commercial airports which are licensed for the retail sale of distilled spirits and wine by the drink and which have dining facilities with a minimum seating capacity of one hundred (100) people at tables and which receive at least fifty percent (50%) or more of gross annual income from dining facilities by the sale of food. The proposal to be submitted to the electorate shall be so framed that any voter who wishes to vote in favor of ***the***[~~such~~] limited Sunday sales of distilled spirits and wine by the drink may signify his approval by voting "yes" and any voter who wishes to vote against ***the***[~~such~~] limited Sunday sales of distilled spirits and wine by the drink may do so by voting "no." ***The***[~~Said~~] election shall be held on a date stipulated by the legislative body and the cost of the election shall be borne by the urban-county government. The proposal shall be published pursuant to KRS Chapter 424 and shall also be advertised by written or printed handbills posted at not less than five (5) conspicuous places in each precinct of the county for two (2) weeks before the election. The general election laws, including penalties for violations, shall apply to the election, except where those laws are inconsistent with the provisions of this section. ***The***[~~Any such~~] proposal submitted to the electorate shall be effective immediately if a majority of those voting on the proposal shall vote "yes."

(4) In any county containing an urban-county government in which the sale of distilled spirits and wine by the drink is permitted on Sunday as provided in subsections (2) and (3) of this section, holders of distilled spirits and wine retail drink licenses may apply to the administrator of the distilled spirits unit for a special Sunday sale retail drink license. Upon receipt of an application and payment of the prescribed fee, the administrator shall issue a license.

Section 23. KRS 244.360 is amended to read as follows:

All alcoholic beverage retailers[~~Each retailer of distilled spirits or wine by the package~~] shall have printed on the front window of the licensed premises the name of the licensee together with the inscription: "Kentucky Retail Package Liquor License No. ...." in uniform letters not less than three ***(3)***[~~and one-half (3 1/2)~~] inches in height.

Section 24. KRS 244.480 is amended to read as follows:

(1) Except as provided in subsection ***(3) of this section***[~~(2)~~], no brewer or distributor shall deliver any malt beverages on Sunday or between the hours of ***midnight***[~~7 p.m.~~] and 6 a.m. on any ***other***[~~week~~] day[~~, except Saturday, when the hours of deliveries shall be between 6 a.m. and midnight~~].

(2) Except as provided in subsection (3) of this section, no retailer shall sell, give away, or deliver any malt beverages between midnight and 6 a.m. or at any time during the twenty-four (24) hours of a Sunday or during the hours the polls are open on a primary or regular election day.

(3)[~~(2)~~] The legislative body of a city of the first, second, third, or fourth class ***or of a county containing a city of the first, second, third, or fourth class*** in which traffic in malt beverages is permitted by KRS Chapter 242, shall have the exclusive power[~~, subject to subsection (3), by ordinance,~~] to establish the times in which malt beverages may be sold within its jurisdictional boundaries***, including Sunday sales if the hours so fixed***[~~. The fiscal court of each county in which a city of the first, second, third, or fourth class is located shall have the exclusive power, subject to subsection (3), to establish the times in which malt beverages may be sold in that portion of the county which lies without the corporate limits of such a city, except any portion in which malt beverages are prohibited by KRS Chapter 242 from being sold.~~

~~(3) Notwithstanding subsections (1) and (2)~~]:

(a) [~~The hours so fixed by the legislative body of a city of the first, second, or third class, and by fiscal courts,~~]Shall not prohibit the sale, gift, or delivery of any malt beverages between 6 a.m. and midnight during ***any day, except Sunday***[~~week days~~]; and

(b) ***Prohibit the sale of***[~~No~~] malt beverages[~~ shall be sold~~] on any primary or regular election day ***during the hours***[~~while~~] the polls are[~~ still~~] open.

Section 25. KRS 244.990 is amended to read as follows:

(1) Any person who, by himself or acting through another, directly or indirectly, violates any of the provisions of this chapter for which no other penalty is provided, except KRS 244.380 to 244.470, shall, for the first offense, be guilty of a Class B misdemeanor; and for the second and each subsequent violation, he ***or she*** shall be guilty of a Class A misdemeanor. The penalties provided for in this subsection shall be in addition to the revocation of the offender's license. If the offender is a corporation, joint stock company, association, or fiduciary, the principal officer or officers responsible for the violation may be imprisoned.

(2) Any person who violates KRS 244.170 shall, upon the first conviction, be guilty of a Class A misdemeanor. Upon a second conviction he ***or she*** shall be guilty of a Class D felony. Upon the third and each subsequent conviction, he ***or she*** shall be guilty of a Class C felony.

(3) Any person who violates any of the provisions of KRS 244.480 to 244.600 shall be guilty of a violation.

(4) Any person, firm, or corporation violating any provision of KRS 244.083 and 244.085 shall be guilty of a violation and

each violation shall constitute a separate offense.

(5) Any person who violates the provisions of subsection (5) of KRS 244.085 shall, for the first offense, be guilty of a violation, and for each subsequent offense shall be guilty of a Class A misdemeanor.

(6) Any person who violates KRS 244.125 shall be guilty of a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.

(7) Any person who knowingly provides false or misleading information to the department, its employees, or investigators in an application, or during a field visit, inspection, or investigation shall be guilty of a Class D felony.

Section 26. KRS 243.040 is amended to read as follows:

The following kinds of malt beverage licenses may be issued by the administrator of the malt beverages unit, the fees for which shall be:

(1)	Brewer's license, per annum	$1,500.00
(2)	Microbrewery license, per annum	$ 250.00
(3)	Distributor's license, per annum	$ 200.00
(4)	Retailer's license per annum:	
	(a) New applicants	$ 200.00
	(b) Renewals	$ 75.00
(5)	Dining car license, per annum	$ 100.00
(6)	Transporter's license, per annum	$ 25.00
(7)	Special temporary license, per month or part of month	$ 12.50
(8)	Special off-premises storage license, per annum	$ 25.00
(9)	Distributor's storage, per annum	$ 50.00
(10)	Special beer transporter's license, per annum	$ 25.00

(11) Such other special licenses as the state board finds to be necessary for the administration of KRS Chapters 241, 243, and 244 and for the proper regulation and control of the trafficking in malt beverages, which may be provided for by regulation and adopted by the state board.

Applicants for special licenses provided for under the authority granted in subsection (11) may be exempt from so much of the provisions of subsection ***(1)(f)***[~~(3)~~] of KRS 243.100 and paragraph (c) of subsection (1) of KRS 244.090 as the board by regulation prescribes.

Section 27. KRS 243.050 is amended to read as follows:

(1) The department may issue a railroad system license to a railroad company upon the payment of ***the required***[~~a~~] fee[~~ of one thousand dollars ($1,000)~~]. This license tax shall be in lieu of all license and excise taxes which would otherwise be due by the holder in connection with the retailing of alcoholic beverages.

(2) The department may issue a commercial airlines system license to a commercial airlines system or charter flight system upon the payment of ***the required***[~~a~~] fee[~~ of $1,000~~]. This license fee shall be in lieu of all license and excise taxes which would otherwise be due by the holder in connection with the retailing of alcoholic beverages and the license may be renewed annually for a fee of $1,000. The license shall authorize the licensee to sell distilled spirits and wine by the drink and by miniature bottle, and malt beverages, upon regularly-scheduled or charter flights of the licensee, ***in***[~~into~~] and out of the State of Kentucky. The license shall authorize the licensee to store alcoholic beverages for retail sale at a location or locations, if operating from more than one airport in Kentucky, as designated on the license application.

(3) The department may issue a transporter's license to a commercial airline system, a charter flight system, or a commercial cargo system, upon the payment of ***the required fee***[~~$100~~]. This license may be renewed annually for a fee of $100. The license shall authorize the licensee to transport distilled spirits and wine and malt beverages, into and out of the State of Kentucky, upon regularly-scheduled or charter flights of the licensee. The license shall authorize, for the purpose of transportation, the storage of alcoholic beverages at a location or locations, if operating from more than one airport in Kentucky, as designated on the license application. This license shall authorize an airline to transport if both the consignor and consignee in each case are authorized by the laws of the states of their residence to sell, purchase, ship, or receive the alcoholic beverages.

(4) Where it is determined by the department to be in the best interest of promoting tourism, conventions, and the economic development of Kentucky or any part thereof, the department may issue a supplemental license for the retail sale of alcoholic beverages by the drink at convention centers, at horse race tracks licensed to conduct a race meeting under KRS Chapter 230, and at commercial airports through which more than five hundred thousand (500,000) passengers arrive or depart annually. Upon application by the holder of a retail alcoholic beverage license at a convention center, horse race track, or commercial airport as provided above, the department may establish the days when the supplemental license

will be valid at the specific location, including Sundays after 1 p.m. The supplemental license fee shall be one thousand dollars ($1,000) per year and shall be in addition to all other licenses and fees due by the holder in connection with the retailing of alcoholic beverages. The department may by regulation or special conditions of the supplemental permit establish such restrictions on the use of the license as will insure that it will be primarily for the benefit of the convention center business, the horse racing industry, and passengers at large commercial airports. Provided, however, that no provision of this subsection shall apply to any portion of a county containing an urban-county government.

Section 28. KRS 241.140 is amended to read as follows:

The functions of each county administrator shall be the same, with respect to local licenses and regulations, as the functions of the board with respect to state licenses and regulations, except that no regulation adopted by a county administrator may be less stringent than statutes relative to alcoholic beverage control or than the regulations of the board.[~~ No regulation of a county administrator shall become effective until it has been approved by the board.~~] If any city appoints its own administrator ***under***[~~as provided for in~~] KRS 241.170, the county administrator in that county shall have jurisdiction over only that portion of the county which lies outside the corporate limits of that city***, unless the department determines that the city does not have an adequate police force of its own or under KRS 70.540, 70.150, 70.160, and 70.170.***

Section 29. The following KRS section is repealed:

243.635 "Transfer" defined -- Transfer of license under specified circumstances prohibited.

The Committee Substitute to **HB 565** is as follows:

AN ACT relating to alcoholic beverages.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 243 IS CREATED TO READ AS FOLLOWS:

The board may compel obedience to its lawful orders by injunction or other proper proceedings in Franklin Circuit Court or any other court of competent jurisdiction and the proceedings shall have priority over all pending cases.

Section 2. KRS 241.060 is amended to read as follows:

The board shall have the following functions, powers, and duties:

(1) To promulgate reasonable administrative regulations governing ***procedures***[~~the procedure~~] relative to ***the*** applications for and revocations of licenses***,***[~~ and relative to all other matters over which the board has jurisdiction, and for~~] the supervision and control of ***the use,*** manufacture, sale, transportation, storage, advertising, and trafficking of alcoholic beverages***, and all other matters over which the board has jurisdiction***. Administrative regulations need not be uniform in their application but may vary in accordance with reasonable classifications;

(2) To limit in its sound discretion the number of licenses of each kind or class to be issued in this state or any political subdivision, and restrict the locations of licensed premises. To this end***,*** the board may make reasonable division and subdivision of the state or any political subdivision into districts. Administrative regulations relating to the granting, refusal, and revocation of licenses may be different within the several divisions ***or***[~~of~~] subdivisions;

(3) To hold hearings[~~ to be conducted~~] in accordance with the provisions of KRS Chapter 13B. The department may pay witnesses the per diem and mileage provided in KRS 421.015;

(4) To conduct hearings and appeals under KRS 241.150, 241.200, 243.470, and 243.520 and render final orders upon the subjects of the hearings and appeals;

(5) ***To destroy evidence in the department's possession after all administrative and judicial proceedings are conducted;***

(6) To suspend, revoke, or cancel for cause, after a hearing in accordance with KRS Chapter 13B, any license issued under KRS 243.020 to 243.670;

(7)[~~(6)~~] To[~~ be required, if violation of KRS Chapter 241, KRS 243.020 to 243.670, or KRS Chapter 244 has taken place on the premises within the knowledge of the owner, or was committed or permitted in or upon premises owned by a licensee, to~~] prohibit the issuance of a license for the premises until the expiration of two (2) years from the time the offense was committed ***if a violation of KRS Chapter 241, KRS 243.020 to 243.670, or KRS Chapter 244 has taken place on the premises which the owner knew of or should have known of, or was committed or permitted in or on the premises owned by the licensee***;

(8)[~~(7)~~] To suspend a license for any cause for which the board is authorized to exercise its discretion as to revoking a license; and

(9)[~~(8)~~] To promulgate administrative regulations and to provide forms that may be necessary to regulate the alcoholic beverage industry and to make KRS 244.380 to 244.470 effective.

Section 3. KRS 241.190 is amended to read as follows:

The functions of each city administrator shall be the same with respect to city licenses and regulations, as the functions of the board with respect to state licenses and regulations, except that no regulation adopted by a city administrator may be less stringent than the statutes relating to alcoholic beverage control, or than the regulations of the board[~~. No regulation of a city administrator shall become effective until it has been approved by the board~~].

Section 4. KRS 241.200 is amended to read as follows:

Appeals from the orders of each city administrator may be taken to the board, by filing with the board within ***thirty (30)***[~~ten (10)~~] days a certified copy of the orders of the city administrator. Matters at issue shall be heard by the board as upon an original proceeding. Appeals from orders of the city administrator shall be governed by KRS 243.550 to 243.590.

Section 5. KRS 241.250 is amended to read as follows:

The functions of each urban-county administrator shall be the same with respect to urban-county licenses and regulations, as the functions of the board with respect to state licenses and regulations, except that no regulation adopted by an urban-county administrator may be less stringent than the statutes relating to alcoholic beverage control, or than the regulations of the board[~~. No regulation of an urban-county administrator shall become effective until it has been approved by the board~~].

Section 6. KRS 241.260 is amended to read as follows:

Appeals from the orders of each urban-county administrator may be taken to the board by filing with the board within ***thirty (30)***[~~ten (10)~~] days a certified copy of the orders of the urban-county administrator. Matters at issue shall be heard by the board as upon an original proceeding. Appeals from orders of the urban-county administrator shall be governed by KRS 243.550 to 243.590.

Section 7. KRS 243.100 is amended to read as follows:

A natural[~~No~~] person shall ***not*** become a licensee under KRS 243.020 to 243.670 ***if he or she***[~~who~~]:

(1) ***(a)*** Has been convicted of any felony ***until five (5) years have passed from the date of conviction, release from custody or incarceration, parole, or termination of probation, whichever is later***[~~or misdemeanor directly or indirectly attributable to the use of alcoholic beverages, within two (2) years preceding the application~~];

(b) Has been convicted of any misdemeanor described under KRS 218A.050, 218A.060, 218A.070, 218A.080, 218A.090, 218A.100, 218A.110, 218A.120, or 218A.130 in the two (2) years immediately preceding the application;

(c) Has been convicted of any misdemeanor directly or indirectly attributable to the use of alcoholic beverages in the two (2) years immediately preceding the application;

(d)[~~(2)~~] Is under the age of twenty-one (21) years;

(e) Has had any license issued under this statute relating to the regulation of the manufacture, sale, and transportation of alcoholic beverages revoked for cause or has been convicted of a violation of any such statute, until the expiration of two (2) years from the date of the revocation or conviction; or

(f)[~~(3)~~] Is not a citizen of the United States and has not had an actual, bona fide residence in this state for at least one (1) year before the date on which his ***or her*** application for a license is made. This subsection shall not apply to applicants for manufacturers' licenses, to applicants that are corporations authorized to do business in this state, or to persons licensed on March 7, 1938.[~~;~~]

(2) [~~(4) Is~~]A partnership***, limited partnership, limited liability company,*** or corporation ***shall not be licensed if:***

(a) [~~, unless~~]Each member of the partnership or each of the directors, principal officers, or managers ***does not qualify under subsection (1)(a), (b), (c), and (d) of this section***[~~of the corporation has not been convicted of any misdemeanor or felony directly attributable to the use of alcoholic beverages, is twenty-one (21) years of age or more and is a citizen of the United States~~];

(b)[~~(5)~~] ***It*** has had any license issued under this statute relating to the regulation of the manufacture, sale, and transportation of alcoholic beverages revoked for cause or has been convicted of a violation of any such statute, until the expiration of two (2) years from the date of the revocation or conviction; or

(c)[~~(6)~~]***It*** is a partnership or corporation, if any member of the partnership or any director***, manager,*** or principal officer of the corporation has had any license issued under any statute relating to the regulation of the manufacture, sale, and transportation of alcoholic beverages, revoked for cause or has been convicted of a violation of any such statute, until the expiration of ***the later of*** two (2) years from the date of the revocation or ***two (2) years from the date of*** conviction.

(3) The provisions of subsection (1)(a) and (b) shall apply to anyone applying for a new license under this chapter after July 15, 1998, but shall not apply to those who renew a license that was originally issued prior to July 15, 1998, or an application for a supplemental license where the original license was issued prior to July 15, 1998.

Section 8. KRS 243.250 is amended to read as follows:

A distilled spirits and wine retail drink license shall authorize the licensee to purchase, receive, possess, and sell distilled spirits and wine at retail by the drink for consumption on the licensed premises. ***The***[~~Such a~~] licensee shall purchase distilled spirits and wine only from licensed wholesalers and unless he ***or she*** also holds a retail package license he ***or she*** shall not buy or possess distilled spirits ***or wine*** in containers[~~ of a capacity~~] smaller than ***two***[~~seven~~] hundred[~~ fifty~~] ***(200)***[~~(750)~~] milliliters***. A licensee may purchase wine***[~~, but wine may be bought~~] in containers not smaller than one hundred (100) milliliters if the wine does not exceed fourteen percent (14%) alcohol by volume and the retail drink license is held by a restaurant or private club which receives a minimum of ***fifty***[~~forty~~] percent ***(50%)***[~~(40%)~~] of its income from the sale of food and has a minimum seating capacity of fifty (50) people at tables***. A licensee may buy mixed drinks***[~~, and mixed drinks may be bought~~] in containers of a capacity not smaller than three hundred fifty-five (355) milliliters, if the mixed drinks contain a substantial proportion of carbonated water. A retail drink license shall not authorize the ***licensee to sell***[~~sale of~~] distilled spirits or wine by the package.

Section 9. KRS 243.360 is amended to read as follows:

(1) ***Any person, corporation, partnership, or any other entity, except an applicant for the same license for the same premises, or an applicant for a special agent or solicitor's license, a bonded warehouse license, a freight forwarding license, a storage warehouse license, an industrial alcohol license, a nonindustrial alcohol license, a storage warehouse license, a nonbeverage alcohol license, a vendor license, a transporter's license, a Sunday license, or a temporary drink license shall, before applying for a license under KRS 243.030 and 243.040, advertise by publication under KRS 424.130(1)(b) his or her intention to apply for a license.***

(2) The notice shall conform in all material respects to the following requirements:

(a) The notice shall state: the name and address of the applicant if the applicant is an individual, the name and address of each partner and the name of the business and its address if the applicant is a partnership, and the name and address of each principal officer and director and the name and business address of the corporation if the applicant is a corporation;

(b) The notice shall specifically state the location of the premises for which the license is sought and the type of license being requested; and

(c) The notice shall state the date the application will be filed and shall contain the following statement: "Any person, association, corporation, or body politic may protest the granting of the license by writing the Department of Alcoholic Beverages, 1003 Twilight Trail, Suite A-2, Frankfort, Kentucky 40601, within thirty (30) days of the date of legal publication."

(3) A license shall not be issued until the thirty (30) day period in which a protest is permissible has expired. Any protest received after the thirty (30) day period has expired shall not be considered a valid legal protest by the board[~~Every person, except an applicant for renewal of the same license for the same premises, or an applicant for a special agent's or solicitor's license, an industrial alcohol license, a nonindustrial alcohol license, a bonded warehouse license, a freight forwarding license, a storage warehouse license or a temporary drink license shall, before applying for any license under KRS 243.030 or 243.040, advertise by publication pursuant to KRS Chapter 424 his intention to apply. The advertisement shall state the name and address of the applicant if he is an individual, the names and addresses of the members of partnership if the applicant is a partnership, as well as the name of the business and its address, or, if the applicant is a corporation, the names and addresses of the principal officers and directors of the corporation, as well as the name and address of the corporation itself, the location of the premises for which the license is sought, and the type of license to be applied for.~~

~~(2) The applicant shall attach to the application a newspaper clipping of the advertisement and proof of the publication as provided in KRS 424.170.~~

~~(3) The board shall not consider protests received more than thirty-seven (37) days after an application for a license under KRS 243.030 is filed; nor shall it consider protests received more than seventeen (17) days after an application for a license under KRS 243.040 is filed; provided, however, that this subsection shall not apply to a church or a school which has not received actual notice as required by KRS 243.220~~].

Section 10. KRS 243.390 is amended to read as follows:

(1) In addition to[~~ such~~] other information as the board may by ***administrative*** regulation require, every application for a license under KRS 243.020 to 243.670 shall contain the following information, given under oath:

(a) The name, age, ***Social Security number,*** address***,***[~~ and~~] residence***, and citizenship*** of each applicant[~~, and, if there is more than one (1) and they are partners, the partnership name and address, and the facts as to their citizenship~~];

(b) ***If the applicant is a partner, the name, age, Social Security number, address, residence, and citizenship of each partner and the name and address of the partnership;***

(c) The name***, age, Social Security number,***[~~and~~] address***, residence, and citizenship*** of each person interested[~~ or to become interested~~] in the business for which the license is sought, together with the nature of that interest, and, if the applicant is a corporation, ***limited partnership company, or limited liability company,*** the ***name, age, Social Security number, address, and residence***[~~names, addresses and ages~~] of each officer, director***, member,***

partner, and managerial employee and the[~~ facts as to their~~] citizenship ***of each***, and the state under the laws of which the corporate applicant is incorporated ***or organized***. The department may require the names of all the stockholders ***and the percentage of stock held by each***;

(d)[~~(c)~~]The premises to be licensed, stating the street and number, if the premises ***has***[~~have~~] a street number, and otherwise such a description ***that***[~~as~~] will reasonably indicate the location of the premises[~~. The applicant shall also state the nature of his interest in the premises, and the name, age and address of any other person, either as principal or associate, who is interested with the applicant, either in the premises or in the business to be licensed, and the facts as to his citizenship~~];

(e)[~~(d)~~]A statement that neither the applicant nor any other person referred to in this section has been convicted of***:*** any misdemeanor directly or indirectly attributable to[~~ the use, manufacture, sale of or traffic in~~] alcoholic beverages***; any violation of KRS 218A.050, 218A.060, 218A.070, 218A.080, 218A.090, 218A.100, 218A.110, 218A.120, or 218A.130 within the two (2) years immediately preceding the application;***[~~, or~~] any felony, within ***five (5)***[~~two (2)~~] years ***from the later of the date of parole or the date of conviction; or providing false information to the department*** preceding the application; and that ***the applicant or any other person referred to in this section***[~~he~~] has not had any license that has been issued to him under any alcoholic beverage statute revoked for cause within two (2) years prior to the date of the application; and

(f)[~~(e)~~] A statement that the applicant will in good faith abide by every ***state and local*** statute***, regulation,*** and ordinance relating to the manufacture, sale***, use of,*** and ***trafficking in***[~~transportation of~~] alcoholic beverages[~~ that may be in force in the location at which he seeks to do business, as well as all regulations of the board, and, if the applicant seeks to do business in a locality where local regulations are in effect, all regulations of the local alcoholic beverage control authority~~].

(2) If, after a license has been issued, there is a change in any of the facts required to be set forth in the application, a verified supplemental statement in writing giving notice of the change shall be filed with the board within ten (10) days after the change.

(3) In giving any notice, or taking any action in reference to a license, the board may rely upon the information furnished in the application or in the supplemental statement connected with the application. ***This***[~~Such~~] information, as against the licensee or applicant, shall be conclusively presumed to be correct. The information required to be furnished in the application or supplemental statement shall be deemed material in any prosecution for perjury.

Section 11. KRS 243.430 is amended to read as follows:

(1) ***The state administrator may reject any application for a license issued under KRS 243.030 and 243.040 if the application is incomplete or the correct fee has not been remitted with the application. In rejecting an application, the state administrator shall provide a written statement of the deficiencies contained in the application***[~~If the state administrator approves the application he shall issue the proper license~~].

(2) ***A license for which public notice under Section 9 of this Act is required***[~~No retail drink, retail package, or special private club license~~] shall ***not*** be issued in less than ***thirty (30)***[~~ten (10)~~] days ***from the date the application is substantially complete, except the renewal of the license may be issued upon receipt of all necessary information by the state administrator with jurisdiction over the license***[~~or delivered in less than fifteen (15) days from the time the application and remittances were received by the state administrator; except that a retail package, retail drink, or special private club license shall not be issued to an applicant who has not held a license during the same or preceding license period, or for a premises for which a license has not been issued during the same or preceding license period, in less than twenty (20) days or delivered in less than thirty (30) days from the time the application and remittances were received by the state administrator~~]. All remaining licenses provided for in KRS 243.030 shall be issued[~~ at any time~~] when, in the sound discretion of the distilled spirits administrator, all of the information necessary has been obtained.

Section 12. KRS 243.480 is amended to read as follows:

(1) Upon proceedings for the revocation of any license under KRS 243.520, the Alcoholic Beverage Control Board, or the local alcoholic beverage administrator, may in its or his ***or her*** discretion[~~, as the case may be,~~] order a suspension of the license for any cause for which it may, but is not required to, revoke the license under the provisions of KRS 243.490 and 243.500. However, the licensee may have the alternative, subject to the approval of the Alcoholic Beverage Control Board or the local alcoholic beverage administrator, to pay in lieu of part or all of the days of any suspension period, a sum as follows: Distillers, rectifiers, vintners, brewers, and blenders, one thousand dollars ($1,000) per day; wholesale liquor licensees, four hundred dollars ($400) per day; wholesale beer licensees, four hundred dollars ($400) per day; ***retail licensees authorized to sell distilled spirits, wine, or beer by the package or drink***[~~any license which by its terms authorize the sale of liquor by the drink~~], fifty dollars ($50) per day; ***and***[~~retail package liquor licensees, fifty dollars ($50) per day; retail beer licensees, twenty-five dollars ($25) per day;~~] all remaining licensees, ***fifty***[~~ten~~] dollars ***($50)***[~~($10)~~] per day.

(2) Payments in lieu of suspension collected by the Alcoholic Beverage Control Board shall be deposited in the State

Treasury and credited to the general expenditure fund. Payments in lieu of suspension collected by local alcoholic beverage administrators shall be deposited and used as local alcoholic beverage license tax receipts are deposited and used.

(3) Appeals from orders of suspension and the procedure thereon shall be the same as are provided for orders of revocation in KRS ***Chapter 13B***[~~243.550 to 243.590~~].

Section 13. KRS 243.500 is amended to read as follows:

Any license issued under KRS 243.020 to 243.670 ***shall***[~~must~~] be revoked or suspended for the following causes:

(1) Conviction of the licensee or his agent or employee for selling any illegal beverages on the ***licensed*** premises[~~ licensed~~].

(2) Making any false, material statements in an application for a license ***or supplemental license***.

(3) Violation of the provisions of KRS 243.670.

(4) ***Conviction of the***[~~If, within a period of two (2) consecutive years, any~~] licensee or any of his clerks, servants, agents, or employees ***of:***.

(a) [~~shall have been convicted of~~]Two (2) violations of the terms and provisions of KRS Chapter 241, 243, or 244 or any act ***regulating***[~~heretofore or hereafter in effect relating to the regulation of~~] the manufacture, sale, and transportation of alcoholic beverages[~~ or if,~~] within ***two (2) consecutive years;***[~~such period, any licensee or any of his clerks, servants, agents, or employees shall have twice been convicted of any felony or of any misdemeanor directly or indirectly attributable to the use of intoxicating liquors, or of one (1) such felony and one (1) such misdemeanor~~]

(b) Two (2) misdemeanors directly or indirectly attributable to the use of intoxicating liquors within two (2) consecutive years; or

(c) Any felony.

(5) [~~Willful and deliberate~~]Failure or default of a licensee to pay an excise tax or any part ***of the tax***[~~thereof,~~] or any penalties imposed by or under the provisions of any statutes, ordinances, or acts of Congress relative to taxation, or for a violation of any administrative regulations ***promulgated by***[~~of~~] the Revenue Cabinet made in pursuance thereof.

(6) Revocation of any license or permit provided in KRS 243.060, 243.070, 243.600, and 243.610, or granted under any act of Congress relative to the regulation of the manufacture, sale, and transportation of alcoholic beverages. Any license issued under KRS 243.020 to 243.670 ***shall***[~~must~~] be revoked or suspended ***if***[~~in the case of sale of alcoholic beverages by~~] the licensee ***sells the alcoholic beverages*** at a price in excess of the price set by federal or state regulations.

(7) Setting up, conducting, operating, or keeping, on the licensed premises, any gambling game, device, machine,[~~ or~~] contrivance,[~~ or~~] lottery***,***[~~ or~~] gift enterprise, [~~or~~]handbook***,*** or facility for betting or transmitting bets on horse races; or permitting to be set up, conducted, operated, kept, or engaged in, on the licensed premises, any such game, device, machine, contrivance, lottery, gift enterprise, handbook, or facility. This section shall not apply to contests in which eligibility to participate is determined by chance and the ultimate winner is determined by skill and the licensee has no direct interest, or to the sale of lottery tickets sold under the provisions of KRS Chapter 154A.

(8) Conviction of the licensee, his agents, servants, or employees for:

(a) The sale or use upon the licensed premises of those items described in KRS 218A.050 to 218A.130 as controlled substances;

(b) Knowingly permitting the sale or use by patrons upon the licensed premises of those items described in KRS 218A.050 to 218A.130 as controlled substances***; or***

(c) Knowingly receiving stolen property upon the licensed premises.

Section 14. KRS 243.540 is amended to read as follows:

(1) ***If a license issued under KRS 243.020 to 243.670 is revoked, voluntarily surrendered, or subject to disposition by a court, or is not renewed by the licensee, or if an act of God requires the relocation or closure of the licensee's business the licensee's inventory shall be disposed of in accordance with the requirements set out in this section***[~~When a license issued under KRS 243.020 to 243.670 has been revoked the former licensee may, under the supervision of the state administrator, dispose of and transfer his stock of alcoholic beverages to a licensee, but such a disposition of stock on hand shall not be delayed longer than ninety (90) days in the case of distillers, rectifiers or vintners, longer than thirty (30) days in the case of wholesalers or distributors nor longer than twenty (20) days in the case of retailers~~].

(2) ***If a license issued by the department has been revoked, the former licensee may, under the supervision of the state administrator, dispose of and transfer his or her stock to another licensee if the disposition is completed within ninety (90) days and the licensee is a distiller, rectifier, vintner, or brewer. The disposition shall be completed within thirty (30) days if the licensee is a wholesaler or distributor or within twenty (20) days if the licensee is a retailer.***

(3) If a retail licensee in good standing with the department voluntarily ceases to operate his or her business, the following requirements shall apply to the disposition of the licensee's inventory:

(a) If the premises is still open to the public and the licensee has not yet surrendered the license, the licensee shall sell alcoholic beverages only to the public and shall not sell below costs;

(b) If a licensee has terminated his or her business and has surrendered his or her license to the department, he or she shall submit a written request for approval from the state administrator within ten (10) days in advance of the sale to dispose of the licensee's remaining inventory. The request shall identify the retailer who is purchasing the inventory, the proposed date of the sale , and the quantity, types, and brands of alcohol to be sold; and

(c) If a licensee has more than one (1) licensed retail premises and closes one (1) or more retail premises and seeks to transfer his or her inventory to another licensed retail premises he or she owns, he or she shall submit a request in writing to the state administrator at least ten (10) days before the inventory is transferred. The request shall identify the premises to which the alcohol is being transferred, the proposed date of the transfer, and the quantity, types, and brands of alcohol to be sold.

(4) If a retail licensee files for bankruptcy or is directed by a court to dispose of inventory to satisfy a lien or judgment, the inventory may be sold only to a retail alcoholic beverage licensee. The bankrupt licensee or the licensee subject to the court order shall notify the department of the sale and shall attach a copy of the court order or the judgment directing the sale and a list of the quantity, types, and brands of alcohol to be sold. Any licensee who purchases the inventory shall notify the department within five (5) days after the transfer of the specific inventory sold~~[Transfers under subsection (1) shall not be deemed violations of the provisions of KRS 243.120, 243.160, 243.250 or 243.300]~~.

Section 15. KRS 243.630 is amended to read as follows:

(1) For purpose of this section, "transfer" means:

(a) The transfer to a new person or entity of ten percent (10%) or more ownership interest in any license issued under KRS 243.020 to 243.670; or

(b) The transfer in bulk, and not in the ordinary course of business, of a major part of the fixtures, materials, supplies, merchandise, or other inventory of a licensee's business.

(2) *Any*~~[No]~~ license issued under KRS 243.020 to 243.670 to any person for any licensed premises shall *not* be transferable or assignable to any other person or to any other premises or to any other part of the building containing the licensed premises, unless a transfer or assignment is authorized by the state administrator in the exercise of his sound discretion under KRS 243.640 or 243.650. For the purposes of this section each railroad dining car shall be deemed premises to be separately licensed.

(3) A licensee shall not acquire or otherwise dispose of any interest in a licensed premises or any license issued by the department, by sale of assets, stock, inventory, control or right of control, or activities on the licensed premises without prior approval of the state administrator. The state administrator shall grant approval if the person acquiring the interest meets the qualifications for a new applicant.

(4) Any acquisition of interest in a license without prior authorization shall be void.

(5) All applications for approval of a transfer shall be made in writing to the state administrator having jurisdiction over the license.

(6) Applications for approval of a transfer shall be made under oath or affirmation, shall be signed by both the transferor and the transferee, and shall contain such other information as the department may prescribe.

(7) The appropriate state administrator shall grant or deny the application within sixty (60) days of the date the application is substantially complete or on a later date that is mutually acceptable to the administrator and the transferee, but it shall not be acted upon before the end of the public protest period outlined in Section 9 of this Act.

(8) No licensee or other person seeking to acquire an interest in an existing license shall transfer control or assume control of any licensed premises by agreement or otherwise.

(9) A licensee shall not transfer his or her license or any interest in the license while any proceedings against the license or the licensee for a violation of any statute or regulation which may result in the suspension or revocation of the license are pending.

(10) A licensee shall not transfer his or her license or any interest he or she has in the license if the licensee owes a debt on the inventory to a wholesaler responsible for the collection and payment of the tax imposed under KRS 243.884.

(11) A licensee shall not transfer his or her license or any interest in the license if the licensee owes the Commonwealth of Kentucky for taxes as defined in subsection (5) of Section 13 of this Act. A transfer shall not take place until the department is notified by the Kentucky Revenue Cabinet that the licensee's indebtedness has been paid or resolved to the cabinet's satisfaction. This section shall not prohibit a transfer of a license or an interest in a license by a trustee

in bankruptcy if all other requirements of this section are met.

Section 16. KRS 244.040 is amended to read as follows:

(1) ***A***[~~No~~] brewer or distributor shall ***not*** sell[~~ any~~] alcoholic beverages to any person in this state for any consideration except for cash paid at or before the time of delivery.

For purposes of this section, "cash" includes the sale of malt beverages by electronic transfers if the following conditions are met:

(a) The use of electronic transfers shall be voluntary and shall be agreed to by the affected brewer, distributor, and retailer;

(b) The brewer shall not pay or credit back in any way to the distributor any share of the cost that is attributable to the electronic transfer;

(c) The distributor shall not pay or credit back in any way to the retailer any share of the cost that is attributable to the electronic fund transfer;

(d) The transfer of funds shall be initiated by the brewer or the distributor;

(e) The distributor may debit the retailer's bank account for the exact amount due based on the amount of alcoholic beverages delivered;

(f) Electronic fund transfers that are rejected or denied at the time of sale for any reason shall be treated in the same manner as checks drawn on insufficient funds; and

(g) Each participating retail licensee and each distributor maintain accurate records of all electronic fund transfers in accordance with department statutes and administrative regulations.

(2) ***A***[~~No~~] brewer or distributor shall ***not*** furnish or deliver any ***returnable*** bottled malt beverage without collecting a minimum container charge or deposit of sixty cents ($0.60) per case of twenty-four (24) twelve-ounce bottles or ***its***[~~the~~] equivalent[~~ thereof,~~] in the same manner that the price of the malt beverage is collected.

(3) This section shall not prohibit a licensee from crediting to a purchaser the actual prices charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid by the purchaser for containers or as a deposit on containers when the title is retained by the vendor, if the containers or packages have been returned to the brewer or distributor.

(4) No right of action shall exist to collect any claim for credit extended contrary to this section.

(5) This section shall not apply to sales by wholesalers or distributors to licensees that are private clubs or voluntary associations.

Section 17. KRS 244.080 is amended to read as follows:

A[~~No~~] retail licensee shall ***not*** sell, give away, or deliver any alcoholic beverages, or procure or permit any alcoholic beverages to be sold, given away, or delivered to:

(1) A minor, except that in any prosecution for selling alcoholic beverages to a minor it ***shall be***[~~is~~] an affirmative defense that the sale was induced by the use of false, fraudulent, or altered identification papers or other documents and that the appearance and character of the purchaser were such that his ***or her*** age could not have been ascertained by any other means and that the purchaser's appearance and character indicated strongly that he ***or she*** was of legal age to purchase alcoholic beverages. ***This***[~~Such~~] evidence may be introduced either in mitigation of the charge or as a defense to the charge itself.

(2) A person actually or apparently under the influence of alcoholic beverages.

(3) ***Anyone known to the seller or server to be*** an habitual drunkard or any person ***known to the seller or server to have been*** convicted of drunkenness as many as three (3) times within the most recent twelve (12) month period.

(4) Anyone known to the seller ***or server*** to have been convicted of any misdemeanor attributable directly or indirectly to the use of alcoholic beverages, or ***anyone known to the seller or server to have been convicted*** of a felony.

Section 18. KRS 244.085 is amended to read as follows:

(1) As used in KRS 244.083 and this section: "Premises" ***has the meaning it is given in KRS 241.010 and also*** means the place of business of a person licensed to sell alcoholic beverages including, in the case of drive-in establishments, the entire lot upon which the business establishment is situated.

(2) ***A***[~~No~~] person under 21 years of age shall ***not*** enter any premises licensed for the sale of alcoholic beverages for the purpose of purchasing or receiving any alcoholic beverages.

(3) ***A***[~~No~~] person under 21 years of age shall ***not*** possess for his or her own use, or purchase or attempt to purchase or have another purchase for him or her any alcoholic beverages. No person shall aid or assist any person under 21 years of age in purchasing or having delivered or served to him or her any alcoholic beverages.

(4) ***A***[~~No~~] person under 21 years of age shall ***not*** misrepresent his or her age for the purpose of inducing any licensee, or ***the licensee's agent, servant, or***[~~other~~] employee[~~ of any licensee~~], to sell or serve any alcoholic beverages to ***the underage***[~~such~~] person.

(5) ***A***[~~No~~] person under 21 years of age shall ***not*** use, or attempt to use any false, fraudulent, or altered identification card***,***[~~ or~~] paper***,*** or any other document to purchase or attempt to purchase or otherwise obtain any alcoholic beverage.

(6) Except as provided in Sections 19 and 20 of this Act, a licensee, or his or her agents, servants, or employees shall not permit any person under twenty-one (21) years of age to remain on any premises where alcoholic beverages are sold by the drink or consumed on the premises, unless:

(a) The usual and customary business of the establishment is a hotel, motel, restaurant, convention center, convention hotel complex, racetrack, simulcast facility, golf course, private club, park, fair, church, school, athletic complex, athletic arena, theater, distillery or brewery or winery tour, establishment where prebooked concerts with advance ticket sales are held, or any facility in which there is maintained in inventory on the premises for sale at retail no less than five thousand dollars ($5000) of food, groceries, and related products valued at cost. For purposes of this paragraph, house bands, disc jockeys, and karaoke are not considered concerts;

(b) All alcoholic beverage inventory is kept in a separate, locked department at all times when minors are on the premises; or

(c) Written approval has been granted by the department to allow minors on the premises until 10 p.m. where the sale of alcohol is incidental to a specific family or community event including, but not limited to, weddings, reunions, or festivals. The licensee's request shall be in writing and shall specifically describe the event for which approval is requested. The state administrator shall approve or deny the request in writing.

(7) Except as provided in subsection (6) of this section, a licensee or his or her agent, servant, or employee shall not allow any person under the age of twenty-one (21) to remain on any premises that sells alcoholic beverages by the package unless the underage person is accompanied by a parent or guardian or the usual and customary business of the establishment is a convenience store, grocery store, drugstore, or similar establishment.

(8) Except as provided in subsection (6) of this section, a person under the age of twenty-one (21) shall not remain on any premises that sells alcoholic beverages by the package unless he or she is accompanied by a parent or guardian or the usual and customary business of the establishment is a convenience store, grocery store, drugstore, or similar establishment.

Section 19. KRS 244.087 is amended to read as follows:

Persons at least eighteen (18) years of age may stock, arrange displays, accept payment for***,*** and sack malt beverages by the package, under the supervision of ***a person twenty (20) years of age or older***[~~an adult. Delivery of malt beverages away from the parking area of the licensed business premises shall not be performed by anyone under the age of twenty (20) years~~].

Section 20. KRS 244.090 is amended to read as follows:

(1) ***A***[~~No~~] person holding any license under KRS 243.020 to 243.670 shall ***not*** knowingly employ in connection with his ***or her*** business, any person who:

(a) Has been[~~ twice~~] convicted of any felony[~~, misdemeanor or offense or one (1) felony and one (1) misdemeanor directly or indirectly attributable to the use of intoxicating liquors,~~] within the last two (2) years***. The provisions of this paragraph shall apply to any new applicant for a license issued under this chapter after July 15, 1998, but shall not apply to renewals of licenses that were originally issued prior to July 15, 1998, or supplemental licenses related to an original license if the original license was issued prior to July 15, 1998***;

(b) ***Has been twice convicted of any misdemeanor or offense directly or indirectly attributable to the use of intoxicating liquors within the last two (2) years;***

(c) Is under the age of twenty (20) years, ***unless the person is employed:***[~~except;~~]

1. In a bottling house or room of a licensed distiller, vintner***,***[~~ or~~] brewer***,*** or rectifier;

2. In an office of a wholesaler or manufacturer ***that is*** maintained in a building separate from the warehouses or factory or as provided in KRS 244.087; or

3. In any of the following establishments***,*** if ***the*** employment is in a capacity that does not involve the sale or serving of alcoholic beverages:

a. A restaurant that derives at least ***fifty***[~~thirty-five~~] percent ***(50%)***[~~(35%)~~] of its gross sales from the sale of food ***for consumption on the licensed premises***; or

b. Any other establishment with alcoholic beverage sales not exceeding fifty percent (50%) of its gross sales***.***[~~;~~

~~(c) Is not a citizen of the United States; or~~]

(d) Within two (2) years prior to the date of his employment, has had any license issued under KRS 243.020 to 243.670 or under any other act or ordinance relating to the regulation of the manufacture, sale***,*** or transportation of alcoholic beverages revoked for cause.

(2) Violation of this section shall subject both employer and employee to penalties provided in this chapter, and shall be cause for revocation of license.

Section 21. KRS 244.290 is amended to read as follows:

(1) ***A***[~~No~~] premises ***that is licensed to sell***[~~for which there has been granted a license for the sale of~~] distilled spirits or wine at retail shall ***not*** be permitted to remain open[~~ for any purpose between midnight and 8 a.m., or at any time during the twenty-four (24) hours of a Sunday, or~~] during the hours the polls are open on any regular or primary election day ***unless the licensee provides a separate locked department in which all stock of distilled spirits and wine are kept during the hours the polls are open***[~~, provided, that if a licensee provides a separate department within his licensed premises capable of being locked and closed off, within which is kept all stocks of distilled spirits and wine, and all fixtures and apparatus connected with his business as a licensee, and said department is kept locked during the times mentioned above, he shall be deemed to have complied with this section; except that the city council, board of aldermen, or other municipal legislative body of cities of the first, second, third, or fourth class in which traffic in distilled spirits and wine is permitted under KRS Chapter 242 shall have the exclusive right and power, by ordinance duly enacted, to establish the hours and times in which distilled spirits and wine may be sold within its jurisdictional boundaries, and except further that the fiscal court of each county in which cities of the first, second, third, or fourth class are located shall have the exclusive right and power to establish the hours and times in which distilled spirits and wine may be sold over that portion of the county which lies without the corporate limits of such cities, except any portion in which distilled spirits and wine are prohibited from being sold. Provided, however, that no distilled spirits or wine may be sold in any portion of the counties containing cities of the first, second, third, or fourth class during the twenty-four (24) hours between 6 a.m. Sunday and 6 a.m. Monday, except as provided in KRS 243.050 and subsections (2), (4), and (6) of this section, and that no distilled spirits or wine may be sold on any primary or regular election day while the polls are still open; and provided, also, that all stocks of distilled spirits and wine must be kept locked during the hours which the licensee is prohibited from selling same~~].

(2) In any county containing a city of the first or second class in which the sale of distilled spirits and wine ***by the drink*** is permitted under KRS Chapter 242, an election on the question of permitting the sale of distilled spirits and wine by the drink on Sunday may be held as provided in KRS ***Chapter 242.***[~~242.020 to 242.040 and 242.060 to 242.120. In any election, the form of the proposition shall be, "Are you in favor of the sale of distilled spirits and wine by the drink between the hours of one p.m. and midnight on Sunday in (name of county)?"~~]

(3) Except as provided in Section 27 of this Act, a premise for which there has been granted a license for the sale of distilled spirits or wine at retail shall not remain open for any purposes between midnight and 6 a.m. or at any time during the twenty-four (24) hours of a Sunday, unless:

(a) The licensee provides a separate locked department in which all stocks of distilled spirits and wine are kept during those times; or

(b) The legislative body of a city of the first, second, third, or fourth class, or the fiscal court of a county containing a city of the first, second, third, or fourth class, has otherwise established the hours and times in which distilled spirits and wine may be sold within its jurisdictional boundaries.

(4)[~~(3)~~] In any county containing a city of the first or second class ***or any city located therein*** in which the sale of distilled spirits and wine[~~ by the drink~~] is permitted ***under KRS Chapter 242, the legislative body of the city or county may, by ordinance, permit the sale of distilled spirits and wine by the drink on Sunday from 1 p.m. until the designated closing hour of that locality at hotels, motels, or restaurants which:***

(a) Have dining facilities with a minimum seating capacity of one hundred (100) people at tables; and

(b) Receive at least fifty percent (50%) or more of their gross annual income from the dining facilities from the sale of food[~~on Sunday as provided in subsections (2) and (4) of this section, holders of distilled spirits and wine retail drink licenses may apply to the administrator of the distilled spirits unit for a special Sunday sale retail drink license. Upon receipt of an application and payment of the prescribed fee, the administrator shall issue a license~~].

(5)[~~(4)~~] In any county containing a city of the first[~~ or second~~] class or in any city located therein in which ***the*** sale of distilled spirits and wine is permitted under KRS Chapter 242, the ***distilled spirits administrator may issue a license to holders of a distilled spirits and wine retail drink quota license or a special private club license which permits the sale of distilled spirits and wine by the drink on Sunday from 1 p.m. until the prevailing time for that locality***[~~respective legislative body of such city or fiscal court, of such areas, shall have the power by duly enacted ordinance, to permit the sale of distilled spirits and wine by the drink on Sunday from 1 p.m. until a closing hour to be~~

~~established by the legislative body of the area concerned, by hotels, motels, and restaurants which are licensed for the retail sale of distilled spirits and wine by the drink and which have dining facilities with a minimum seating capacity of one hundred (100) people at tables and which receive at least fifty percent (50%) or more of their gross annual income from their dining facilities by the sale of food~~].

[~~(5) (a) Any hotel, motel, restaurant operation, convention center, or commercial airport which sells liquor on Sunday shall pay each of its employees wages at a rate of not less than the minimum wage as set forth in KRS 337.275(1), the provisions of KRS 337.275(2) and KRS 337.010(2)(a)6. notwithstanding.~~

~~(b) No employer shall use all or part of any tips or gratuities received by employees toward the payment of the statutory minimum wage as required under KRS 337.275(1). Nothing, however, shall prevent employees from entering into an agreement to divide tips or gratuities among themselves.~~]

(6) Any city of the fourth class or county containing a city of the fourth class which has enacted a comprehensive, regulatory ordinance relating to the licensing and operation of hotels, motels, inns, or restaurants for the sale of alcoholic beverages by the drink ***under***[~~as provided in~~] KRS 242.185(1), may also regulate and provide[~~ by ordinance~~] for the ***limited***[~~special~~] sale of distilled spirits and wine by the drink ***on Sundays if:***

(a) ***The limited Sunday drink***[~~as authorized by subsections (2) and (4) of this section. Such special~~] licenses ***are***[~~shall only be~~] issued ***only*** to those hotels, motels, inns, or restaurants authorized to sell alcoholic beverages by the drink ***under***[~~as provided in~~] KRS 242.185(3)***; and***

(b) ***The***[~~,~~] holders of distilled spirits and wine retail drink licenses ***have applied***[~~may apply~~] to the ***state*** administrator ***and meet all other legal requirements for obtaining a limited Sunday liquor by the drink license***[~~of the distilled spirits unit for the special retail drink license. Upon receipt of an application and payment of the prescribed fee, the administrator shall issue a license~~].

Section 22. KRS 244.295 is amended to read as follows:

(1) In any county containing an urban-county government, ***a***[~~no~~] premises ***that***[~~for which there~~] has been granted a license for the sale of distilled spirits or wine at retail shall ***not*** be permitted to remain open for any purpose between ***6 p.m.***[~~midnight~~] and 8 a.m., or at any time during the twenty-four (24) hours of a Sunday, or during the hours the polls are open on any regular ***or***[~~,~~] primary[~~, school or special~~] election day ***unless the***[~~, provided, that if a~~] licensee provides a separate department within his licensed premises capable of being locked and closed off, within which is kept all stocks of distilled spirits and wine, and all fixtures and apparatus connected with his business as a licensee, and ***the***[~~said~~] department is kept locked during the time mentioned above***.*** ***The licensee***[~~, he~~] shall be deemed to have complied with this section; except that the legislative body of an urban-county government in which traffic in distilled spirits and wine is permitted under KRS Chapter 242 shall have the exclusive right and power, by ordinance[~~ duly enacted~~], to establish the hours and times in which distilled spirits and wine may be sold within its jurisdictional boundaries. Provided, however,[~~ that no~~] distilled spirits or wine may ***not*** be sold in any portion of a county containing an urban-county government during the twenty-four (24) hours between 6 a.m. Sunday and 6 a.m. Monday, except as provided in subsections (2) and (3) of this section, and[~~ that no~~] distilled spirits or wine may ***not*** be sold on any election day while the polls are still open; and provided, also, that all stocks of distilled spirits and wine must be kept locked during the hours in which the licensee is prohibited from selling same.

(2) In any county containing an urban-county government in which the sale of distilled spirits and wine is permitted under KRS Chapter 242, an election on the question of permitting the sale of distilled spirits and wine by the drink on Sunday may be held as provided in KRS 242.020 to 242.040 and 242.060 to 242.120. In any election, the form of the proposition shall be, "Are you in favor of the sale of distilled spirits and wine by the drink between the hours of one p.m. and midnight on Sunday in (name of county)?"

(3) In any county containing an urban-county government in which the sale of distilled spirits and wine is permitted under KRS Chapter 242, the legislative body of such urban-county government may by resolution or ordinance submit to the electorate a proposal to permit the sale of distilled spirits and wine by the drink, on Sunday from 1 p.m. until a closing hour specified in the proposal, by hotels, motels, convention centers, ***convention hotel complexes,*** restaurants***,*** ***racetracks,*** and commercial airports which are licensed for the retail sale of distilled spirits and wine by the drink and which have dining facilities with a minimum seating capacity of one hundred (100) people at tables and which receive at least fifty percent (50%) or more of gross annual income from dining facilities by the sale of food. The proposal to be submitted to the electorate shall be so framed that any voter who wishes to vote in favor of ***the***[~~such~~] limited Sunday sales of distilled spirits and wine by the drink may signify his approval by voting "yes" and any voter who wishes to vote against ***the***[~~such~~] limited Sunday sales of distilled spirits and wine by the drink may do so by voting "no." ***The***[~~Said~~] election shall be held on a date stipulated by the legislative body and the cost of the election shall be borne by the urban-county government. The proposal shall be published pursuant to KRS Chapter 424 and shall also be advertised by written or printed handbills posted at not less than five (5) conspicuous places in each precinct of the county for two (2) weeks before the election. The general election laws, including penalties for violations, shall apply to the election, except where those laws are inconsistent with the provisions of this section. ***The***[~~Any such~~] proposal submitted to the electorate

shall be effective immediately if a majority of those voting on the proposal shall vote "yes."

(4) In any county containing an urban-county government in which the sale of distilled spirits and wine by the drink is permitted on Sunday as provided in subsections (2) and (3) of this section, holders of distilled spirits and wine retail drink licenses may apply to the administrator of the distilled spirits unit for a special Sunday sale retail drink license. Upon receipt of an application and payment of the prescribed fee, the administrator shall issue a license.

Section 23. KRS 244.360 is amended to read as follows:

All alcoholic beverage retailers~~[Each retailer of distilled spirits or wine by the package]~~ shall have printed on the front window of the licensed premises the name of the licensee together with the inscription: "Kentucky Retail Package Liquor License No. ...." in uniform letters not less than three ***(3)***~~[and one-half (3-1/2)]~~ inches in height.

Section 24. KRS 244.480 is amended to read as follows:

(1) Except as provided in subsection ***(3) of this section***~~[(2)]~~, no brewer or distributor shall deliver any malt beverages on Sunday or between the hours of ***midnight***~~[7 p.m.]~~ and 6 a.m. on any ***other***~~[week]~~ day~~[except Saturday, when the hours of deliveries shall be between 6 a.m. and midnight]~~.

(2) Except as provided in subsection (3) of this section, no retailer shall sell, give away, or deliver any malt beverages between midnight and 6 a.m. or at any time during the twenty-four (24) hours of a Sunday or during the hours the polls are open on a primary or regular election day.

(3)~~[(2)]~~ The legislative body of a city of the first, second, third, or fourth class ***or of a county containing a city of the first, second, third, or fourth class*** in which traffic in malt beverages is permitted by KRS Chapter 242, shall have the exclusive power~~[, subject to subsection (3), by ordinance,]~~ to establish the times in which malt beverages may be sold within its jurisdictional boundaries***, including Sunday sales if the hours so fixed***~~[. The fiscal court of each county in which a city of the first, second, third, or fourth class is located shall have the exclusive power, subject to subsection (3), to establish the times in which malt beverages may be sold in that portion of the county which lies without the corporate limits of such a city, except any portion in which malt beverages are prohibited by KRS Chapter 242 from being sold.~~

~~(3) Notwithstanding subsections (1) and (2)]~~:

(a) ~~[The hours so fixed by the legislative body of a city of the first, second, or third class, and by fiscal courts,]~~Shall not prohibit the sale, gift, or delivery of any malt beverages between 6 a.m. and midnight during ***any day, except Sunday***~~[week days]~~; and

(b) ***Prohibit the sale of***~~[No]~~ malt beverages~~[shall be sold]~~ on any primary or regular election day ***during the hours***~~[while]~~ the polls are~~[still]~~ open.

Section 25. KRS 244.990 is amended to read as follows:

(1) Any person who, by himself or acting through another, directly or indirectly, violates any of the provisions of this chapter for which no other penalty is provided, except KRS 244.380 to 244.470, shall, for the first offense, be guilty of a Class B misdemeanor; and for the second and each subsequent violation, he ***or she*** shall be guilty of a Class A misdemeanor. The penalties provided for in this subsection shall be in addition to the revocation of the offender's license. If the offender is a corporation, joint stock company, association, or fiduciary, the principal officer or officers responsible for the violation may be imprisoned.

(2) Any person who violates KRS 244.170 shall, upon the first conviction, be guilty of a Class A misdemeanor. Upon a second conviction he ***or she*** shall be guilty of a Class D felony. Upon the third and each subsequent conviction, he ***or she*** shall be guilty of a Class C felony.

(3) Any person who violates any of the provisions of KRS 244.480 to 244.600 shall be guilty of a violation.

(4) Any person, firm, or corporation violating any provision of KRS 244.083 and 244.085 shall be guilty of a violation and each violation shall constitute a separate offense.

(5) Any person who violates the provisions of subsection (5) of KRS 244.085 shall, for the first offense, be guilty of a violation, and for each subsequent offense shall be guilty of a Class A misdemeanor.

(6) Any person who violates KRS 244.125 shall be guilty of a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.

(7) Any person who knowingly provides false or misleading information to the department, its employees, or investigators in an application, or during a field visit, inspection, or investigation shall be guilty of a Class D felony.

Section 26. KRS 243.040 is amended to read as follows:

The following kinds of malt beverage licenses may be issued by the administrator of the malt beverages unit, the fees for which shall be:

(1)	Brewer's license, per annum	$1,500.00
(2)	Microbrewery license, per annum	$ 250.00

(3)	Distributor's license, per annum	$ 200.00
(4)	Retailer's license per annum:	
	(a) New applicants	$ 200.00
	(b) Renewals	$ 75.00
(5)	Dining car license, per annum	$ 100.00
(6)	Transporter's license, per annum	$ 25.00
(7)	Special temporary license, per month or part of month	$ 12.50
(8)	Special off-premises storage license, per annum	$ 25.00
(9)	Distributor's storage, per annum	$ 50.00
(10)	Special beer transporter's license, per annum	$ 25.00

(11) Such other special licenses as the state board finds to be necessary for the administration of KRS Chapters 241, 243, and 244 and for the proper regulation and control of the trafficking in malt beverages, which may be provided for by regulation and adopted by the state board.

Applicants for special licenses provided for under the authority granted in subsection (11) may be exempt from so much of the provisions of subsection ***(1)(f)***[~~(3)~~] of KRS 243.100 and paragraph (c) of subsection (1) of KRS 244.090 as the board by regulation prescribes.

Section 27. KRS 243.050 is amended to read as follows:

(1) The department may issue a railroad system license to a railroad company upon the payment of ***the required***[~~a~~] fee[~~ of one thousand dollars ($1,000)~~]. This license tax shall be in lieu of all license and excise taxes which would otherwise be due by the holder in connection with the retailing of alcoholic beverages.

(2) The department may issue a commercial airlines system license to a commercial airlines system or charter flight system upon the payment of ***the required***[~~a~~] fee[~~ of $1,000~~]. This license fee shall be in lieu of all license and excise taxes which would otherwise be due by the holder in connection with the retailing of alcoholic beverages and the license may be renewed annually for a fee of $1,000. The license shall authorize the licensee to sell distilled spirits and wine by the drink and by miniature bottle, and malt beverages, upon regularly-scheduled or charter flights of the licensee, ***in***[~~into~~] and out of the State of Kentucky. The license shall authorize the licensee to store alcoholic beverages for retail sale at a location or locations, if operating from more than one airport in Kentucky, as designated on the license application.

(3) The department may issue a transporter's license to a commercial airline system, a charter flight system, or a commercial cargo system, upon the payment of ***the required fee***[~~$100~~]. This license may be renewed annually for a fee of $100. The license shall authorize the licensee to transport distilled spirits and wine and malt beverages, into and out of the State of Kentucky, upon regularly-scheduled or charter flights of the licensee. The license shall authorize, for the purpose of transportation, the storage of alcoholic beverages at a location or locations, if operating from more than one airport in Kentucky, as designated on the license application. This license shall authorize an airline to transport if both the consignor and consignee in each case are authorized by the laws of the states of their residence to sell, purchase, ship, or receive the alcoholic beverages.

(4) ***The department may issue a convention center or convention hotel complex license for the retail sale of distilled spirits, wine, and malt beverages for consumption on the premises to a convention center or hotel having seating capacity of one thousand (1,000) or more persons. The license shall cover all alcoholic beverage sales on the premises, except that a separate hotel in-room service license is required, where applicable. An applicant for the license shall meet the qualifications of KRS 243.055 and an extended supplement license under subsection (5) of this section may be issued. The convention center or convention hotel complex license shall be a nonquota license and shall not be transferable to other premises. The provisions of this subsection shall not apply to convention center licenses or the renewal thereof, other than those in a city of the first class or a county containing a city of the first class, if the original license was issued prior to July 15, 1998.***

(5) Where it is determined by the department to be in the best interest of promoting tourism, conventions, and the economic development of Kentucky or any part thereof, the department may issue a supplemental license for the retail sale of alcoholic beverages by the drink at convention centers, at horse race tracks licensed to conduct a race meeting under KRS Chapter 230, and at commercial airports through which more than five hundred thousand (500,000) passengers arrive or depart annually. Upon application by the holder of a retail alcoholic beverage license at a convention center, ***convention hotel complex,*** horse race track, or commercial airport as provided above, the department may establish the days when the supplemental license will be valid at the specific location, including Sundays after 1 p.m. The supplemental license fee shall be ***established,***[~~one thousand dollars ($1,000) per year~~] and shall be in addition to all other licenses and fees due by the holder in connection with the retailing of alcoholic beverages. The department may***,*** by ***administrative*** regulation or special conditions of the supplemental permit***,*** establish such restrictions on the use of the license as will insure that it will be primarily for the benefit of the convention[~~ center~~] business, the horse racing industry, and passengers at large commercial airports[~~, Provided, however, that no provision of this subsection shall apply to any portion of a county containing an urban-county government~~].

Section 28. KRS 241.140 is amended to read as follows:

The functions of each county administrator shall be the same, with respect to local licenses and regulations, as the functions of the board with respect to state licenses and regulations, except that no regulation adopted by a county administrator may be less stringent than statutes relative to alcoholic beverage control or than the regulations of the board.[~~ No regulation of a county administrator shall become effective until it has been approved by the board.~~] If any city appoints its own administrator ***under***[~~as provided for in~~] KRS 241.170, the county administrator in that county shall have jurisdiction over only that portion of the county which lies outside the corporate limits of that city***, unless the department determines that the city does not have an adequate police force of its own or under KRS 70.540, 70.150, 70.160, and 70.170.***

Section 29. The following KRS section is repealed:

243.635 "Transfer" defined -- Transfer of license under specified circumstances prohibited.

HB 602, AN ACT relating to barbers.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 317.440 is amended to read as follows:

(1) To protect the health and safety of the public or to protect the public against misrepresentation, deceit***,*** or fraud in the practice or teaching of barbering, the[~~ barber~~] board shall ***promulgate administrative***[~~prescribe reasonable rules and~~] regulations:

- (a) Governing the location and housing of barber shops or schools;
- (b) Governing the quantity and quality of equipment, supplies, materials, records***,*** and furnishings required in barber shops or schools;
- (c) Governing the training and supervision of barber apprentices;
- (d) Governing the qualifications of teachers of barbering;
- (e) Governing the hours and courses of instruction at barber schools;
- (f) Governing the examinations of applicants for barber, apprentice barber or teacher of barbering.

(2) ***The board shall establish fees by administrative regulation according to the schedules established in Section 2 of this Act.***

(3) ***Administrative*** regulations pertaining to health and sanitation shall be approved by the Kentucky secretary for human resources before becoming effective.

Section 2. KRS 317.450 is amended to read as follows:

(1) ***(a)*** The[~~ barber~~] board shall issue a license to practice barbering to any person who:

- ***1.***[~~(a)~~] Is at least ***seventeen and one-half (17 1/2)***[~~eighteen (18)~~] years of age;
- ***2.***[~~(b)~~] Is of good moral character and temperate habit;
- ***3.***[~~(c)~~] Has acted as a licensed apprentice for at least ***nine (9)***[~~eighteen (18)~~] months under the immediate supervision of a licensed barber;
- ***4.***[~~(d)~~] Has satisfactorily passed the examination prescribed by the barber board; ***and***
- ***5.***[~~(e)~~] Has paid a fee ***not to exceed fifty dollars ($50)***[~~of twenty dollars ($20)~~].

(b)[~~(f)~~] The board may reciprocate with other states and issue a barber license upon payment of a fee ***not to exceed two hundred fifty dollars ($250)***[~~of fifty dollars ($50)~~] and upon submission of satisfactory evidence that the requirements for licensure in the other state are substantially equivalent to the requirements of this state at the time of application. The board may require an applicant under this section to pass an examination to establish equivalency.

(2) The[~~ barber~~] board shall issue a license to act as ***an*** apprentice to a barber to any person who:

- (a) Is at least sixteen and one-half (16-1/2) years of age;
- (b) Is of good moral character and temperate habit;
- (c) Has at least four (4) years of high school education;
- (d) Has graduated from an accredited or licensed school of barbering;
- (e) Has satisfactorily passed the examination prescribed by the barber board ***by promulgation of administrative regulations***; and

(f) Has paid a fee ***not to exceed fifty dollars ($50)***[~~of twenty dollars ($20)~~].

(3) The[~~ barber~~] board shall issue a license to operate a barber shop to any barber licensed under the provisions of this chapter upon application ***and payment*** of[~~ such barber accompanied by~~] a fee ***not to exceed fifty dollars ($50).***[~~ of twenty dollars ($20) provided that~~] The[~~ barber~~] board shall refuse to issue ***the***[~~such a~~] license upon a failure ***of the licensed barber*** to comply with the provisions of this chapter or the ***administrative***[~~rules and~~] regulations ***promulgated by***[~~of~~] the board[~~ adopted pursuant thereto~~].

(4) The[~~ barber~~] board shall issue a license to operate a school of barbering to any person, firm or corporation who or which:

(a) Applies ***for a license***[~~therefor~~] upon forms furnished by the board;

(b) Has the equipment and facilities ***that***[~~which~~] may be required by ***administrative***[~~rules and~~] regulations ***promulgated by***[~~of~~] the board[~~ adopted pursuant to this chapter~~];

(c) ***Has*** furnished ***adequate***[~~any~~] evidence ***to***[~~deemed necessary by~~] the board ***that:***

1. There is an intent[~~in the exercise of a sound discretion that it is the purpose of the applicant~~] to establish a bona fide school for the education and training of competent barbers***;*** and[~~ can and will employ~~]

2. A sufficient number of[~~ licensed~~] teachers ***licensed by the board will be employed***[~~of barbering~~] to conduct ***the***[~~such~~] school***, including at least one (1) teacher with a minimum of twelve (12)***[~~;~~

~~(d) Has furnished evidence of having at least twenty four (24)~~] months experience teaching in a barber school ***that includes***[~~including~~] administrative experience[~~ in such school~~]; ***and***

(d)[~~(e)~~]Pays a fee ***not to exceed one hundred fifty dollars ($150)***[~~of one hundred dollars ($100)~~].

(5) The[~~ barber~~] board shall issue a license to teach barbering to any person who:

(a) Is of good moral character and temperate habit;

(b) Has a high school education;

(c) Has been a licensed and practicing barber for at least ***eighteen (18)***[~~thirty six (36)~~] months;

(d) Has satisfactorily passed the examination prescribed by the board ***by promulgation of administrative regulations***; and

(e) Has paid a fee ***not to exceed one hundred dollars ($100)***[~~of twenty five dollars ($25)~~].

(6) Applications for examination required in this section shall be accompanied by an ***examination***[~~examining~~] fee as follows:

(a) Barber -- ***not to exceed one hundred fifty dollars ($150)***[~~$20.00~~];

(b) Apprentice to a barber -- ***not to exceed one hundred fifty dollars ($150***[~~$20.00~~];

(c) Teaching barbering -- ***not to exceed one hundred fifty dollars ($150)***[~~$25.00~~].

(7) Licenses issued pursuant to this section shall expire on the first day of July next following the date of their issuance[~~ but the board shall renew any license so expiring at no increased renewal fee if the required annual renewal license fee is paid within thirty-one (31) days after the expiration of such license, provided that the applicant for a renewal is otherwise in compliance with this chapter and the rules and regulations of the board adopted pursuant thereto~~]. Any license shall automatically be renewed by the board upon receipt of the required annual license fee ***no later than thirty-one (31) days after***[~~prior to~~] the expiration date ***if***[~~of such license, provided~~] the applicant for renewal is ***otherwise*** in compliance with the provisions of this chapter and the ***administrative***[~~rules and~~] regulations of the board[~~ adopted pursuant thereto~~].

(8) The annual renewal license fee for each type of license renewal shall be as follows:

(a) Barber -- ***not to exceed fifty dollars ($50)***[~~$20.00~~];

(b) Apprentice to barber -- ***not to exceed fifty dollars ($50)***[~~$20.00~~];

(c) Teacher of barbering -- ***not to exceed fifty dollars ($50)***[~~$20.00~~];

(d) Barber shop -- ***not to exceed fifty dollars ($50)***[~~$20.00~~];

(e) Barber school -- ***not to exceed one hundred fifty dollars ($150)***[~~$75.00~~].

(9) Except as provided in subsection (7) of this section, the fee for the renewal of an expired license, ***if***[~~where~~] the period of expiration does not exceed five (5) years, shall be as follows:

(a) Barber -- ***not to exceed twenty-five dollars ($25)***[~~$15.00~~] plus lapse fees;

(b) Apprentice -- ***not to exceed twenty-five dollars ($25)***[~~$15.00~~] plus lapse fees;

(c) Barber shop -- ***not to exceed twenty-five dollars ($25) plus lapse fees***[~~$20.00~~];

(d) Barber school -- ***not to exceed twenty-five dollars ($25) plus lapse fees***[~~$75.00~~];

(e) Teacher of barbering -- ***not to exceed twenty-five dollars ($25)***[~~$15.00~~] plus lapse fees.

HB 609, AN ACT relating to alcoholic beverages.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 241.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl or spirit of wine, from whatever source or by whatever process it is produced.

(2) "Alcoholic beverage" means every liquid or solid, whether patented or not, containing alcohol in an amount in excess of ***more than one percent (1%) of alcohol by volume, which is fit for beverage purposes***[~~that permitted under KRS Chapter 242 and capable of being consumed by a human being~~]. It includes every spurious or imitation liquor sold as, or under any name commonly used for, alcoholic beverages, whether containing any alcohol or not. It does not include the following products if they are unfit for use for beverage purposes:

(a) Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopoeia, National Formulary, or the American Institute of Homeopathy;

(b) Patented, patent, and proprietary medicines;

(c) Toilet, medicinal, and antiseptic preparations and solutions;[~~ and~~]

(d) Flavoring extracts and syrups***;***[~~.~~]

(e) Denatured alcohol or denatured rum;

(f) Vinegar and preserved sweet cider;

(g) Wine for sacramental purposes;

(h) Alcohol unfit for beverage purposes that is to be sold for legitimate external use; and

(i) Malt beverages, containing not more than three and two-tenths percent (3.2%) of alcohol by weight, in territory that has voted to allow the sale thereof.

(3) "Board" means the State Alcoholic Beverage Control Board created by KRS 241.030.

(4) "Bottle" means any container which is used for holding alcoholic beverages for the use and sale of alcoholic beverages at retail.

(5) "Brewer" means any person who ***manufactures malt beverages or*** owns, occupies, carries on, works, or conducts any brewery, either by himself or by his agent.

(6) "Brewery" means any place or premises where malt beverages are manufactured for sale, and includes all offices, granaries, mash rooms, cooling rooms, vaults, yards, and storerooms connected with the premises; or where any part of the process of the manufacture of malt beverages is carried on; or where any apparatus connected with manufacture is kept or used; or where any of the products of brewing or fermentation are stored or kept.

(7) "Building containing licensed premises" means the licensed premises themselves and includes ***the land, tract of land, or parking lot***[~~any part of any building~~] in which the premises are contained, and any part of any[~~ other~~] building connected[~~with the building~~] by direct access or by ***an***[~~a common~~] entrance ***which is under the ownership or control of the licensee by lease holdings or ownership***.

(8) ***"Cabinet" means the Revenue Cabinet unless the context requires otherwise.***

(9) "Charitable organization" means a nonprofit entity recognized as exempt from federal taxation under section 501(c) of the Internal Revenue Code (26 U.S.C. sec. 501(c)), or any organization having been established and continuously operating within the Commonwealth of Kentucky for charitable purposes for three (3) years and which expends at least sixty percent (60%) of its gross revenue exclusively for religious, educational, literary, civic, fraternal, or patriotic purposes.

(10) "Cider" means any fermented fruit-based beverage containing more than one-tenth of one percent (0.1%) alcohol by volume and includes hard cider and perry cider.

(11)[~~(9)~~] "City administrator" means city alcoholic beverage control administrator.

(12)[~~(10)~~] "Commissioner" means the commissioner of alcoholic beverage control.

(13) "Convention center" means any facility which, in its usual and customary business, provides seating for a minimum of one thousand (1,000) people and offers convention facilities and related services for seminars, training and educational purposes, trade association meetings, conventions, or civic and community events or for plays, theatrical productions, or cultural exhibitions.

(14)[~~(11)~~] "Convicted" and "conviction" means a finding of guilt resulting from a plea of guilty, the decision of a court, or the finding of a jury, irrespective of a pronouncement of judgment or the suspension of the judgment.

(15)[~~(12)~~] "County administrator" means county alcoholic beverage control administrator.

(16)[~~(13)~~] "Department" means the Department of Alcoholic Beverage Control.

(17)[~~(14)~~] "Distilled spirits" or "spirits" means any product capable of being consumed by a human being which contains alcohol in excess of the amount permitted by KRS Chapter 242 obtained by distilling, mixed with water or other substances in solution, except wine***, hard cider, and malt beverages***.

(18)[~~(15)~~] "Distiller" means any person who is engaged in the business of manufacturing distilled spirits at any distillery in the state, and is registered in the Office of the Collector of Internal Revenue for the United States at Louisville, Kentucky.

(19)[~~(16)~~] "Distillery" means any place or premises where distilled spirits are manufactured for sale, and which are registered in the office of any collector of internal revenue for the United States. It includes any United States government bonded warehouse.

(20)[~~(17)~~] "Distributor" means any person who distributes malt beverages for the purpose of being sold at retail.

(21)[~~(18)~~] "Dry territory" means a county, city, district or precinct in which a majority of voters have voted in favor of prohibition[~~, as prohibition is defined in KRS 242.010~~].

(22) "Election" means:

(a) An election held for the purpose of taking the sense of the people as to the application or discontinuance of alcoholic beverage sales under KRS Chapter 242; or

(b) Any other election not pertaining to alcohol.

(23)[~~(19)~~] "Field representative" means any employee or agent of the department who is regularly employed and whose primary function is to travel from place to place for the purpose of visiting taxpayers, and any employee or agent of the department who is assigned, temporarily or permanently, by the commissioner to duty outside the main office of the department at Frankfort, in connection with the administration of alcoholic beverage statutes.

(24)[~~(20)~~] "License" means any license issued pursuant to KRS 243.020 to 243.670.

(25)[~~(21)~~] "Licensee" means any person to whom a license has been issued, pursuant to KRS 243.020 to 243.670.

(26)[~~(22)~~] "Malt beverage" means any fermented undistilled alcoholic beverage of any name or description, manufactured from malt wholly or in part, or from any substitute for malt, and having an alcoholic content greater than that permitted under ***subsection (2)(i) of this section***[~~KRS Chapter 242~~].

(27)[~~(23)~~] "Manufacture" means distill, rectify, brew, bottle***,*** and operate a winery.

(28)[~~(24)~~] "Manufacturer" means a vintner, distiller, rectifier, or brewer***,*** and any other person engaged in the production or bottling of alcoholic beverages.

(29)[~~(25)~~] "Premises" means the land and building in and upon which any business regulated by alcoholic beverage statutes is operated or carried on. ***"Premises"***[~~It~~] shall not include as a single unit two (2) ***or more*** separate businesses[~~ or enterprises~~] of one (1) owner on the same lot or tract of land, in the same or in different buildings ***if physical and permanent separation of the premises is maintained, excluding employee access by keyed entry and emergency exits equipped with crash bars, and each has a separate public entrance accessible directly from the sidewalk or parking lot. Any licensee holding an alcoholic beverage license on the effective date of this Act shall not, by reason of this subsection, be ineligible to continue to hold his or her license or obtain a renewal, of the license***.

(30) "Prohibition" means the application of KRS 242.190 to 242.430 to a territory.

(31)[~~(26)~~] "Rectifier" means any person who rectifies, purifies, or refines distilled spirits or wine by any process other than as provided for on distillery premises, and every person who, without rectifying, purifying, or refining distilled spirits by mixing alcoholic beverages with any materials, manufactures any imitations of or compounds liquors for sale under the name of whiskey, brandy, gin, rum, wine, spirits, cordials, bitters, or any other name.

(32)[~~(27)~~] "Repackaging" means the placing of alcoholic beverages in any retail container irrespective of the material from which the container is made.

(33) "Restaurant" means a facility where the usual and customary business is the serving of meals to consumers and that has a bona fide kitchen facility.

(34) "Retail container" means any bottle, can, barrel, or other container which, without a separable intermediate container, holds alcoholic beverages and is suitable and destined for sale to a retail outlet, whether it is suitable for delivery to the consumer or not.

(35) "Retail outlet" means retailer, hotel, motel, restaurant, railroad dining car, club, and any facility where alcoholic beverages are sold directly to the consumers.

(36)[~~(28)~~] "Retail sale" means any sale where delivery is made in Kentucky to any ***consumers***[~~person not holding a license~~].

(37)[~~(29)~~] "Retailer" means any person who sells at retail any alcoholic beverage for the sale of which a license is required.

(38)[~~(30)~~]. "Sale" means any transfer, exchange, or barter for consideration, and includes all sales made by any person, whether principal, proprietor, agent, servant, or employee, of any alcoholic beverage.

(39) "Secretary" means the secretary of the Kentucky Revenue Cabinet.

(40)[~~(31)~~] "Sell" includes solicit or receive an order for, keep or expose for sale, keep with intent to sell, and the delivery of any alcoholic beverage.

(41)[~~(32)~~] "Small winery" means a winery producing wines from grapes, other fruit, or honey produced in Kentucky unless exempt under KRS 243.155(2), in an amount not to exceed fifty thousand (50,000) gallons in one (1) year.

(42) "Souvenir package" means a special package of Kentucky straight bourbon whiskey available for retail sale at a licensed Kentucky distillery where the whiskey was produced or bottled that is available from a licensed retailer.

(43)[~~(33)~~] "State administrator" means the administrator of the Distilled Spirits Unit or the administrator of the Malt Beverage Unit or both, as the context requires.

(44) "Vehicle" means any device or animal used to carry, convey, transport, or otherwise move alcoholic beverages or any products, equipment, or appurtenances used to manufacture, bottle, or sell these beverages.

(45)[~~(34)~~] "Vintner" means any person who owns, occupies, carries on, works, conducts, or operates any winery, either by himself or by his agent, except persons who manufacture wine for sacramental purposes exclusively.

(46)[~~(35)~~] "Warehouse" means any place in which alcoholic beverages are housed or stored.

(47)[~~(36)~~] "Wholesale sale" means a sale to any person for the purpose of resale.

(48)[~~(37)~~] "Wholesaler" means any person who ***distributes alcoholic beverages for the purpose of being sold at retail, but it shall not include a subsidiary of a manufacturer or cooperative of a retail outlet***[~~sells at wholesale any alcoholic beverage for the sale of which a license is required, except a distiller, rectifier, brewer, or vintner~~].

(49)[~~(38)~~] "Wine" means the product of the normal alcoholic fermentation of the juices of fruits, with the usual ***processes of manufacture and normal additions, and***[~~cellar treatment and necessary additions to correct defects due to climatic, saccharine and seasonal conditions. It~~] includes champagne and sparkling and fortified wine of an alcoholic content not to exceed twenty-four percent (24%) by volume. ***It includes cider, hard cider, and perry cider and also includes preparations or mixtures vended in retail containers if these preparations or mixtures contain not more than fifteen percent (15%) of alcohol by volume. It includes ciders, perry, or sake having an alcohol content greater than that permitted under subsection (2)(i) of this section.***

(50)[~~(39)~~] "Winery" means any place or premises in which wine is manufactured from any fruit, or brandies are distilled as a by-product of wine or other fruit, or cordials are compounded. It includes a winery for the manufacture of wine in any state or county other than Kentucky, if the out-of-state winery has and maintains a branch factory, office, or storeroom within this state and receives wine within this state consigned to a United States government bonded winery, warehouse***,*** or storeroom located within this state.

Section 2. KRS 241.150 is amended to read as follows:

Appeals from the orders of a county administrator may be taken to the board by filing with the board within ***thirty (30)***[~~ten (10)~~] days a certified copy of the orders of the county administrator. Matters at issue shall be heard by the board as upon an original proceeding. Appeals from orders of the county administrator shall be governed by KRS ***Chapter 13B***[~~243.550 to 243.590~~].

Section 3. KRS 242.030 is amended to read as follows:

(1) The date of the ***local option*** election may be stated in the petition for election. If the date is not stated, it shall be designated by the county judge/executive.

(2) The ***local option*** election shall be held not earlier than sixty (60) nor later than ninety (90) days after the date the petition is filed with the county clerk.

(3) The ***local option*** election shall not be held on the same day that a primary or general election is held in the territory or any part of the territory, nor within thirty (30) days next preceding or following a regular political election.

(4) ***A local option***[~~No~~] election in any territory less than the county shall ***not*** be held on the same day on which an election for the entire county is held, except as approved in KRS 242.125.

(5) No ***local option*** election shall be held in the same territory ***more***[~~oftener~~] than once in every three (3) years.

Section 4. KRS 242.100 is amended to read as follows:

Upon each day that a ***local option***[~~primary or regular~~] election is held, no place where alcoholic beverages are sold in the county in which the territory affected is situated shall be open at any time during the day. ***A***[~~No~~] person in that county shall ***not*** sell, loan, furnish, or give to any person any alcoholic beverage on that day.

Section 5. KRS 242.127 is amended to read as follows:

(1) In any city of the fourth class in which prohibition is not in effect, an election may be held in the manner prescribed in KRS ***Chapter 242***[~~242.010 to 242.040 and KRS 242.060 to 242.120~~] to take the sense of the people of the city as to the sale of distilled spirits or wine by the drink for consumption on the premises in the city.

(2) An election held pursuant to this section shall be city-wide.

Section 6. KRS 242.1292 is amended to read as follows:

(1) The provisions of this section shall be applicable in any city of the second class notwithstanding any other provisions of this chapter relating to the discontinuance of prohibition in any county, city, or territory which may be to the contrary.

(2) In any city of the second class in which prohibition is in effect in all or part of the city, and upon a determination that an economic hardship exists in one (1) or more of the voting precincts of the city in the manner prescribed in subsection (10) of this section, the governing body of the city shall by ordinance designate ***the***[~~such~~] precinct or precincts as a limited sale precinct or precincts and shall provide for an election to be held in ***the***[~~such~~] precinct or precincts to take the sense of the people of each[~~ such~~] precinct as to the discontinuance of prohibition in ***the***[~~such~~] precinct.

(3) The election shall be held in ***the***[~~such~~] precinct or precincts in the manner prescribed in KRS ***Chapter 242***[~~242.010 to 242.040 and KRS 242.060 to 242.120~~]. ***The***[~~Such~~] election shall not be deemed to be an election in the "same territory" within the meaning of subsection (5) of KRS 242.030; provided, however,[~~ that~~] no election on the same question shall be held in the same precinct or precincts more[~~ often~~] than once every five (5) years.

(4) The question shall be presented to the voters in conformance with the requirements of KRS 242.050 except that the form of the proposition shall be, "Are you in favor of the sale of alcoholic beverages in (official name and designation of precinct)?"

(5) If a majority of the votes cast in any limited sale precinct in which an election is held pursuant to this section are in favor of the sale of alcoholic beverages in that precinct, the governing body of the city shall by ordinance create or provide for the office of city alcoholic beverage control administrator and shall adopt a comprehensive regulatory ordinance covering the licensing and operation of establishments for the sale of alcoholic beverages within a limited sale precinct. In its discretion the governing body may provide that:

(a) Only three (3) licenses permitting the package sale at retail of alcoholic beverages shall be granted within the territorial limits of any limited sale precinct.

(b) Only four (4) licenses to sell alcoholic beverages by the drink for consumption on the premises by the general public shall be granted in any one (1) limited sale precinct. One (1)[~~ such~~] license in each limited sale precinct may be reserved for grant to any newly established hotel, motel, or inn containing not less than fifty (50) sleeping units and having dining facilities for not less than one hundred (100) persons. The remaining three (3) licenses may be granted to a hotel, motel, or inn meeting the aforestated requirements or to bona fide restaurants open to the general public having dining facilities for not less than one hundred (100) persons.[~~; and further provided that~~] Additional licenses to sell alcoholic beverages by the drink for consumption on the premises may be granted to social membership clubs established and maintained for the benefit of members only by bona fide fraternal or veterans organizations.

(6) The governing body may also incorporate in the regulatory ordinance[~~ such~~] other reasonable rules and regulations as may be necessary or desirable for the proper administration and enforcement of this section,[~~ and~~] for the maintenance of public order in a limited sale precinct, and for the issuance of any licenses permitted by KRS 243.070; provided that any rule or regulation adopted in the regulatory ordinance shall conform to the requirements of KRS 241.190.

(7) Notwithstanding any limitations imposed on the city's taxing or licensing power by KRS 243.070 upon the discontinuance of prohibition in any limited sale precinct, the governing body of the city ***may***[~~is hereby authorized to~~] impose a regulatory license fee upon the gross receipts of each establishment located therein and licensed to sell alcoholic beverages. The regulatory license fee may be levied at the beginning of each city budget period at such percentage rate as shall be reasonably estimated to fully reimburse the city for the estimated costs of any additional policing, regulatory or administrative expenses related to the sale of alcoholic beverages in the city. ***The***[~~Such~~] regulatory license fee shall be in addition to any other taxes, fees, or licenses permitted by law, but a credit against ***the***[~~such~~] fee shall be allowed in an amount equal to any licenses or fees imposed by the city pursuant to KRS 243.070.

(8) Subject to the limitation imposed by subsection (3) of this section, no provision contained in this section providing for the establishment of a limited sale precinct shall preclude or abridge the right of the constitutionally qualified voters of ***the***[~~such~~] precinct to petition for a subsequent election on the same question.

(9) If an election is held pursuant to other provisions of KRS Chapter 242 in the city or the county in which a limited sale precinct is located for the purpose of taking the sense of the voters upon the question of adopting or repealing prohibition for the entire city or the entire county, the status of ***the***[~~such~~] question in a limited sale precinct shall be determined in the following manner:

(a) The status of a limited sale precinct shall not be affected by any election for the entire city or the entire county if

the[~~such~~] limited sale precinct was established less than five (5) years prior to the date of the proposed election for the entire city or the entire county and ***if so***[~~in such case~~] the voters of any limited sale precinct shall not vote in ***the***[~~such~~] election.

(b) If ***the***[~~such~~] limited sale precinct was established more than five (5) years prior to the date of the proposed election for the entire city or the entire county, the voters within each limited sale precinct shall be presented with the question, "Are you in favor of continuing the sale of alcoholic beverages in (official name and designation of precinct) as a limited sale precinct?" No other question shall be presented to the voters of any limited sale precinct.

(c) The votes of each limited sale precinct shall be counted separately, and, if a majority of the votes cast in the limited sale precinct are in favor of continuing the sale of alcoholic beverages therein as a limited sale precinct, then ***the***[~~such~~] status shall continue within ***the***[~~such~~] precinct, except that if the city or the county in which the limited sale precinct is located votes against prohibition in the remainder of the city or the county, the limited sale precinct status of any precinct may be terminated by the governing body of the city or the county and thereafter the status of ***the***[~~such~~] precinct shall be the same as that in effect for the remainder of the city or the county.

(10) Any precinct located entirely within any city of the second class in which prohibition is in effect in all or part of the city shall be designated as a limited sale precinct by the governing body of the city, ***if***[~~provided that~~]:

(a) The governing body determines to its satisfaction that the general trade, business and economy of one (1) or more of the precincts within the city is substantially adversely affected by[~~ reason of~~] the legal sale of alcoholic beverages in any neighboring or adjoining state, county, city, town, district***,*** or precinct. For the purpose of making ***this***[~~such~~] determination, the governing body may hold[~~ such~~] hearings, examine[~~ such~~] witnesses***,*** or receive[~~ such~~] evidence as it believes necessary or desirable for ***this***[~~such~~] purpose; or

(b) The governing body receives a petition signed by a number of constitutionally qualified voters of a precinct equal to thirty-three percent (33%) of the votes cast in the precinct at the last preceding general election requesting the governing body of the city to designate ***the***[~~such~~] precinct as a limited sale precinct. The petition may consist of one (1) or more separate units and shall be filed with the mayor of the city. In addition to the name of the voter, the petition shall also state his ***or her*** post office address and the correct date upon which his ***or her*** name is signed. Upon receipt of the petition, the mayor shall ***present it***[~~cause the same to be presented~~] to the governing body of the city at its next regularly scheduled meeting and, after verifying that ***the***[~~such~~] petition is in compliance with the requirements of this section, the governing body shall forthwith by ordinance designate the precinct to be a limited sale precinct.

Section 7. KRS 242.240 is amended to read as follows:

A[~~No~~] person shall ***not*** sell or give any of the articles listed in paragraphs (a) to ***(h)***[~~(i)~~] of subsection ***(2)***[~~(1)~~] of ***Section 1 of this Act***[~~KRS 242.010~~] as not within the definition of alcoholic beverages, knowing that, or under such circumstances that, the seller or giver might reasonably deduce that the purchaser or person to whom the article is given intends to use it for beverage purposes.

Section 8. KRS 243.020 is amended to read as follows:

(1) ***A***[~~No~~] person shall ***not*** do any act authorized by any kind of license with respect to the manufacture, storage, sale, purchase, transporting, or other traffic in alcoholic beverages unless he holds the kind of license that authorizes ***the***[~~such~~] act.

(2) The holding of any permit from the United States government to traffic in alcoholic beverages without the corresponding requisite state and local licenses shall in all cases raise a ***rebuttable***[~~prima facie~~] presumption that the holder of the United States permit is unlawfully trafficking in alcoholic beverages.

(3) Except as provided in KRS 243.036, ***243.260, and 243.290, a***[~~no~~] person, conducting a place of business patronized by the public, who does not hold a license to sell distilled spirits***,***[~~ and~~] wine***, or malt beverages,***[~~ by the drink,~~] shall ***not*** permit any person to sell, barter, loan, give away, or drink distilled spirits***,***[~~ or~~] wine***, or malt beverages*** on the premises of his place of business.

(4) ***Any***[~~No~~] distilled spirits or wine in excess of three (3) gallons (twelve (12) liters) shall ***not*** be stored or kept except upon the licensed premises of a person who is the holder of a license provided for in KRS 243.030.

Section 9. KRS 243.033 is amended to read as follows:

(1) As used in this section, unless the context requires otherwise, "caterer" means a corporation, partnership, or individual ***that***[~~which~~] operates the business of a food service professional by preparing food and beverages in a licensed and inspected commissary, transporting the food and beverages to a location selected by the customer away from the commissary premises, and serving the food and beverages to the customer's guests.

(2) A caterer's license may be issued as a supplementary license to a caterer that holds a retail package liquor license or a

distilled spirits and wine by the drink retail license.

(3) The caterer's license may be issued to a caterer, that does not meet the requirements of subsection (2) of this section, for the premises that serves as the caterer's commissary. The alcoholic beverage stock of the caterer shall be kept under lock and key at the licensed premises during the time that the alcoholic beverages are not being used in conjunction with a catered function.

(4) The caterer's license shall authorize the caterer to:

(a) Purchase and store alcoholic beverages in the manner prescribed in KRS 243.250, 243.280, and 244.310;

(b) Transport, sell, serve, and deliver alcoholic beverages by the drink at locations in wet territory away from the licensed premises in conjunction with the catering of food and beverages for a customer and his guests. Distilled spirits and wine may only be transported, sold, served, or delivered in cities of the first, second, or third classes, counties containing cities of the first, second, or third classes, and cities of the fourth class in which the sale of distilled spirits and wine has been adopted pursuant to KRS 242.127;

(c) Receive and fill telephone orders for alcoholic beverages in conjunction with the ordering of food for a function catered by the licensee; and

(d) Receive payment for alcoholic beverages served at a function on a by-the-drink or by-the-function basis. The caterer may bill the host for by-the-function sales of alcoholic beverages in the usual course of the caterer's business.

(5) A caterer licensee shall not cater alcoholic beverages at locations for which retail alcoholic beverage licenses or special temporary licenses have been issued.

(6) A caterer licensee shall not cater distilled spirits and wine on Sunday except in territory in which the Sunday sale of distilled spirits and wine is permitted under the provisions of KRS 244.290~~[(2)]~~. A caterer licensee shall not cater malt beverages on Sunday except in territory in which the Sunday sale of malt beverages is permitted under the provisions of KRS 244.480.

(7) The location at which alcoholic beverages are sold, served, and delivered by a caterer, pursuant to this section, shall not constitute a public place for the purpose of KRS Chapter 222. If the location is a multi-unit structure, only the unit or units at which the function being catered is held shall be excluded from the public place provisions of KRS Chapter 222.

(8) The caterer licensee shall post a copy of his caterer's license at the location of the function for which alcoholic beverages are catered.

(9) The name and license numbers of the caterer shall be painted, in a contrasting color, in a form prescribed by the board by promulgation of an administrative regulation, upon all vehicles used by the caterer to transport alcoholic beverages.

(10) All restrictions and prohibitions applying to a distilled spirits and wine retail drink licensee not inconsistent with this section, shall apply to the caterer licensee.

(11) The caterer licensee shall submit a list of functions catered or to be catered including location, host, date, and time upon request of the board.

Section 10. KRS 243.110 is amended to read as follows:

(1) Except as provided in subsection (2) of this section, each kind of license listed in KRS 243.030 shall be inconsistent with every other kind listed in that section and no person holding a license of any of those kinds shall apply for or hold a license of another kind listed in KRS 243.030.

(2) The holder of a retail package license may also hold either a retail drink license or a special nonindustrial alcohol license. The holder of a transporter's license may also hold a special storage or warehouse license. The holder of a wholesaler's license may also hold a special nonbeverage alcohol vendor's license~~[, a special industrial alcohol license or a vintner's license]~~. The holder of a distiller's license may also hold a rectifier's license, ***a special industrial alcohol license or a vintner's license,*** and a souvenir retail liquor license. The holder of a ***farm winery and a*** small winery license may exercise all functions of such license as authorized by KRS 243.155 ***and Section 12 of this Act***. A commercial airline system or charter flight system retail license, a commercial airline system or charter flight system transporter's license, and a retail drink license if held by a commercial airline or charter flight system may be held by the same person or corporation.

(3) Any person may hold two (2) or more licenses of the same kind.

(4) An applicant shall not evade the prohibition against applying for or holding licenses of two (2) kinds by applying for a second license under the cloak of a separate corporate entity. The state administrator may examine into the ownership and management of corporations which apply for or hold licenses, and shall deny the application for a license to any party substantially interested in an incompatible license.

Section 11. KRS 243.120 is amended to read as follows:

A distiller's, rectifier's or vintner's license shall authorize the licensee to engage in the business of distiller, rectifier, or vintner at the premises specifically designated in the license***, to maintain aging warehouses,*** and to transport for himself ***or herself*** only any alcoholic beverage which he ***or she*** is authorized under the license to manufacture or sell. ***The***[~~Such~~] licensee shall transport alcoholic beverages only by a vehicle owned and operated by himself ***or herself,***, which has affixed to its sides at all times a sign of form and size prescribed by the state board, containing among other things the name and license number of the licensee. No distilled spirits or wine shall be transported on the same truck or vehicle with malt beverages, except by a common carrier, unless the owner of ***the***[~~such~~] truck or vehicle holds a distributor's license.

Section 12. KRS 243.156 is amended to read as follows:

(1) A farm winery license shall authorize the licensee to perform the following functions, without having to obtain separate licenses:

(a) Manufacture wines and bottle wines at a winery located on a Kentucky farm with a producing vineyard, orchard, or similar growing area, in an amount not to exceed twenty-five thousand (25,000) gallons in one (1) year;

(b) Serve on the premises ***or at an off-premise retail site*** complimentary samples of wine produced by it in amounts not to exceed four (4) ounces per patron per day, if the farm winery ***or off-premise retail site*** is located in wet territory;

(c) Sell wine produced on the premises of the farm winery or produced by a licensed small winery by the package at retail to consumers, if the farm winery or off-premise retail site is located in wet territory and the wine produced by the small winery is made with Kentucky products;

(d) Sell and transport wine produced on the premises of the farm winery to wholesale liquor license holders and to retail package or retail drink license holders, if the wine has been offered for sale to wholesale license holders and the wine is sold at the wholesale price to the retail package or retail drink license holders;

(e) Serve complimentary samples or sell wine produced on the premises of the farm winery at another farm winery or small winery sales site, if the other farm winery or small winery sales site is located in wet territory;

(f) Consume on the premises wine produced by the farm winery or a small winery and purchased by the package at the licensed premises, if the farm winery is located in wet territory; and

(g) Obtain a special temporary wine license for the purpose of selling wine produced by the farm winery or a licensed small winery at a fair, festival, or other similar type of event, if the event is held in a wet territory.

(2) A licensed farm winery may establish one (1) off-premise retail sales outlet, if it is located in wet territory.

(3) All of the fresh fruits, fruit juices, or honey used to manufacture wine at a farm winery shall be grown or produced in the Commonwealth of Kentucky.

(4) If a licensed farm winery is located in a dry territory, KRS 242.230 to 242.430 shall apply.

(5) This section shall not exempt the holder of a farm winery license from the provisions of KRS Chapters 241, 242, 243, and 244, nor from administrative regulations of the board, except as expressly stated in this section.

Section 13. KRS 243.220 is amended to read as follows:

(1) No license for the sale of alcoholic beverages at retail shall be issued for any premises unless the applicant for the license is the owner of the premises or is in possession of the premises under a written lease for a term of not less than the license period.

(2) (a) No premises shall be licensed for the sale of alcoholic beverages at retail ***unless***[~~except where~~] the licensed premises and the entrance to the premises are on the street level and located in a business center or on a main thoroughfare.

(b) Paragraph (a) of this subsection shall not apply to a hotel, club or restaurant, ***if***[~~provided~~] the club or restaurant receives a minimum of ***fifty***[~~forty~~] percent ***(50%)***[~~(40%)~~] of its income from the sale of food and has a minimum seating capacity of fifty (50) people at tables. In the[~~ class of~~] cases described in this paragraph the administrator to whom the application is made may, in the exercise of his sound discretion, decide whether the premises are to be licensed.

[~~(3) (a) Except as provided in paragraphs (b) and (c) of this subsection, no license for the sale of alcoholic beverages at retail shall be issued for any premises that are located within two hundred (200) feet of a building used primarily as a church or for class rooms of a school, if the governing authority of the church or school, within ten (10) days after receiving notice of the application for the license, files written protest with the state administrator against the issuance of the license. The measurement shall be taken in a straight line from the nearest outside wall of the building on the licensed premises to the nearest outside wall of the church or school building. Proof of the giving of notice to the governing authority of the church or school must be furnished to the state administrator before the license is issued.~~

~~(b) A hotel, drug store, private club or other retail licensee which or who has been bona fide in business as a licensee at a particular location for not less than one (1) year preceding the passage of Acts 1978 or the establishment of the church or school, may be issued a license by the administrator, in the exercise of his sound discretion, regardless of protest, even though the premises are within less than two hundred (200) feet of a building occupied~~

~~primarily as a church or for class rooms of a school.~~

~~(c) In cities of the first, second or third class, the city administrator, with the approval of the State Alcoholic Beverage Control Board, may issue a regulation in such city requiring written permission by the governing authority of the church or school for the licensing of retail premises within two hundred (200) feet of the church or school building, in which case the state administrator may not issue the license without such permission, except under the circumstances set forth in paragraph (b) of this subsection.~~]

Section 14. KRS 243.230 is amended to read as follows:

(1) Licenses to sell distilled spirits and wine by the drink for consumption on the premises may be issued only for premises located within cities of the first, second, or third class, or elsewhere in counties containing a city of the first, second, or third class if those counties maintain an adequate police force under KRS 70.540 and 70.150 to 70.170.

(2) Notwithstanding any other provision of law, ***a liquor by the drink***[~~a special~~] license to sell distilled spirits and wine[~~ by the drink~~] for consumption on the premises may be issued for premises located within a city of the fourth class in which the majority of votes cast in the most recent election held ***under***[~~pursuant to~~] KRS 242.127 and 242.129 were in favor of the proposition voted upon ***if***[~~provided~~] the city has an adequate police force under KRS 95.710 and 95.760 to 95.787.

(3) Licenses to sell distilled spirits or wine by the package may be issued only for premises located within incorporated cities, or elsewhere in counties containing a city of the first, second, or third class if those counties maintain an adequate police force under KRS 70.540 and 70.150 to 70.170.

(4) Notwithstanding subsection (3) of this section, the board may, after a field investigation, issue a license to sell distilled spirits and wine by the package at premises not located within any city if:

 (a) Substantial aggregations of population would otherwise not have reasonable access to a licensed vendor;

 (b) The premises to be licensed under this subsection shall be used exclusively for the sale of distilled spirits and wine by the package and malt beverages, ***where applicable,***[~~if the premises are licensed to sell malt beverages at retail~~] and shall not be used in any manner, in connection with a dance hall, roadhouse, restaurant, store, or any other commercial enterprise, except as a drug store in which a registered pharmacist is employed.

(5) No retail package or drink license for the sale of distilled spirits or wine shall be issued for any premises used as or in connection with the operation of any business in which a substantial part of the commercial transaction consists of selling at retail staple groceries or gasoline and lubricating oil.

Section 15. KRS 243.270 is amended to read as follows:

(1) A special private club license may be issued to any nonprofit social, fraternal, military, or political organization or club, which for more than one (1) year prior to the date of application has maintained and operated a club room or rooms from which the general public is excluded.

(2) This license shall authorize the licensee to exercise the privilege of a ***malt beverage or a*** distilled spirits and wine retail drink licensee***, or both,*** at the designated premises if the general public is excluded.[~~ All restrictions and prohibitions applying to a distilled spirits and wine retail drink licensee shall apply to a special private club licensee.~~]

Section 16. KRS 243.280 is amended to read as follows:

(1) A malt beverage retailer's license shall authorize the licensee to sell malt beverages at retail from the licensed premises only and to purchase malt beverages only from a distributor.

(2) ***A***[~~No~~] malt beverage retailer's license shall ***not*** be issued to sell malt beverages at retail for any premises from which gasoline and lubricating oil are sold or from which the servicing and repair of motor vehicles is conducted, unless there is maintained in inventory on the premises for sale at retail not less than five thousand dollars ($5,000) of food, groceries, and related products valued at cost.

(3) The term "food and groceries" ***means***[~~referred to in subsection (2) of this section shall mean~~]:

 (a) Any food or food product intended for human consumption except alcoholic beverages, tobacco,[~~ and~~] hot foods, and hot food products prepared for immediate consumption;

 (b) Seeds and plants to grow food for personal consumption.

(4)[~~ This section shall be effective as to each malt beverage retail license which is no longer eligible for a retail malt beverage license hereunder upon the expiration of any current license issued by the state malt beverage administrator.~~

~~(5)~~] The provisions of this section shall not apply to any licensed premises which sells no fuel other than marine fuel.

Section 17. KRS 243.340 is amended to read as follows:

A special agent's or solicitor's license may be issued to a duly authorized representative, employee, or agent of, or solicitor for a distiller, rectifier, vintner, or wholesaler licensed in Kentucky or by the state of his residence and by the United States if a resident therein. ***The***[~~Such~~] license shall authorize the licensee to offer for sale and to solicit orders for the sale of any alcoholic beverage sold by a distiller, rectifier, vintner, or wholesaler who is licensed in Kentucky or who is a nonresident. The license shall set forth the name, address, and, unless the vendor is a nonresident, the license numbers of the vendors the agent or solicitor represents, as well as the name, address***,*** and license number of the agent or solicitor. An agent or solicitor shall not represent any vendor or licensee whose name does not appear upon the license ***or the application for the license***.[~~ Every nonresident vendor licensed under the provisions of KRS 243.030(14) shall post a surety bond of five hundred dollars ($500) with the administrator of the distilled spirits unit.~~]

Section 18. KRS 243.350 is amended to read as follows:

A special storage or warehouse license may be issued to parties not otherwise entitled under Kentucky law to store or warehouse distilled spirits or wine, but who are so authorized by the federal government[~~ and who are required to keep as a part of their permanent records United States Treasury Department forms 52A and 52B~~]. ***The***[~~This~~] license shall authorize the licensee to operate a warehouse or place of storage for distilled spirits or wine on the premises specifically designated.

Section 19. KRS 243.450 is amended to read as follows:

(1) A license ***to***[~~that might~~] be issued under KRS 243.020 to 243.670 shall be refused:

(a) If the applicant or the premises for which the license is sought ***does***[~~do~~] not comply fully with all alcoholic beverage control statutes ***and***[~~,~~] the regulations of the board***;***[~~, all ordinances relative to the regulation of the manufacture, sale and transportation of alcoholic beverages, and~~]

(b) If the applicant or the premises for which the license is sought does not comply with all regulations of a city administrator or county administrator;

(c)[~~(b)~~]If the applicant has done any act for which a revocation of license would be authorized; or

(d)[~~(c)~~]If the applicant has made any false material statement in his application.

(2) A license that might be issued under KRS 243.020 to 243.670 may be refused by a state administrator for any reason which ***the administrator***[~~he~~], in the exercise of his ***or her*** sound discretion, ***deems***[~~may deem~~] sufficient. Among those factors that the administrator shall consider in the exercise of his ***or her*** discretion are: public sentiment in the area; number of licensed outlets in the area; potential for future growth; type of area involved; type of transportation available; and financial potential of the area.

Section 20. KRS 243.460 is amended to read as follows:

If the payment of a license fee was erroneously made or the state administrator refuses to issue the license the department shall authorize the ***payment of the refundable amount***[~~refund of the amount paid~~], if at the expiration of ***thirty (30)***[~~ten (10)~~] days no appeal has been filed[~~ under KRS 243.470. The refunds shall be made whether the payments were voluntary or involuntary or were made under protest or not~~].

Section 21. KRS 243.470 is amended to read as follows:

(1) If a state administrator ***rejects***[~~determines to reject~~] an application ***the administrator***[~~he~~] shall notify the applicant of his ***or her decision***[~~determination~~] by[~~ mailing a~~] registered ***mail at***[~~letter to him, directed to~~] the address given in ***the***[~~his~~] application or ***supplement***[~~in the last statement filed supplementary thereto~~].

(2) The applicant may,[~~If~~] within ***thirty (30)***[~~ten (10)~~] days after the date of the mailing of ***the***[~~that~~] notice from the administrator, ***indicate,***[~~ the applicant indicates~~] in writing***,*** his ***or her*** desire ***for a hearing. The hearing shall be conducted***[~~to be present and heard, he shall have the opportunity to be heard~~] by the board or persons designated by the board ***in compliance with the requirements of KRS Chapter 13B***[~~. The application shall not finally be passed upon by the administrator until the board has conducted a hearing~~].

Section 22. KRS 243.490 is amended to read as follows:

(1) Any license issued under KRS 243.020 to 243.670 may be revoked by the state board if the licensee shall have violated any of the provisions of KRS Chapter 241, 243, or 244, or any rule or regulation of the[~~ said~~] board or of the Revenue Cabinet relating to the regulation of the manufacture, sale***,*** and transportation or taxation of alcoholic beverages or if ***the***[~~such~~] licensee shall have violated or shall violate any act of Congress or any rule or regulation of any federal board, agency, or commission, or any ordinance now, heretofore, or hereafter in effect relating to the regulation of the manufacture, sale and transportation or taxation of intoxicating liquors or any rules or regulations of any local alcoholic beverage authority or any similar body heretofore in existence or authorized by the terms of KRS Chapters 241, 243, and 244 to be created, or if any clerk, agent, servant, or employee of any licensee shall violate any of the laws, regulations, or ordinances above referred to, irrespective of whether the licensee knew of or permitted the violation or whether the violation was committed in disobedience of his instructions, or any[~~ such~~] license may be revoked for any cause which the Alcoholic Beverage Control Board in the exercise of its sound discretion deems sufficient. A license may be revoked for any of the reasons for which the administrator would have been required to refuse a license if the facts had been known.

(2)[~~ Any license issued under KRS 243.020 to 243.670 may be revoked by the board if the licensee is guilty of unfair competition as defined in KRS 244.470.~~

~~(3)~~] If it is determined that an applicant for a license or license renewal under the provisions of this chapter is a delinquent taxpayer as defined in KRS 131.1815, the Department of Alcoholic Beverage Control may refuse to issue or renew the license to the applicant.

Section 23. KRS 243.550 is amended to read as follows:

Hearings upon appeals from orders of a county administrator or a city administrator, a determination of a state administrator, or upon proceedings for revocation or suspension shall be held by the board. The board may, at its discretion, hold the hearing in Frankfort, or in the county where the licensed premises, or the premises to be licensed, are located. Decisions shall be made and final orders entered only upon the vote of a majority of the board. ***The hearings shall be conducted in accordance with the provisions of KRS Chapter 13B.***

Section 24. KRS 243.620 is amended to read as follows:

(1) Before commencing or doing any business for the time for which a license has been issued, ***all licenses***[~~the license~~] ***issued under KRS 243.020 to 243.670*** shall be posted and at all times displayed in a conspicuous place in the room or principal room where the business is carried on, so that all persons visiting the place may readily see the license.[~~ Licenses issued under KRS 243.030 shall be inclosed in a wood or metal frame inclosing a clear glass space so that the whole of the license may be seen.~~]

(2) No licensee shall post the license or permit it to be posted, upon premises other than the licensed premises or upon premises where traffic in alcoholic beverages is being carried on by any person other than the licensee, or knowingly deface, destroy***,*** or alter the license in any respect.

[~~(3) Whenever a license is lost or destroyed without the fault of the licensee or his agents or employees, a duplicate license shall be issued upon proof of loss satisfactory to the state administrator, and upon the payment of a fee of five dollars ($5) for a license issued under KRS 243.030 or 243.050, or one dollar ($1) for a license issued under KRS 243.040.~~]

Section 25. KRS 243.640 is amended to read as follows:

(1) If a corporation or partnership that holds a license under KRS 243.020 to 243.670 is dissolved, or if a receiver, assignee for the benefit of creditors or a guardian or conservator for the property of a licensee under those sections is appointed during the time for which a license was granted, or if a licensee under those sections dies during the time for which the license was issued and a personal representative is appointed for his ***or her*** estate, that corporation, partnership, receiver or assignee, or the personal representative of the estate of the deceased or individual adjudged to be mentally disabled, may be permitted to continue the business upon the licensed premises for the balance of the term for which the license was effective, with the same rights and subject to the same restrictions and liabilities as if he ***or she*** had been the original licensee.

(2) Before continuing the business the receiver, assignee, personal representative or committee shall file a statement setting forth in ***the***[~~such~~] form[~~ as~~] the board prescribes the facts and circumstances by which he ***or she*** has succeeded to the rights of the original licensee. The state administrator of the unit that issued the original license may, in the exercise of his sound discretion, permit or refuse to permit the continuance of the business.

(3) If the administrator permits the continuance of the business the license shall be submitted to him ***or her***, and he ***or she*** shall write or stamp across the face of the license the words: ".... is permitted to exercise the rights and privileges of the original licensee as (assignee, receiver, personal representative or committee, as the case may be) of the original licensee for the unexpired term of this license." The indorsement on the face of the license shall be dated and signed by the person making it.

[~~(4) The applicant shall pay a fee of five dollars ($5) for the indorsement.~~]

Section 26. KRS 244.050 is amended to read as follows:

No retail licensee shall give away any alcoholic beverage in any quantity, or deliver it in any quantity for less than a full monetary consideration, except as provided by KRS 243.155***, Section 12 of this Act, and KRS 243.157***.

Section 27. KRS 244.110 is amended to read as follows:

The entrance[~~ doors~~] of any premises for which a retail license has been issued shall be of clear glass ***and permit an unobstructed view***. The premises shall be so erected and maintained as to furnish a clear view of the[~~ entire~~] premises from the sidewalk, or, if the premises are not on the street level, from the entrance. No partition, box, stall, screen, curtain***,*** or other device shall obstruct the view or the general observation of persons, but partitions, subdivisions***,*** or panels that are not higher than forty-eight (48) inches from the floor shall not be construed as obstructing the view or the general observation of persons. [~~Any license to any bona fide hotel or club shall entitle the licensee to serve such alcoholic beverages as it is licensed to sell in a separate room at banquets or dinners or where meals are served.~~]

Section 28. KRS 244.130 is amended to read as follows:

(1) Except in conformity with regulations of the board, no licensee under KRS 243.020 to 243.670 shall[~~:~~

~~(a)~~] advertise or cause or permit to be advertised in any manner any product which he ***or she*** is licensed to manufacture or sell[~~; nor~~

~~(b) Have or exhibit in a window any display of alcoholic beverages~~].

(2) Subsection (1) of this section shall not prohibit:

(a) Advertising in newspapers, magazines***,*** or periodicals having a general circulation;

(b) Promotional advertising on radio or television limited to no more than the name of the licensee and the products the licensee is permitted to manufacture or sell;

(c) Promotional advertising containing the names of establishments or products displayed on uniforms or equipment of sporting teams.

Section 29. KRS 244.150 is amended to read as follows:

(1) Each licensee under KRS 243.020 to 243.670 shall keep and maintain upon the licensed premises***, or make readily available upon request of the department or the Revenue Cabinet,*** adequate books and records of all transactions involved in the manufacture or sale of alcoholic beverages, in the manner required by regulations of the ***department***[~~board~~] and the Revenue Cabinet.[~~ Such books and records shall be available at all reasonable times for inspection by the board and by the Revenue Cabinet.~~]

(2) The commissioner ***may***[~~shall~~] require common carriers to provide information in such form as he ***or she*** deems wise respecting all shipments of alcoholic beverages to, from, or between persons in Kentucky.

Section 30. KRS 244.260 is amended to read as follows:

(1) No wholesaler shall purchase, import, keep upon the licensed premises, or sell any distilled spirits or wine in any container except in the original sealed package containing quantities of not less than two hundred (200) milliliters each of distilled spirits or one hundred (100) milliliters of wine, and not exceeding 1.75 liters of distilled spirits or two hundred twenty (220) liters of wine, and fifty (50) milliliters of distilled spirits, as received from the distiller, rectifier, vintner, or wholesaler, as the case may be. The containers shall at all times have affixed to them all labels as may be required by the administrative regulations of the board, together with all necessary federal revenue and state excise tax stamps.

(2) No wholesaler shall sell any distilled spirits or wine except in cases of containers of uniform size, except that wine may be sold in barrels or kegs. "Case" as used in this section means a carton of containers aggregating not less than six (6) liters nor more than ***twenty-four (24)***[~~twelve (12)~~] liters of wine and distilled spirits***, or case containing one hundred twenty (120) or two hundred forty (240) fifty (50) milliliter bottles of distilled spirits and wine***.

Section 31. KRS 244.270 is amended to read as follows:

Each wholesaler shall have painted on the front window of the licensed premises, or, if there is no window, on a sign affixed to the front of the building containing the licensed premises, the name of the licensee together with the inscription: "Kentucky Wholesaler's Liquor License No. ...." in uniform letters not less than three ***(3)***[~~and one half (3 1/2)~~] inches in height.

Section 32. KRS 61.170 is amended to read as follows:

(1) County judges/executive, justices of the peace, sheriffs, coroners, surveyors, jailers, county attorneys***,*** and constables may be indicted in the county in which they reside for misfeasance or malfeasance in office, or willful neglect in the discharge of official duties, and if convicted they shall be fined not less than one hundred ($100) nor more than one thousand dollars ($1,000), and the judgment of conviction shall declare the office held by such person vacant.

(2) Any sheriff, deputy sheriff, policeman***,*** or other peace officer who fails to enforce any provision of KRS ***Chapter 242***[~~242.010 to 242.990~~] after receiving information of a violation thereof, or having knowledge of a violation thereof and failing to act thereon, may be indicted for nonfeasance or malfeasance in office, and if convicted shall be fined not less than fifty ($50) nor more than two hundred dollars ($200), and the judgment of conviction shall declare the office held by such person vacant.

(3) In the absence of good cause shown, a member of the fiscal court who fails to attend fifty percent (50%) of the regular terms of the fiscal court within a six (6) month period or who fails to attend two (2) consecutive terms of the fiscal court shall be charged with neglect of office and upon conviction shall forfeit his office.

Section 33. KRS 241.060 is amended to read as follows:

The board shall have the following functions, powers, and duties:

(1) To promulgate reasonable administrative regulations governing the procedure relative to applications for and revocations of licenses and relative to all other matters over which the board has jurisdiction, and for the supervision and control of manufacture, sale, transportation, storage, advertising, and trafficking of alcoholic beverages. Administrative regulations need not be uniform in their application but may vary in accordance with reasonable classifications;

(2) To limit in its sound discretion the number of licenses of each kind or class to be issued in this state or any political subdivision, and restrict the locations of licensed premises. To this end the board may make reasonable division and subdivision of the state or any political subdivision into districts. Administrative regulations relating to the granting, refusal, and revocation of licenses may be different within the several divisions ***or***[~~of~~] subdivisions;

(3) To hold hearings to be conducted in accordance with the provisions of KRS Chapter 13B. The department may pay witnesses the per diem and mileage provided in KRS 421.015;

(4) To conduct hearings and appeals under KRS 241.150, 241.200, 243.470, and 243.520 and render final orders upon the subjects of the hearings and appeals;

(5) To suspend, revoke, or cancel for cause, after a hearing in accordance with KRS Chapter 13B, any license issued under KRS 243.020 to 243.670;

(6) To be required, if violation of KRS Chapter 241, KRS 243.020 to 243.670, or KRS Chapter 244 has taken place on the premises within the knowledge of the owner, or was committed or permitted in or upon premises owned by a licensee, to prohibit the issuance of a license for the premises until the expiration of two (2) years from the time the offense was committed; ***and***

(7) To suspend a license for any cause for which the board is authorized to exercise its discretion as to revoking a license[~~; and~~

~~(8) To promulgate administrative regulations and to provide forms that may be necessary to regulate the alcoholic beverage industry and to make KRS 244.380 to 244.470 effective~~].

Section 34. KRS 243.360 is amended to read as follows:

(1) Every person, except an applicant for renewal of the same license for the same premises, or an applicant for a special agent's or solicitor's license, an industrial alcohol license, a nonindustrial alcohol license, a bonded warehouse license, a freight forwarding license, a storage warehouse license or a temporary drink license shall, before applying for any license under KRS 243.030 or 243.040, advertise by publication pursuant to KRS Chapter 424 his intention to apply. The advertisement shall state the name and address of the applicant if he is an individual, the names and addresses of the members of partnership if the applicant is a partnership, as well as the name of the business and its address, or, if the applicant is a corporation, the names and addresses of the principal officers and directors of the corporation, as well as the name and address of the corporation itself, the location of the premises for which the license is sought, and the type of license to be applied for.

(2) The applicant shall attach to the application a newspaper clipping of the advertisement and proof of the publication as provided in KRS 424.170.

(3) The board shall not consider protests received more than thirty-seven (37) days after an application for a license under KRS 243.030 is filed; nor shall it consider protests received more than seventeen (17) days after an application for a license under KRS 243.040 is filed[~~; provided, however, that this subsection shall not apply to a church or a school which has not received actual notice as required by KRS 243.220~~].

Section 35. KRS 244.990 is amended to read as follows:

(1) Any person who, by himself or acting through another, directly or indirectly, violates any of the provisions of this chapter for which no other penalty is provided[~~, except KRS 244.380 to 244.470,~~] shall, for the first offense, be guilty of a Class B misdemeanor; and for the second and each subsequent violation, he shall be guilty of a Class A misdemeanor. The penalties provided for in this subsection shall be in addition to the revocation of the offender's license. If the offender is a corporation, joint stock company, association, or fiduciary, the principal officer or officers responsible for the violation may be imprisoned.

(2) Any person who violates KRS 244.170 shall, upon the first conviction, be guilty of a Class A misdemeanor. Upon a second conviction he shall be guilty of a Class D felony. Upon the third and each subsequent conviction, he shall be guilty of a Class C felony.

(3) Any person who violates any of the provisions of KRS 244.480 to 244.600 shall be guilty of a violation.

(4) Any person, firm, or corporation violating any provision of KRS 244.083 and 244.085 shall be guilty of a violation and each violation shall constitute a separate offense.

(5) Any person who violates the provisions of subsection (5) of KRS 244.085 shall, for the first offense, be guilty of a violation, and for each subsequent offense shall be guilty of a Class A misdemeanor.

(6) Any person who violates KRS 244.125 shall be guilty of a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.

Section 36. KRS 413.241 is amended to read as follows:

(1) The General Assembly finds and declares that the consumption of intoxicating beverages, rather than the serving, furnishing***,*** or sale of such beverages, is the proximate cause of any injury, including death and property damage, inflicted by an intoxicated person upon himself or another person.

(2) Any other law to the contrary notwithstanding, no person holding a permit under KRS[~~ 243.010,~~] 243.030, 243.040, 243.050, nor any agent, servant, or employee of ***the***[~~such a~~] person, who sells or serves intoxicating beverages to a person over the age for the lawful purchase thereof, shall be liable to ***that***[~~such~~] person or to any other person or to the estate, successors, or survivors of either for any injury suffered off the premises including but not limited to wrongful death and

property damage, because of the intoxication of the person to whom the intoxicating beverages were sold or served, unless a reasonable person under the same or similar circumstances should know that the person served is already intoxicated at the time of serving.

(3) The intoxicated person shall be primarily liable with respect to injuries suffered by third persons.

(4) The limitation of liability provided by this section shall not apply to any person who causes or contributes to the consumption of alcoholic beverages by force or by falsely representing that a beverage contains no alcohol.

(5) This section shall not apply to civil actions filed prior to July 15, 1988.

Section 37. KRS 506.120 is amended to read as follows:

(1) No person, with the purpose to establish or maintain a criminal syndicate or to facilitate any of its activities, shall do any of the following:

(a) Organize or participate in organizing a criminal syndicate or any of its activities;

(b) Provide material aid to a criminal syndicate or any of its activities, whether such aid is in the form of money or other property, or credit;

(c) Manage, supervise, or direct any of the activities of a criminal syndicate, at any level of responsibility;

(d) Knowingly furnish legal, accounting, or other managerial services to a criminal syndicate;

(e) Commit, or conspire or attempt to commit, or act as an accomplice in the commission of, any offense of a type in which a criminal syndicate engages on a continuing basis;

(f) Commit, or conspire or attempt to commit or act as an accomplice in the commission of, any offense of violence;

(g) Commit, or conspire or attempt to commit, or act as an accomplice in the commission of bribery in violation of KRS Chapters 518 or 521, or KRS 119.205, 121.025, 121.055, 524.070, 156.465, 45A.340, 63.090, 6.080, 18A.145,~~[244.390]~~ or 244.600.

(2) Whoever violates this section is guilty of engaging in organized crime, which shall be a Class B felony.

(3) As used in this section "criminal syndicate" means five (5) or more persons collaborating to promote or engage in any of the following on a continuing basis:

(a) Extortion or coercion in violation of KRS 514.080, 276.280, 276.310, or 521.020;

(b) Engaging in, promoting, or permitting prostitution in violation of KRS Chapter 529;

(c) Any theft offense as defined in KRS Chapter 514;

(d) Any gambling offense as defined in KRS 411.090, KRS Chapter 528, or Section 226 of the Constitution;

(e) Illegal trafficking in controlled substances as prohibited by KRS Chapter 218A, in intoxicating or spirituous liquor as defined in KRS Chapters 242 or 244, or in destructive devices or booby traps as defined in KRS Chapter 237;

(f) Lending at usurious interest, and enforcing repayment by illegal means in violation of KRS Chapter 360.

Section 38. KRS 243.075 is amended to read as follows:

Notwithstanding the provisions of KRS 243.070, in any city of the third or fourth class in which the discontinuance of prohibition is effective by virtue of a local option election held in the manner prescribed in KRS ***Chapter 242***~~[242.010 to 242.040 and KRS 242.060 to 242.120,]~~ and in the case of fourth class cities, KRS 242.127 to 242.129, the governing body of the city is authorized to impose a regulatory license fee upon the gross receipts of each establishment therein licensed to sell alcoholic beverages. The regulatory license fee may be levied at the beginning of each city budget period at such percentage rate as shall be reasonably estimated to fully reimburse the city for the estimated costs of any additional policing, regulatory or administrative expenses related to the sale of alcoholic beverages in the city. ***The***~~[Such]~~ regulatory license fee shall be in addition to any other taxes, fees or licenses permitted by law, but a credit against such fee shall be allowed in an amount equal to any licenses or fees imposed by the city pursuant to KRS 243.070.

Section 39. The following KRS sections are repealed:

242.010 Definitions.
243.010 Definitions for chapter and for KRS 243.720 to 243.850.
244.380 Provisions contracts of sale to contain (fair trade contracts).
244.390 Minimum resale prices.
244.400 Contracts of producers and processors -- Filing -- Contents.
244.410 Contracts of wholesalers -- Filing -- Contents.
244.420 Nonresident producers and importers to sell under fair trade contract.
244.430 Amendments to fair trade contracts may be filed.

244.460 Close-out sales -- Requirements of.
244.470 Violators guilty of unfair competition.
244.520 Advertisement or label not to refer to alcoholic content.

HB 632, AN ACT relating to engineers and land surveyors.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 322.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Board" means the State Board of ***Licensure***[~~Registration~~] for Professional Engineers and Land Surveyors;

(2) "Engineer" means a person who is qualified ***to engage in the practice of professional engineering*** by reason of ***special***[~~his~~] knowledge ***and use*** of***:***

  (a) The mathematical, physical, and engineering sciences;[~~ mathematics, the physical sciences, ~~]and

  (b) The principles ***and methods*** of engineering ***analysis and design***, acquired by ***engineering***[~~professional~~] education and practical ***engineering*** experience[~~, to engage in the practice of professional engineering~~];

(3) ***"Professional engineer" means a person who is licensed as a professional engineer by the board;***

(4) "Engineering" ***means***[~~includes~~] any ***professional*** service or creative work, the adequate performance of which requires engineering education, training, and experience ***as an engineer.***

  (a) Engineering shall include:

    1. [~~in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as ~~]Consultation, investigation, evaluation, planning, ***certification,*** and design of engineering works and systems***;***

      a. Design and engineering work associated with design/build projects;

      b. [~~, including ~~]Engineering works and systems which involve earth materials, water ***or***[~~,~~] other liquids, and gases***;***

      c. [~~, ~~]Planning the use of land***, air,*** and waters***;***

      d. Performing engineering surveys and studies;[~~,~~] and

      e. The teaching of advanced engineering design courses;

    2. The review of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces ***this***[~~such~~] service or work***,*** either public or private, in connection with any utilities, structures, certain buildings, building systems, machines, equipment, processes, work systems, or projects with which the public welfare or the safeguarding of life, health, or property is concerned, when ***that***[~~such~~] professional service ***or work*** requires the application of engineering principles and data***;***

    3. The teaching of upper level undergraduate design courses in this state, after June 30, 2000, in any program accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology;

    4. The negotiation or solicitation of engineering services on any project in this state, regardless of whether the persons engaged in the practice of engineering:

      a. Are residents of this state;

      b. Have their principal place of business in this state; or

      c. Are in responsible charge of the engineering services performed; and

    5. The services of a professional engineer who engages in the practice of land surveying incident to the practice of engineering that does not relate to the location or determination of land boundaries.

  (b) Engineering shall[~~ It does~~] not include the ***professional services***[~~work ordinarily~~] performed by persons who***:***

    1. Develop or administer construction project safety programs, construction safety compliance, construction safety rules or regulations, or related administrative regulations; or

    2. Only operate or maintain machinery or equipment[~~operate or maintain machinery or equipment, such as locomotive, stationary, marine, or power plant operators, nor work embraced within the practice of land surveying~~];

(5)[~~(4)~~] "Practice of engineering" ***means the performance of any professional service included in subsection (4)(a) of this section***[~~includes all professional services included in subsection (3) of this section, together with the negotiation or~~

~~solicitation for engineering work on any project in this state, regardless of whether the persons engaged in that practice are residents of this state or have their principal office or place of business in this state or any other state or country, and regardless of whether they are performing one (1) or all of these duties, or whether they are performing them in person or as the directing heads of offices or organizations~~];

(6)[~~(5)~~] ***"Engineer in training" means a person who has passed the Fundamentals of Engineering Examination and is otherwise qualified to earn experience toward licensure as a professional engineer;***

(7) "Responsible charge of engineering" means direct control and personal supervision of engineering, or teaching experience with the rank equivalent to assistant professor or higher in a board-approved engineering program;

(8) "Land surveyor" means a person who is qualified to engage in the practice of land surveying by reason of special knowledge and use of mathematics, the physical and applied sciences, and the principles and methods of land surveying, acquired by education and practical experience in land surveying;

(9) "Professional land surveyor" means a person who is licensed as a professional land surveyor by the board;

(10) "Land surveying" means any ***professional*** service or work, the adequate performance of which ***requires the education, training, and experience as a land surveyor.***

(a) Land surveying shall include, but not be limited to, the following:

1. [~~involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences and the relevant requirements of law for adequate evidence to the act of~~]Measuring and locating***, establishing, or re-establishing*** lines, angles, elevations, natural and man-made features in the air, on the surface ***and immediate subsurface*** of the earth, within underground workings, and on the beds ***or surfaces*** of bodies of water ***involving the:***

a. Determination or establishment of the facts of size, shape, topography, and acreage;

b. Establishment of photogrammetric and geodetic control that is published and used for the determination, monumentation, or description of property boundaries;

c. Subdivision, division, and consolidation of lands;

d. Measurement of existing improvements, including condominiums, after construction and the preparation of plans depicting existing improvements, if the improvements are shown in relation to property boundaries;

e. Layout of proposed improvements, if those improvements are to be referenced to property boundaries;

f. Preparation of physical written descriptions for use in legal instruments of conveyance or real property and property rights;

g. Preparation of subdivision record plats;

h. Determination of existing grades and elevations of roads and land;

i. Creation and perpetuation of alignments related to maps, record plats, field note records, reports, property descriptions, and plans and drawings that represent them; and

j. Certification of documents; and

2. The negotiation or solicitation of land surveying services on any project in this state, regardless of whether the persons engaged in the practice of land surveying:

a. Are residents of this state;

b. Have their principal office or place of business in this state; or

c. Are in responsible charge of the land surveying services or work performed.

(b) Land surveying shall not include:

1. The measurement of crops or agricultural land area under any agricultural program sponsored by an agency of the federal government or the state of Kentucky;

2. The services of a professional engineer who engages in the practice of land surveying incident to the practice of engineering, if the land surveying work does not relate to the location or determination of land boundaries; or

3. The design of grades and elevations of roads and land;

(11) "Practice of land surveying" means the performance of any professional service included in subsection (10)(a) of this section;

(12) "Land surveyor in training" means a person who has passed the Fundamentals of Land Surveying Examination and is otherwise qualified to earn experience toward licensure as a professional land surveyor;

(13) "Responsible charge of land surveying" means direct control and personal supervision of land surveying, or teaching experience with the rank equivalent to assistant professor or higher in a board-approved land surveying program;

(14) "Business entity" means a corporation, partnership, or firm;

(15) "Offer to practice" means:

(a) A promise or commitment to engage in any act directly related to engineering or land surveying;

(b) Undertaking to engage in the practice of engineering or land surveying; or

(c) Any claim, express or implied, by any person representing himself or herself to be a professional engineer or professional land surveyor;

(16) "Certification" means affixing a seal or stamp, signature, and date by a professional engineer or professional land surveyor to represent that the services or work addressed therein was performed by that professional engineer or professional land surveyor according to his or her knowledge, information, and belief, and that it was completed in accordance with applicable standards of practice. "Certification" shall not mean a guaranty or warranty, either express or implied;

(17) The "Fundamentals of Engineering Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying;

(18) The "Fundamentals of Land Surveying Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying;

(19) The "Principles and Practice of Engineering Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying; and

(20) The "Principles and Practice of Land Surveying Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying

[~~for the purpose of determining areas and volumes, for the monumenting of property boundaries and for the platting and layout of lands and subdivisions thereof, including the topography, alignment, and grades of streets and for the preparation and perpetuation of maps, record plats, field note records, and property descriptions that represent these surveys;~~

~~(6) "Land surveyor" means and includes any person engaged in the practice of land surveying as herein defined, and shall include any public offer, or the holding out by any person to the public, to engage in the practice of land surveying;~~

~~(7) "Practice of land surveying" shall include the performance of any professional service included in subsection (5) of this section. "Offer to practice" shall include performance of any act or acts directly related to land surveying, or any claim, oral or written, sign, letterhead, professional card, or other representation, on the part of any person representing himself to be a land surveyor or who holds himself out to the general public as possessing the ability and qualifications to perform land surveying within the terms of this section, KRS 322.200, 322.230 to 322.250, and 322.420 to 322.460;~~

~~(8) "Engineer in training" means a person who has passed a written examination in the fundamentals of engineering acceptable to the board; and~~

~~(9) "Land surveyor in training" means a person who has passed a written examination in the fundamentals of land surveying acceptable to the board~~].

SECTION 2. A NEW SECTION OF KRS CHAPTER 322 IS CREATED TO READ AS FOLLOWS:

On the effective date of this section, all registered engineers and registered land surveyors shall be deemed licensed by the board until their registration expires. First-time licensure of these registrants shall be processed as a license renewal under Section 14 of this Act.

Section 3. KRS 322.020 is amended to read as follows:

(1) Unless licensed as a professional engineer, no person shall*:*

(a) Engage in the practice of engineering;[~~ practice or ~~]

(b) Offer to practice engineering*;* or

(c) [~~ land surveying, or ~~]Use, assume*,* or advertise in any way any title or description tending to convey the impression that he *or she* is *a professional*[~~an~~] engineer*.*

(2) Unless licensed as a professional[~~ or~~] land surveyor, *no person shall:*

(a) Engage in the practice of land surveying;

(b) Offer to practice land surveying; or

(c) Use, assume, or advertise in any way any title or description tending to convey the impression that he or she is a professional land surveyor[~~unless he has been registered under this chapter~~].

Section 4. KRS 322.030 is amended to read as follows:

KRS 322.020 shall not apply to:

(1) ***(a)*** [~~The engaging in engineering as~~]A pupil[~~ of~~] or ***engineer in training engaging in engineering*** under the direction of a ***professional***[~~registered~~] engineer, if ***that***[~~such~~] practice does not include responsible charge of ***engineering; or***

(b) [~~design or supervision as a principal, or the engaging in land surveying as~~]A pupil ***or land surveyor in training engaging in land surveying***[~~of or~~] under the direction of a ***professional***[~~registered~~] land surveyor, if ***that***[~~such~~] practice does not include responsible charge ***of land surveying***[~~or supervision~~];

(2) The practice of ***engineering or land surveying by*** officers and employees of the United States government while engaged in engineering or land surveying for the government;

(3) The practice of engineering or land surveying by a person on property ***he or she leases or owns***[~~leased or owned by the person~~] unless***:***

(a) The practice involves the public safety***,***[~~ or public~~] health***, or welfare;***

(b) The land surveying relates to the location or determination of any existing or proposed land boundaries; or

(c) [~~ to~~]The ***practice***[~~performance~~] of engineering[~~ that~~] relates solely to the design or fabrication of manufactured products;

(4) An engineer or land surveyor engaged solely as an officer or employee of a privately owned public utility or of a ***business entity***[~~corporation~~] engaged in interstate commerce as defined in the Interstate Commerce Act (24 Stat. 379) as amended;

(5) A licensed architect who engages in ***the practice of*** engineering[~~ practice as an~~] incident to the practice of ***architecture***[~~his own profession~~].

Section 5. KRS 322.040 is amended to read as follows:

(1) A person shall qualify for ***licensure***[~~registration~~] as a professional engineer ***if he or she has:***

(a) Graduated from[~~who is a graduate of~~] an engineering ***program***[~~curriculum~~] of four (4) years or more approved by the board***;***

(b) [~~and with a specific record of an additional~~]Four (4)[~~ years~~] or more ***additional years*** of progressive experience in engineering projects of a grade and character which indicates to the board that the applicant ***is***[~~may be~~] competent to practice engineering***; and***

(c) A passing score on:

1. [~~. Each applicant must pass a written examination in the fundamentals of engineering acceptable to the board and a written examination in~~]The Principles and Practice of Engineering ***Examination; and***

2. [~~acceptable to the board. The board may admit to~~]The Fundamentals of Engineering Examination***. The board may allow students***[~~ applicants~~] enrolled in the final year of an undergraduate engineering ***program to take this examination. Upon passing the examination the applicant shall be designated an engineer in training***[~~curriculum. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice engineering in this Commonwealth, provided the applicant is otherwise qualified. In counting years of experience, the board may give credit, not in excess of one (1) year, for satisfactory graduate study in engineering~~].

(2) ***Prior to July 1, 2000, a person who is currently teaching in an engineering program in Kentucky that is accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology shall qualify for licensure as a professional engineer if he or she:***

(a) Has graduated from a board-approved engineering program of four (4) years or more;

(b) Has graduated from a board-approved doctoral engineering degree program, with an additional three (3) years or more of progressive experience in engineering projects or teaching of a grade and character which indicate to the board that the applicant is competent to practice engineering; and

(c) Has passed the Principles and Practice of Engineering Examination.

(3) A person shall qualify for licensure as a professional land surveyor if he or she has:

(a) Passed the Fundamentals of Land Surveying Examination and is thereby designated a land surveyor in training according to the conditions set forth in paragraph (c) of this subsection;

(b) Passed the Principles and Practice of Land Surveying Examination; and

(c) Met one (1) of the following requirements[~~Compliance with the requirements of any one (1) of paragraphs (a), (b) or (c) of this subsection shall qualify an applicant for registration as a land surveyor~~]:

[~~(a) Any person holding a certificate of registration to engage in the practice of land surveying issued to him by the proper authorities of any state, territory, possession of the United States, District of Columbia, or any foreign~~

~~country, based upon requirements and qualifications appearing in his application, which, in the opinion of the board, are equal to, or higher than, the requirements required to be registered in this state to practice land surveying;~~]

1.[~~(b)~~] *Graduation*[~~Any graduate~~] from *a board-approved program in land surveying from a college or university*[~~an engineering or surveying curriculum of not less than four (4) years, at an institution approved by the board~~], followed by not less than four (4) years of progressive experience[~~, in land surveying~~] under the direct supervision of a[~~ registered and~~] practicing *professional* land surveyor*.*

a. *The experience required by the provisions of this subparagraph shall indicate that the applicant was in charge of the accuracy and correctness of the land surveying work being performed;*

b. *Work experience acquired as part of the education requirement shall not be construed as experience; and*

c. *Applicants shall be eligible to take the Fundamentals of Land Surveying Examination during their final year in the program;*

2. *Graduation from a four (4) year program other than land surveying accredited by one of the Commissions of the Accreditation Board for Engineering and Technology, followed by not less than six (6) years of practical experience in land surveying under the direct supervision of a practicing professional land surveyor.*

a. *Four (4) years of the experience required by this subparagraph shall indicate that the applicant was in charge of the accuracy and correctness of the land surveying work being performed;*

b. *Work experience acquired as a part of the education requirements shall not be construed as experience; and*

c. *Applicants shall be eligible to take the Fundamentals of Land Surveying Examination upon completion of two (2) years of land surveying experience following graduation from the program;*

3. *Graduation from a two (2) year board-approved program in land surveying followed by not less than six (6) years of progressive experience under the direct supervision of a practicing professional land surveyor.*

a. *The experience required by this subparagraph shall indicate that the applicant was in charge of the accuracy and correctness of the land surveying work being performed;*

b. *Work experience acquired as a part of the education requirement shall not be construed as experience; and*

c. *Applicants shall be eligible to take the Fundamentals of Land Surveying Examination upon completion of two (2) years land surveying experience following graduation from the program;*[~~, and who shall pass a written examination in the fundamentals of surveying, acceptable to the board, and a written examination in the principles and practices of land surveying, acceptable to the board; and~~].

4.[~~(c)~~] *Until June 30, 2001,*[~~Any person possessing~~] eight (8) or more years of progressive active experience in the practice of land surveying under the direct supervision of a [~~registered and~~] practicing *professional* land surveyor, and *passing scores on*[~~who shall pass a written examination in~~] the Fundamentals of *Land* Surveying *Examination*[~~, acceptable to the board,~~] and[~~ a written examination in~~] the Principles and *Practice*[~~practices~~] of Land Surveying *Examination; or*

5. *Effective July 1, 2001, graduation from high school, or the equivalent, followed by not less than ten (10) years of progressive experience under the direct supervision of a practicing professional land surveyor and passing scores on the Fundamentals of Land Surveying Examination and the Principles and Practice of Land Surveying Examination. Six (6) years of the experience required by this subparagraph shall indicate that the applicant was in charge of the accuracy and correctness of the land surveying work performed. Applicants shall be eligible to take the Fundamentals of Land Surveying Examination upon completion of four (4) years of land surveying experience*[~~, acceptable to the board~~].

[~~(3) In the consideration of the qualifications of applicants, engineering teaching may be construed as engineering experience.~~]

(4) As it may apply to the experience qualifications for engineers or land surveyors*:*

(a) Teaching engineering or land surveying courses at the postsecondary level may earn an applicant a

maximum credit of two (2) years' experience in the respective field;

(b) The board may grant up to one (1) year of engineering experience credit for satisfactory graduate study in engineering and up to one (1) year of land surveying experience credit for satisfactory graduate study in land surveying;

(c) [~~,~~]The satisfactory completion of each year ***as a full-time student*** of ***a board-approved program***[~~an approved curriculum~~] in ***civil*** engineering or land surveying[~~in a school or college approved by the board as of satisfactory standing,~~] without graduation, ***may***[~~shall~~] be considered as equivalent to ***one (1)***[~~a~~] year of experience required by ***subsection (3)(c)3., 4., and 5.***[~~subsections (1) and (2)(b)~~] of this section***;***

(d) [~~,~~]Graduation ***from***[~~in~~] a ***program***[~~curriculum~~] other than ***as provided in subsection (3)(c)1., 2., and 3. of this section***[~~engineering or land surveying~~] from a college or university of recognized standing may be considered as equivalent to two (2) years of experience required by ***subsection (3)(c)3., 4., and 5.***[~~subsections (1) and (2)(b)~~] of this section***;***

(e) [~~, but~~]No applicant shall receive credit for more than four (4) years of experience ***based on***[~~because of~~] undergraduate educational qualifications.

(5) The[~~mere~~] execution as a contractor of work designed by ***a professional***[~~an~~] engineer or the supervision of the construction of ***that***[~~such~~] work as a foreman or superintendent ***may***[~~shall not~~] be considered ***experience in the*** practice ***of***[~~in~~] engineering.

(6) Any person having the necessary qualifications prescribed in subsections (1)***,***[~~and~~] (2)***, and (3)*** of this section shall be eligible ***to apply*** for ***licensure, even if the applicant is***[~~registration although he may~~] not[~~be~~] practicing ***the***[~~his~~] profession at the time of [~~making his~~]application.

Section 6. KRS 322.050 is amended to read as follows:

To[~~No person shall~~] be eligible for ***licensure, an applicant shall be***[~~registration unless he is~~] of good character and reputation***. No applicant***[~~, nor~~] shall[~~any person~~] be eligible ***who:***

(1) [~~if he~~]Has been convicted of any felony involving moral turpitude***, fraud, or deceit;***

(2) Engages in conduct likely to deceive or defraud the public; or

(3) Is adjudged mentally disabled by a court of competent jurisdiction.

Section 7. KRS 322.060 is amended to read as follows:

(1) ***(a)*** A ***business entity shall not***[~~corporation, partnership, or firm may~~] engage in the practice of engineering in this state ***unless:***

1. [~~if~~]At least one (1) of ***its***[~~the~~] principals, officers, or a designated employee[~~of the corporation, partnership, or firm~~] is ***a professional engineer who is*** in ***responsible***[~~direct~~] charge of the engineering work***;*** and

2. The board has issued a permit to the business entity[~~is registered as an engineer in this state~~].

(b) To apply for a permit, a business entity[~~Corporations, partnerships, or firms~~] offering engineering services in this state shall file with the board, on a form prescribed by the board***:***

1. The[~~, a list of~~] names ***and***[~~,~~] addresses[~~, and registration numbers~~] of all principals and officers***;***

2. [~~, as well as~~]The ***license number of*** principals***,***[~~or~~] officers***, and employees who are professional engineers***[~~duly registered to practice engineering in this state who are~~] in ***responsible***[~~direct~~] charge of the ***business entity's*** practice ***of engineering*** in this state***;***

3. [~~, and~~]A ***list***[~~listing~~] of locations of all offices in this state at which the ***business entity***[~~corporation, partnership, or firm~~] offers professional engineering services***;***

4. A statement of qualifications for the permit; and

5. References as required by administrative regulations promulgated by the board.[~~The corporations, partnerships, or firms shall advise the board in writing within thirty (30) days of any change of status.~~]

(c) If more than one (1) place of business is maintained in this state***, a professional*** [~~an~~]engineer[~~registered in this state~~] shall be in ***responsible***[~~direct~~] charge of the engineering work for each office.

(d) A professional engineer who renders occasional, part-time, or consulting engineering services to or for a ***business entity required to hold a permit from***[~~firm required to file with~~] the board ***under***[~~pursuant to~~] this section shall not be designated as the person in ***responsible*** charge ***of the engineering work***[~~for the professional activity of the firm~~].

(e) A business entity holding a permit shall advise the board in writing within thirty (30) days of any change of status in those items listed in paragraph (b) of this subsection.

(f) Individual professional engineers providing engineering services in their own names, or architectural firms offering engineering services incident to their practice, shall be excluded from the provisions of this subsection.

(2) (a) A business entity shall not engage in the practice of land surveying in this state unless:

1. At least one (1) of its principals, officers, or a designated employee is a professional land surveyor in direct responsible charge of the land surveying work; and

2. The board has issued a permit to the business entity.

(b) To apply for a permit, a business entity offering land surveying services in this state shall file with the board, on a form prescribed by the board:

1. The names and addresses of all principals and officers;

2. The license numbers of the principals, officers, and employees who are professional land surveyors in responsible charge of the practice of land surveying in this state;

3. A list of locations of all offices in this state at which the business entity offers professional land surveying services;

4. A statement of qualifications for the services relating to the permit; and

5. References as required by administrative regulations promulgated by the board.

(c) If more than one (1) place of business is maintained in this state, a professional land surveyor shall be in responsible charge of the land surveying work for each office.

(d) A professional land surveyor who renders occasional, part-time, or consulting services to or for a business entity required to hold a permit from the board under this section shall not be designated as the person in responsible charge of the land surveying activity of the firm.

(e) A business entity holding a permit shall advise the board in writing within thirty (30) days of any change of status.

(f) Individual professional land surveyors providing land surveying services in their own names shall be excluded from the provisions of this subsection.

(3) (a)[~~(2)~~] After a ***business entity***[~~corporation, partnership, or firm~~] applies for a ***professional engineering or professional land surveying*** permit and pays the proper fees, the board shall review the application[~~,~~] and, upon approval, shall issue a permit.

(b) The board may[~~ refuse to issue a permit, or~~] suspend,[~~ or~~] revoke***, or refuse to issue*** a permit for violation of the code of professional practice and conduct.

(c) The expiration date and renewal period for each permit and renewal procedures shall be established by administrative regulations ***promulgated by the board***.[~~ No corporation, partnership, or firm shall engage in providing engineering services without obtaining a permit under this section. Individual registered engineers providing engineering services in their own names or architectural firms offering engineering services incidental to their practice shall be excluded from the provisions of this section.~~]

(4) (a)[~~(3)~~] No ***business entity***[~~corporation, partnership, or firm~~] shall be relieved of responsibility for the conduct or acts of its agent, employees, or officers by reason of its compliance with this section.

(b) No individual practicing professional engineering ***or professional land surveying*** shall be relieved of the responsibility for professional services performed by reason of the individual's employment or relationship with a ***business entity holding a permit***[~~corporation, partnership, or firm licensed~~] under this section.

(5)[~~(4)~~] Disciplinary action against a ***business entity holding a permit***[~~corporation, partnership, or firm licensed~~] under this section shall be administered in the same manner and on the same grounds as disciplinary action against ***an individual***[~~a licensed~~] professional engineer ***or professional land surveyor***.

(6)[~~(5)~~] The Secretary of State shall not issue a certificate of incorporation or a certificate of registration as a foreign corporation authorized to do business in this state to a firm which includes in its name or, among objects for which it is established, any of the words, "engineer," "engineering," ***"surveyor," "surveying," "land surveying,"*** or any modification or derivation thereof, unless the[~~ board has issued a certificate or letter from the board with its~~] application for incorporation or registration with the Secretary of State ***includes a certificate or letter from the board***.

Section 8. KRS 322.070 is amended to read as follows:

Applications for ***professional engineer or professional land surveyor licenses***[~~registration~~] shall be on forms prescribed and furnished by the board ***and***[~~,~~] shall contain***:***

(1) Statements made under oath, showing the applicant's education and a detailed summary of ***the applicant's***[~~his~~] technical

experience;

(2) [~~work, and shall contain~~]Not less than five (5) references, of which at least three (3) shall be from ***professional*** engineers or ***professional*** land surveyors***,*** as may be appropriate, having personal knowledge of the applicant's engineering or land surveying experience***;***

(3) If the primary language of the applicant is not English, evidence of English proficiency included with the license application. The criteria to establish English proficiency shall be determined by administrative regulations promulgated by the board; and

(4) Any other information as the board may require by administrative regulation.

Section 9. KRS 322.080 is amended to read as follows:

(1) Examinations shall be held at times and places determined by the board ***by promulgation of administrative regulations***.

(2) The scope of the examination and the methods of procedure shall be prescribed by the board with special reference to the applicant's ability to design and supervise engineering or land surveying works so as to insure the safety of life, health***,*** and property.

Section 10. KRS 322.090 is amended to read as follows:

An applicant failing an examination may apply for reexamination after six (6) months. Reexaminations shall be granted upon payment of a fee ***to be*** determined by ***administrative regulations promulgated by*** the board.[~~ An applicant who has failed three (3) examinations shall not apply for reexamination within twenty-four (24) months of his last preceding examination.~~]

Section 11. KRS 322.100 is amended to read as follows:

The ***license fees***[~~registration fee~~] for ***professional*** engineers ***and professional***[~~or~~] land surveyors shall be established by ***administrative*** regulation ***promulgated by***[~~of~~] the board. If the board refuses to issue ***a license***[~~registration~~] to any applicant***,*** the initial fee deposited shall be retained as an application fee.

Section 12. KRS 322.110 is amended to read as follows:

(1) The board shall ***issue a license authorizing the practice of engineering or land surveying to any applicant who has met the respective requirements set forth in this chapter.***

(2) All licenses issued under this subsection shall be signed by the chairman and the secretary of the board, under the seal of the board. Each license shall bear the full name of the licensee, the license number, and one of the following designations:

(a) "Professional Engineer";

(b) "Professional Land Surveyor";

(c) "Professional Engineer, Inactive";

(d) "Professional Engineer, Retired";

(e) "Professional Land Surveyor, Inactive"; or

(f) "Professional Land Surveyor, Retired."

(3) The designations in paragraphs (c), (d), (e), and (f) of subsection (2) of this section shall be defined in administrative regulations promulgated by the board.

(4) (a) A valid professional engineer or professional land surveyor license shall be prima facie evidence that the licensee is entitled to all rights, privileges, and responsibilities of a professional engineer or a professional land surveyor.

(b) A valid license bearing the designation "inactive" or "retired" shall be prima facie evidence that the licensee is entitled to all rights, privileges, and responsibilities of a professional engineer or professional land surveyor, except the right to practice[~~register upon payment of the registration fee required by KRS 322.100 any applicant who, in its opinion, has satisfactorily complied with the provisions of this chapter~~].

[~~(2) The board may designate the various recognized branches of engineering and classify the applicant in the branch in which he may practice.~~]

Section 13. KRS 322.120 is amended to read as follows:

[~~(1)~~]The board may, ***by promulgation of administrative regulations, establish requirements and fees for licensure by reciprocity for those applicants who:***

(1) Hold a current license or[~~upon application and payment of a fee to be established by regulation of the board, register any person who holds a~~] certificate of [~~qualification or~~]registration ***to engage in the practice of engineering or land surveying*** issued[~~ to him~~] by[~~ proper authority of the National Council of Engineering Examiners, the National Engineering Certification Committee or~~] any state***, territory, or possession*** of the United States***, the District of Columbia,*** or any ***foreign*** country***; and***

(2) Submit proof that the requirements and qualifications supporting that license or certificate:

(a) Are not in conflict with the provisions of this chapter; and

(b) Equal or exceed this state's requirements in effect on the date of issuance. However, the land surveyor applicant may be required to take examinations, as the board deems necessary, to determine the competency to engage in the practice of land surveying in this state. The examination shall include questions on laws, procedures, and practices pertaining to land surveying in this state[~~, if the requirements under which the certificate of qualification or registration was issued do not conflict with this chapter and are of a standard not lower than those provided in KRS 322.040~~].

[~~(2) The board may make all regulations governing the matter of reciprocity with other states and countries.~~]

Section 14. KRS 322.160 is amended to read as follows:

(1) ***Licenses for individuals and permits for business entities shall be valid for not more than two (2) years from the date of issuance, unless renewed.***

(2) The executive director shall notify every licensee and permit holder at least one (1) month in advance of the pending expiration date.

(a) Renewal notices shall be mailed to the licensee or permit holder at their last known address and state the amount of the renewal fee.

(b) All renewals shall be completed on or before June 30 of the year of expiration[~~The secretary treasurer of the board shall notify every registrant of the date of the expiration of his registration and the amount of the fee required for its renewal. Such notice shall be mailed at least one (1) month in advance of the expiration date. Renewals may be effected at any time prior to the expiration date by the payment of a fee to be established by regulation of the board~~].

(c) Each licensee or permit holder is responsible for notifying the board of any address change.

(3) The failure[~~ of any registrant~~] to renew[~~ his registration~~] shall not deprive ***a licensee or permit holder***[~~him~~] of the right of renewal, but the fee to be paid for the renewal[~~ of registration~~] shall be increased ten percent (10%) for each month or fraction of a month that payment of renewal is delayed. Any ***licensee or permit holder***[~~person~~] who fails to renew[~~ his registration~~] within one (1) year after expiration shall furnish the board with***:***

(a) Satisfactory evidence of qualification of continued practice. However, the board may require reexamination***; and***

(b) If the licensee or permit holder is a professional land surveyor, evidence of completion of continuing professional development hours for professional land surveyors as required by Section 26 of this Act.

(4)[~~(2)~~] ***No licensee shall be***[~~All persons who are~~] required to pay renewal fees to the board[~~ shall not be required to pay such fees~~] during the time ***the licensee is on active duty***[~~such persons are actively serving~~] in the Armed Forces of the United States.

(a) Any ***licensee***[~~person~~] who has previously paid any renewal fee covering a period ***of time spent on active duty***[~~during which he was actively serving in the Armed Forces of the United States~~] shall, upon filing with the board a copy of his ***or her*** discharge, be granted a ***license*** renewal[~~ registration~~] without the payment of any fee.

(b) The free renewal shall be for as many ***license***[~~registration~~] years as[~~ were served by~~] the ***licensee was on active duty***[~~registrant in the Armed Forces~~] and which were covered in whole or in part by the previous payment of a renewal fee.

(c) The continuing professional development requirement for land surveyors under Section 26 of this Act shall be waived for those years the licensee was on active duty.

Section 15. KRS 322.170 is amended to read as follows:

(1) A new ***license or permit***[~~registration certificate~~] may be issued ***to replace any license or permit that was lost, destroyed, or mutilated***, subject to the ***administrative regulations promulgated by***[~~rules of~~] the board[~~, to replace any certificate lost, destroyed or mutilated~~].

(2) A license or permit may be reissued to replace any license or permit that was previously revoked, subject to Section 19 of this Act.

Section 16. KRS 322.180 is amended to read as follows:

The board ***may***[~~shall have the power to suspend,~~] refuse to ***issue, refuse to*** renew, ***suspend,*** or revoke ***a license***[~~the registration of any registrant~~], ***may*** reprimand, place on probation, or ***admonish a licensee, may impose a*** fine ***on a licensee*** not to exceed one thousand dollars ($1,000), ***or may impose any combination of these penalties, when it finds that an applicant or licensee***[~~any registrant who is found guilty by the board of~~]:

(1) ***Engaged in any***[~~The~~] practice of[~~ any~~] fraud or deceit in obtaining ***a license***[~~registration~~];

(2) ***Engaged in***[~~Any~~] gross negligence, incompetence***,*** or misconduct in the practice of engineering or ***land*** surveying;

(3) *Violated any provision of this chapter, the administrative regulations promulgated by the board, or the code of professional practice and conduct adopted by the board and incorporated in administrative regulations;*

(4) Employed, procured, or induced a person not licensed to practice engineering or land surveying in this state;

(5) Aided or abetted a person not licensed to practice engineering or land surveying in this state;

(6) Been granted a license upon a mistake of material fact;

(7) Been convicted by a court of law of a felony involving moral turpitude;

(8) Become a chronic or persistent alcoholic or has become drug-addicted so that continued practice is dangerous to clients or to the public safety;

(9) Developed a physical or mental disability or other condition so that continued practice is dangerous to clients or to the public safety;

(10) Violated any order of suspension or the terms or conditions of any order of probation issued by the board;

(11) Had a license or registration certificate to practice as an engineer or land surveyor denied, limited, suspended, probated, or revoked in another jurisdiction on grounds sufficient to cause licensure to be denied, limited, suspended, probated, or revoked in this state;

(12) Engaged in conduct likely to deceive or defraud the public;

(13) Presented or attempted to use as his or her own the license, seal, or stamp of another;

(14) Falsely impersonated any other licensee;

(15) Attempted to use an expired, suspended, or revoked license;

(16) Provided certification for any plan, specification, plat, report, or physical description not prepared by him or her or under his or her direct supervision; or

(17) Applied the seal, stamp, signature, or title block of another professional engineer or professional land surveyor to a plan, specification, plat, report, or physical description that was not prepared by the other professional engineer or land surveyor[~~Having been convicted by a court of law of a felony involving moral turpitude; or~~

~~(4) Violation of the code of professional practice and conduct which has been adopted by the board~~].

Section 17. KRS 322.190 is amended to read as follows:

Any person *or organization, including the board upon its own volition, may file with the executive director of the board a written complaint alleging violation of any provision of this chapter. The executive director shall cause the complaint to be investigated.*

(1) If the investigation reveals that the alleged violation did occur but was not of a serious nature, the board may issue a written admonishment to the licensee. A copy of the admonishment shall be placed in the permanent file of the licensee. The licensee shall have the right to file a response to the admonishment within thirty (30) days of its receipt and to have the response placed in the permanent licensure file. The licensee may alternatively, within thirty (30) days of the receipt, file a request for hearing with the board. Upon receipt of this request, the board shall set aside the written admonishment and set the matter for hearing in accordance with the provisions of KRS Chapter 13B.

(2) If the investigation reveals evidence supporting the complaint, the executive director shall set the matter for hearing in accordance with the provisions of KRS Chapter 13B before refusing to renew, suspending, revoking, reprimanding, imposing probation or an administrative fine, or any combination of actions regarding any license under the provisions of this chapter.

(a) At any time during the investigation or hearing process, the board may accept a written assurance of voluntary compliance from the licensee which effectively deals with the complaint.

(b) When the board issues a written reprimand to the licensee, a copy of the reprimand shall be placed in the permanent file of the licensee. The licensee shall have the right to submit a response within thirty (30) days of its receipt and to have that response filed in the permanent file.

(3) After denying an application under the provisions of this chapter, the board may grant a hearing to the denied applicant in accordance with the provisions of KRS Chapter 13B.

(4) The board may reconsider, modify, or reverse its decision on any disciplinary action.

(5) Any party aggrieved by a disciplinary action of the board may bring an action in Franklin Circuit Court in accordance with the provisions of KRS Chapter 13B[~~or any organization may prefer written charges of fraud, deceit, gross negligence, incompetence, misconduct or violation of the code of professional practice and conduct against any registrant. They shall be filed with the executive director of the board~~].

Section 18. KRS 322.200 is amended to read as follows:

All charges, unless dismissed by the board as unfounded or trivial, shall be heard by the board within six (6) months after the date on which they are preferred, but a charged party may waive his ***or her*** right to a hearing within six (6) months. The hearing shall be conducted in accordance with KRS Chapter 13B.

Section 19. KRS 322.220 is amended to read as follows:

A person whose license has been revoked may petition the board to reissue. The board shall investigate the petition and may reissue the license upon a finding that the person has complied with any terms prescribed by the board and is again able to competently practice[~~The board, subject to its rules, may reissue a registration certificate to any person whose registration has been revoked~~].

Section 20. KRS 322.230 is amended to read as follows:

(1) The State Board of ***Licensure***[~~Registration~~] for Professional Engineers and Land Surveyors shall consist of ***nine (9)***[~~seven (7)~~] members appointed by the Governor and two (2) ex officio members each with full voting rights. The ex officio members shall be the dean of the College of Engineering of the University of Kentucky and the dean of the Speed Scientific School of the University of Louisville.

(2) The term of each member of the board shall be four (4) years. Each member shall hold office until the expiration of the term[~~ for which he is appointed~~], or until a successor has been appointed and has qualified.

(3) [~~Every member shall, ~~]Before beginning ***a***[~~his~~] term of office, ***every member shall*** file with the Secretary of State ***a***[~~his~~] written oath for the faithful discharge of[~~ his~~] official duties.

(4) No member of the board shall serve as an employee of the board.

Section 21. KRS 322.240 is amended to read as follows:

(1) Each appointed member of the board shall be a citizen of the United States and shall have been a resident of this state for five (5) years.

(2) One (1) member of the board shall be a citizen at large who is not associated with or financially interested in the practice of engineering or land surveying.

(3) Eight (8)[~~Six (6)~~] members of the board shall have been ***a registered or professional engineer or a registered or professional land surveyor*** engaged in the ***respective*** practice[~~ of the profession of engineering or land surveying~~] for at least twelve (12) years, and shall have been in responsible charge of important engineering or land surveying work[~~ or responsible charge of engineering or land surveying teaching~~] for at least five (5) years.[~~ One (1) member of the board shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. At no time shall more than two (2) members whose qualifications are based on responsible charge of engineering or land surveying teaching or more than two (2) members from the faculties of the engineering or land surveying colleges of the state be appointed to the board.~~]

(a) At least ***five (5)***[~~four (4)~~] members of the board shall ***have been***[~~be~~] registered ***or professional***[~~as~~] engineers ***in Kentucky for at least four (4) years prior to the date of their appointment;*** and

(b) At least ***three (3)***[~~two (2)~~] members ***of the board*** shall ***have been***[~~be~~] registered ***or professional***[~~as~~] land surveyors[~~. The engineer members of the board shall have been registered engineers in Kentucky for at least four (4) years prior to the date of their appointments. The land surveyor members of the board shall have been registered land surveyors~~] in Kentucky for at least four (4) years prior to the date of their ***appointment***[~~appointments~~].

Section 22. KRS 322.250 is amended to read as follows:

(1) ***Except as provided for in subsection (5) of this section, each land surveyor appointment to the board shall be made from a list of not less than three (3) nominees to be submitted to the Governor jointly by the Kentucky Society of Professional Engineers and the Kentucky Association of Professional Surveyors, with input from other professional societies. All other appointments to the board shall be made from a list of not less than three (3) nominees to be submitted to the Governor by the Kentucky Society of Professional Engineers with input from other professional societies.***

(2) The nominations shall be submitted to the Governor at least sixty (60) days prior to the appointment date.

(3) The term of office for all full-term appointments shall begin January 1.

(4) Board members shall be allowed to succeed themselves but shall be limited to not more than two (2) consecutive terms. A former member may be reappointed to the board if the member has not served in the preceding four (4) years.

(5) If a vacancy on the board occurs for any reason resulting in an unexpired term, if not filled within three (3) months by official action of the Governor, the board may appoint a provisional member to serve in the interim until the Governor acts.

(6) Every unexpired term shall be filled only for the remainder of that term[~~The Governor shall appoint not more than two (2) full-term members per year, with the exception of 1973, when he shall appoint four (4) members, two (2) for~~

~~terms of three (3) years and two (2) for the full four (4) year term.~~

~~(2) Every member of the board shall receive a certificate of his appointment from the Governor.~~

~~(3) Every appointment to the board shall be made from a list of not less than three (3) nominees to be submitted to the Governor by the Kentucky Society of Professional Engineers.~~

~~(4) Every unexpired term shall be filled only for the remainder of that term.~~

~~(5) The nominations shall be submitted to the Governor at least thirty (30) days prior to the appointment date.~~

~~(6) The term of office of all full term appointments shall begin January 1.~~

~~(7) The appointees to the board shall be limited to not more than two (2) consecutive terms~~].

Section 23. KRS 322.260 is amended to read as follows:

(1) Every year the board shall elect a chairman, a vice chairman and a secretary-treasurer.

(2) The secretary-treasurer ***or any other officer or designee required to handle expenditures or disburse funds of the board*** shall give a surety bond to the board in a sum determined by the board. The premium on the bond shall be paid as a proper, necessary expense of the board.

Section 24. KRS 322.270 is amended to read as follows:

[~~When attending to the work of the board, ~~]Each member shall receive compensation as ***promulgated***[~~established~~] by ***administrative*** regulation of the board and approved by the appropriate legislative body. ***Official duties include***[~~This includes~~] meetings of committees of the board and time spent in necessary travel. Further, members shall be reimbursed for costs for ***all*** actual ***and necessary expenses***[~~travel, incidental, clerical and all expense necessarily~~] incurred in carrying out ***their official***[~~the~~] duties ***as board***[~~of the~~] members[~~ of the board~~].

Section 25. KRS 322.280 is amended to read as follows:

(1) The board shall hold at least ***four (4)***[~~two (2)~~] regular meetings each year. Special meetings shall be held ***if***[~~whenever~~] the bylaws provide. Notice of all meetings shall be given in the manner provided by the bylaws.

(2) ***Six (6)***[~~Five (5)~~] members shall constitute a quorum.

Section 26. KRS 322.290 is amended to read as follows:

[~~(1)~~]The board shall:

(1)[~~(a)~~]Administer this chapter;

(2)[~~(b)~~] Adopt an official seal;[~~ and~~]

(3)[~~(c)~~]Provide suitable office quarters at its own expense***;***

(4)[~~(2) The board shall:~~

~~(a)~~] Adopt and amend all bylaws***,*** and rules of procedure, ***and promulgate administrative regulations,*** consistent with the Constitution and laws of the state, and reasonably necessary for the proper performance of its duties and the regulation ***and fair conduct*** of the proceedings before it;

(5)[~~(b)~~] ***Appoint***[~~Employ~~] an executive director and ***assistant executive directors and fix their compensation;***

(6) Employ any clerk or other assistants necessary for the proper performance of its work;

(7) Appoint a general counsel and any assistant general counsel as it deems necessary, and fix their compensation;

(8) Appoint investigatory personnel, as it deems necessary, and fix their compensation;

(9) Appoint committees of licensees, as it deems necessary, to review issues before the board and make recommendations to the board;

[~~(c) Employ any legal assistants that it considers necessary~~];

(10)[~~(d)~~] Make expenditures***, as it deems necessary,*** for any purpose that it considers reasonably necessary for the proper performance of its duties, including ***paying*** the expenses of the board's delegates to national conventions of and membership dues to the National Council of ***Examiners for*** Engineering ***and Surveying***[~~Examiners~~] or other affiliated national boards or societies; ***and***

(11)[~~(e)~~] Adopt and promulgate ***by administrative regulation*** a code of professional practice and conduct, which shall be ***based upon generally recognized principles of professional ethical conduct and*** binding upon persons ***licensed***[~~registered~~] under this chapter[~~, and which may be amended from time to time~~]. ***A***[~~The~~] code of professional practice and conduct shall be made known to all ***licensees***[~~registrants~~] and applicants and shall include, but not be limited to, the following objectives:

(a)[~~1.~~] The protection of the public health, safety, and welfare;

(b)[~~2.~~] The maintenance of standards of objectivity, truthfulness, and reliability in public statements;

(c)[~~3.~~] The avoidance of conflicts of interest;

(d)[~~4.~~] The prohibition of solicitation or acceptance of engineering or land surveying work on any basis other than qualifications for the work offered;

(e)[~~5.~~] The prohibition of association with any person engaging in illegal or dishonest activities; and

(f)[~~6.~~] The limitation of professional service to the area of competence of the ***licensee;***

(12) [~~(f) registrant.~~]Adopt appropriate standards of practice;

(13)[~~(g)~~] Bring, in its name, injunctive proceedings in the Franklin Circuit Court to enjoin any person, ***business entity,***[~~firm, association, corporation,~~] or combination thereof in violation of KRS 322.020 ***or Section 7 of this Act***; and

(14)[~~(h)~~] Adopt a program for continuing education for its individual land surveyor licensees. No individual land surveyor licensee shall be permitted to renew his ***or her*** license unless the minimum annual continuing education requirements are met, in addition to any other requirement for renewal. The program for continuing education shall not exceed a total of eight (8) credit clock hours per year and shall not include testing or examination of the licensee in any manner.

Section 27. KRS 322.300 is amended to read as follows:

The board shall keep a record of its proceedings and a register of all applications for ***licensure***[~~registration~~]. The register shall state ***the following***:

(1) [~~The ~~]Name, age and residence of each applicant;

(2) [~~The ~~]Date of the application;

(3) [~~The ~~]Place of business of the applicant;

(4) ***Education***[~~His educational~~] and other qualifications ***of the applicant***;

(5) Whether[~~ or not~~] an examination was required;

(6) Whether the applicant was rejected;

(7) Whether ***a license***[~~registration~~] was granted;

(8) [~~The ~~]Date of the action of the board; and

(9) Any other information that the board considers necessary.

Section 28. KRS 322.320 is amended to read as follows:

(1) In carrying this chapter into effect the board, under the hand of its chairman ***or executive director*** and under its seal, may, ***during the investigation or an administrative hearing procedure,*** in cases involving the revocation of a ***license***[~~registration~~] or practicing or offering to practice without ***a license***[~~registration~~], subpoena witnesses and compel their attendance, and require the production of books, papers and documents. Any member may administer oaths to witnesses appearing before the board.

(2) If any person refuses to obey any subpoena so issued, or refuses to testify or produce any books, papers or documents, the board may present its petition to any authority having jurisdiction, setting forth the facts. That authority shall, in a proper case, issue its subpoena to the person, requiring him to attend and testify or produce books, papers and documents considered necessary and pertinent by the board.

(3) Board members ***and agents and staff of the board*** shall be held free of any personal liability as a result of board actions.

Section 29. KRS 322.330 is amended to read as follows:

The secretary-treasurer***, or any other officer*** or ***designee***[~~that board employee~~] properly authorized by the board***,*** shall:

(1) Receive and account for all money collected under this chapter and pay it into the State Treasury***; and***[~~.~~]

(2) Publish ***every two (2) years, and at other intervals as established by the board by promulgation of administrative regulations***,[~~ during July of each year,~~] a roster[~~, or supplement thereto,~~] showing the names and[~~ places of~~] business ***addresses*** of all ***professional***[~~registered~~] engineers***, professional***[~~ and~~] land surveyors***, and business entities holding permits to practice engineering or land surveying in this state***. Copies of the roster shall be ***distributed***[~~mailed~~] to each ***professional***[~~registered~~] engineer and ***professional*** land surveyor, filed with the Secretary of State***,*** and ***distributed or sold to the public***[~~furnished to the public upon request~~].

Section 30. KRS 322.340 is amended to read as follows:

(1) Each ***professional engineer or professional land surveyor shall, upon licensure, obtain a seal or stamp of the design authorized by the board, bearing his or her name, license number, and the words "Licensed Professional Engineer" or "Licensed Professional Land Surveyor."***

(2) The seal or stamp, signature, and the date shall be used to provide certification for all reports, specifications, drawings, and plans, if presented to a client or any public or governmental agency. Reproduction of original signatures shall be adequate to meet the requirements of this subsection.

(3) No report, specification, drawing, or plan furnished on electronic media shall include, or have affixed thereto, an electronic reproduction of the stamp, seal, or signature.

(a) An original seal or stamp, signature, and the date shall be placed on a printed copy produced by electronic media for all reports, specifications, drawings, and plans.

(b) The copy produced by electronic media shall have the following inserted in lieu of an original seal or stamp, signature, and date: "This shall not be considered a certified document. This document, originally issued, sealed, and signed by (name of sealer), Kentucky Professional (Engineer or Land Surveyor), No. (License Number), on (date of sealing or stamping), shall not be used in lieu of a certified document."

(4) The seal or stamp and signature shall be used by licensees only if the work being stamped was under the licensee's complete direction and control.

(5) Every survey plat and physical description prepared by a professional land surveyor and submitted to a client or any public or governmental agency shall display the certification by the professional land surveyor under whose supervision the plat or description was prepared.

(6) It shall be unlawful for a licensee to affix, or permit to be affixed, his or her seal, stamp, or signature to any document described in subsections (2), (3), or (5) of this section:

(a) After the expiration of a license; or

(b) For the purpose of aiding or abetting any other person to evade or attempt to evade any provisions of this chapter.

(7) A professional engineer shall check and have complete dominion and control of the design and engineering work of any engineer not licensed to practice in this state. Complete dominion and control shall include possession of the sealed and signed reproducible construction documents with all supporting design calculations, indicating all changes in the design~~[registrant shall, when he is registered, obtain a seal of the design authorized by the board, bearing his name and the words, "Registered Professional Engineer", or "Registered Land Surveyor". Plans, specifications, plats and reports approved by a registrant shall be signed and dated by the registrant and stamped with the seal when filed with public authorities, and before the delivery thereof to any client during the life of the registration, but no person shall stamp, sign and date seal any document with the seal after the registration has expired or has been revoked, unless it has been renewed or reissued]~~.

Section 31. KRS 322.360 is amended to read as follows:

(1) Neither the state nor any of its political subdivisions shall engage in the construction of any public work involving engineering, unless the plans, specifications and estimates have been prepared and the construction executed under the direct supervision of a ***professional***~~[registered]~~ engineer or a licensed architect.

(2) Subsection (1) of this section shall not apply to any public work***, including a highway or capital project under KRS 56.491, that involves only maintenance or repair of the facility. Maintenance or repair shall not include any work which alters, modifies, or changes the original characteristics of the design***~~[in which the contemplated expenditure for the completed project does not exceed two thousand dollars ($2,000), to the maintenance or repair of an existing state or county highway or to the construction, maintenance or repair of any capital construction project undertaken pursuant to KRS 56.491 the total cost of completion of which the Finance and Administration Cabinet has determined will not exceed twenty-five thousand dollars ($25,000)]~~.

Section 32. KRS 322.370 is amended to read as follows:

This chapter shall not prevent a ***professional***~~[registered]~~ engineer from carrying on any architectural practice incident to the practice of engineering.

Section 33. KRS 322.380 is amended to read as follows:

(1) No person ***without a license***~~[not registered]~~ under this chapter shall avoid or attempt to avoid this chapter by having a representative or employee seek engineering or land surveying work in his ***or her*** behalf.

(2) No person shall act as a representative or employee in the type of activity prohibited by subsection (1) of this section.

Section 34. KRS 322.400 is amended to read as follows:

No~~[It shall be unlawful for the]~~ county clerk of any county, or any other public authority***, shall***~~[with whom the same may be required by law to be filed, to]~~ accept for filing, file***,*** or record any map, plat, survey***,*** or other document related to the practice of land surveying, unless ***it evidences certification by a***~~[there is affixed thereto the personal seal and signature of the]~~ ***professional***~~[registered]~~ land surveyor by whom, or under whose personal supervision and direction, ***the***~~[such]~~ map, plat, survey***,*** or other document was prepared.

Section 35. KRS 322.420 is amended to read as follows:

~~[(1) All applications for registration as a land surveyor shall be made upon forms to be provided by the board and shall be signed and sworn to by the applicant. In addition to such other information as the board may require, all applications shall~~

~~contain a statement of the applicant's educational attainments and record of experience. References shall be furnished therein to not less than five (5) persons possessing direct personal knowledge of the experience and work done by the applicant, at least three (3) of whom shall be registered land surveyors. Applications shall be filed with the executive director of the board and shall be accompanied by an application fee, to be established by regulation of the board. In the event that the board shall, for good cause, deny the application, the fee accompanying the same shall be retained by the board to cover the cost of investigating and processing the same.~~

~~(2)~~]All fees paid to and collected by the board under the provisions of this section shall be deposited in a depository designated by the board and disbursed only at the direction of the board. The officer or employee of the board who shall be designated to collect and disburse the funds represented by such fees shall be required to execute a bond, with corporate surety, in an amount to be determined by the board and reasonably calculated to cover the aggregate of such fees for a period of one (1) year.

Section 36. KRS 322.450 is amended to read as follows:

The provisions of this chapter relating to the necessity of ***licensure***[~~holding registration~~] to engage in the practice of land surveying shall not apply to:

(1) Any employee or employees of the Kentucky Department of Highways, or any other subdivision of the government of the Commonwealth of Kentucky, working under the direct supervision and control of a ***professional***[~~qualified and registered civil~~] engineer or ***professional*** land surveyor;

(2) Any person or persons engaged in the practice of land surveying which is limited to the measurement of crops or agricultural land area under any agricultural program sponsored by an agency of the federal government or of the State of Kentucky; or

(3) Any employee or subordinate of a ***professional land surveyor whose work is done while under the direct supervision of, and is verified by, the professional land surveyor***[~~person holding a valid land surveyor's registration under the provisions of KRS 322.010, 322.200, 322.230 to 322.250, 322.420 to 322.460, provided, however, that the work performed by such person does not include the preparation of any final maps, plats, or other documents relating to land surveying which might become the subject of public record, and providing that the work of such employee is performed under the direct supervision of, and verified by, his registered employer~~].

Section 37. KRS 322.460 is amended to read as follows:

[~~It shall be the duty of~~]The Attorney General of Kentucky[~~,~~] or[~~ such of~~] his ***or her designee shall***[~~assistants as he may designate, to~~] act as legal ***adviser***[~~advisers~~] to the board and[~~ to~~] render[~~ such~~] legal assistance as the board may from time to time require. In addition[~~ thereto~~], the Attorney General of Kentucky, all Commonwealth's attorneys***,*** and the county attorney of each county shall, upon request of the board, and without additional compensation[~~ therefor~~], lend their assistance to the enforcement of the provisions of ***this chapter***[~~KRS 322.010, 322.200, 322.230 to 322.250, 322.420 to 322.460~~] and the prosecution of any violations thereof. The board ***shall***[~~may~~] employ[~~ such~~] additional counsel as[~~ in its discretion may be or become~~] necessary to ***effectively enforce the provisions of this chapter***[~~the effective enforcement of KRS 322.010, 322.200, 322.230 to 322.250, 322.420 to 322.460~~], the cost of which shall be paid exclusively from funds of the board.

Section 38. KRS 322.470 is amended to read as follows:

As used in this section, "professional land surveyor" shall include the agents, the employees, and any personnel under the supervision of a professional land surveyor.

(1) A ***professional***[~~registered~~] land surveyor[~~, his agents, employees, and personnel under his supervision,~~] may go on, over, and upon the lands of others ***if***[~~when~~] necessary to perform surveys for the location of property corners, boundary lines, rights-of-way, and easements, and[~~, in so doing,~~] may carry with them their customary equipment and vehicles.

(a) Entry under the right hereby granted shall not constitute trespass***;***[~~,~~] and

(b) A ***professional***[~~registered~~] land surveyor[~~, his agents, employees, and personnel under his supervision~~] shall not be liable to arrest or a civil action by reason of ***this***[~~such~~] entry***.***

(2) [~~, however,~~]Nothing in this section shall be construed as giving authority to a ***professional***[~~registered~~] land surveyor[~~, his agents, employees, or personnel under his supervision~~] to destroy, injure, damage***,*** or move anything on the lands of another without the written permission of the landowner; and nothing in this section shall be construed as removing civil liability for ***these***[~~such~~] damages.

(3)[~~(2)~~] A ***professional***[~~registered~~] land surveyor[~~, his agents, employees, and personnel under his supervision~~] shall make reasonable effort to notify adjoining landowners upon whose land it is necessary to enter.

(4)[~~(3)~~] No owner or occupant of the land shall be liable for any injury or damage sustained by any person entering upon ***his or her***[~~said~~] land under the provisions of this section.

Section 39. KRS 322.550 is amended to read as follows:

If the drawings and specifications are signed by the authors[~~ thereof~~] with the true titles of their occupations as may be required by law, the following buildings and additions to buildings, classified by use group, shall require the services of a professional engineer or architect registered in ***this state***[~~the Commonwealth of Kentucky~~]:

(1) Factory and industrial use group having a capacity of one hundred (100) persons or more;

(2) High hazard use group, regardless of capacity;

(3) Storage use group having a capacity of one hundred (100) persons or more***; and***

(4) Miscellaneous use groups having a capacity of one hundred (100) persons or more.

Section 40. KRS 322.990 is amended to read as follows:

Any person who violates any ***provision***[~~provisions~~] of this chapter shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or be imprisoned not more than three (3) months, or both.

Section 41. KRS 381.835 is amended to read as follows:

(1) The county clerk shall immediately set up the mechanics and methods by which recordation of a master deed or lease and of the individual units may be made. Provisions shall be made for the recordation of the individual units on subsequent resales, mortgages and other encumbrances, as is done with all other real estate recordation. The master deed or lease to which KRS 381.815 refers shall express the following particulars:

(a)[~~(1)~~] The description of the land, whether leased or in fee simple, and the building, expressing their respective areas;

(b)[~~(2)~~] The general description and the number of each unit, expressing its area, location and any other data necessary for its identification;

(c)[~~(3)~~]The description of the general common elements of the building; and

(d)[~~(4)~~] The common elements, both general and limited, shall remain undivided and shall not be the object of an action for partition or division of the co-ownership. Any covenant to the contrary shall be void.

(2)[~~(5)~~] Simultaneously with the recording of the declaration, there shall be filed in the office of the recording officer a set of the floor plans of the building or buildings, showing the layout, location, unit numbers and dimensions of the units, stating the name of the property or that it has no name, and bearing the verified ***certification by***[~~statement of~~] a ***licensed***[~~registered~~] architect or professional engineer[~~ certifying~~] that it is an accurate copy of portions of the plans of the ***building or buildings***[~~ building(s)~~] as filed with and approved by the county or city and county officer having jurisdiction over the issuance of permits for the construction of buildings, or, in the alternative, certifying that the plans fully and accurately depict the layout, location, unit numbers and dimensions of the units as built. If the plans do not include a verified statement ***of a licensed***[~~by such~~] architect or ***professional*** engineer that ***the***[~~such~~] plans fully and accurately depict the layout, location, unit numbers and dimensions of the units as built, there shall be recorded prior to the first conveyance of any unit an amendment to the declaration to which shall be attached a verified statement of a [~~registered architect or~~] professional ***land surveyor***[~~engineer so~~] certifying ***that***[~~as to~~] the plans[~~ theretofore~~] filed, or being filed simultaneously with ***the***[~~such~~] amendment***, fully and accurately depict the layout, location, unit numbers, and dimensions of the units as built***. The plans shall be kept by the recording officer in a separate file for each property, indexed in the same manner as a conveyance entitled to record, numbered serially in the order of receipt, each designated "condominium ownership," with the name of the property, if any, and each containing an appropriate reference to the recording of the declaration. [~~Correspondingly,~~]The record of the declaration[~~,~~] shall ***also*** contain a reference to the file number of the floor plans of the building or buildings on the property affected[~~ thereby~~].

Section 42. KRS 433.770 is amended to read as follows:

(1) Any person who fraudulently and willfully removes, defaces, cuts down, or destroys a cornertree***, post,***[~~ or~~] cornerstone***, or any monument erected to designate***[~~ of~~] the boundary of this state, or of ***any county or city, or*** the ***boundary***[~~survey~~] of any tract ***or lot*** of land, shall be guilty of a Class D felony ***and shall cause the marker, at his or her own expense, to be re-established by a professional land surveyor***.

(2) Any person who willfully and knowingly, but without a felonious intent,[~~ breaks down, damages, or~~] removes***, defaces, cuts down, or destroys a tree, post, stone, or*** any monument erected to designate the boundaries of this state or of any county or city, or the boundaries of any tract or lot of land,[~~ or any tree, post, stone, or mark planted for that purpose,~~] shall ***cause the marker, at his or her own expense, to be re-established by a professional land surveyor***[~~be guilty of a violation~~].

Section 43. KRS 353.590 is amended to read as follows:

(1) Any person seeking a permit required by KRS 353.570 shall submit to the department a written application in a form prescribed by the department.

(2) Each application shall be accompanied by a specified fee as follows:

(a) The fee shall be three hundred dollars ($300) for each well to be drilled, deepened, or reopened for any purpose relating to the production, repressuring, or storage of oil or gas, and for each water supply well, observation well, and geological or structure test hole.

(b) If the department receives delegation of authority for administration of the underground injection control program under Section 1425 of the Safe Drinking Water Act (Public Law 93-523 as amended), the department may, by administrative regulation, establish a fee or schedule of fees in an amount not to exceed fifty dollars ($50) per well, in addition to the fees imposed by paragraph (a) of this subsection, upon each application to drill, deepen, or reopen a well for any purpose relating to the production, repressuring, or storage of oil or gas, and for each water supply well, observation well, and geological or structure test hole. The fees or schedule of fees to be established by administrative regulation shall not exceed an amount sufficient to recover the costs incurred by the department in administering the Underground Injection Control Program less any other state or federal funds which are made available for this purpose.

(c) All money paid to the State Treasurer for fees required by paragraph (b) of this subsection shall be for the sole use of the department in the administration of the Underground Injection Control Program under Section 1425 of the Safe Drinking Water Act (Public Law 93-523 as amended).

(3) All money paid to the State Treasurer for licenses and fees required by KRS 353.500 to 353.720 shall be for the sole use of the department and shall be in addition to any moneys appropriated by the General Assembly for the use of the department.

(4) Each application shall be accompanied by a plat, which shows the location and elevation of each well, prepared according to the administrative regulations promulgated under KRS 353.500 to 353.720. The plat shall be certified as accurate and correct by a ***professional*** land surveyor ***in accordance with the provisions of KRS Chapter 322***.~~[When the location of the well is known to be underlaid by coal-bearing stratum, the plat shall be certified accurate and correct by both a land surveyor and an engineer registered in Kentucky. If any plat submitted by an applicant is determined by the department to be materially inaccurate or incomplete, the department may require that a new plat be prepared and submitted either by a person approved by the director or an engineer registered in Kentucky. The department may further require that all future plats submitted by the applicant be prepared either by a person approved by the director or an engineer registered in Kentucky.]~~

(5) When any person submits to the Department of Mines and Minerals an application for a permit to drill a well, or to reopen, deepen, or temporarily abandon any well which is not covered by surety bond, the department shall except as provided in this section, require from the well operator a bond in the sum of five hundred dollars ($500) for a well to be drilled to a depth of five hundred feet (500') or less; one thousand dollars ($1,000) for a well to be drilled to a depth between five hundred and one feet (501') and one thousand feet (1,000'); one thousand five hundred dollars ($1,500) for a well to be drilled to a depth between one thousand and one feet (1,001') and one thousand five hundred feet (1,500'); two thousand dollars ($2,000) for a well to be drilled to a depth between one thousand five hundred and one feet (1,501') and two thousand feet (2,000'); two thousand five hundred dollars ($2,500) for a well to be drilled to a depth between two thousand and one feet (2,001') and two thousand five hundred feet (2,500'); three thousand dollars ($3,000) for a well to be drilled to a depth between two thousand five hundred and one feet (2,501') and three thousand feet (3,000'); three thousand five hundred dollars ($3,500) for a well to be drilled to a depth between three thousand and one feet (3,001') and three thousand five hundred feet (3,500'); four thousand dollars ($4,000) for a well to be drilled to a depth between three thousand five hundred and one feet (3,501') and four thousand feet (4,000'); and five thousand dollars ($5,000) for a well to be drilled to a depth of more than four thousand feet (4,000'). The bonds shall be made in favor of the Department of Mines and Minerals, conditioned that the wells upon abandonment shall be plugged in accordance with the administrative regulations of the department and that all records required by the department be filed as specified. An operator may petition the department to amend the drilling depth and bond amount applicable to a particular well, and shall not proceed to drill to a depth greater than that authorized by the department until the operator is so authorized except pursuant to administrative regulations promulgated by the department. The commission may establish a bond in a sum greater than five thousand dollars ($5,000) for any well to be drilled to a depth of more than four thousand feet (4,000') if the members of the commission determine that the particular circumstances of the drilling of the well warrant an increase in the bond amount established above. All bonds shall remain in effect until the plugging of the well is approved by the department, or the bond is released by the department. Any well operator in lieu of the bond may file with the department a blanket bond in a sum of ten thousand dollars ($10,000), covering all wells drilled or to be drilled in the Commonwealth by the principal in the bond, and the acceptance and approval by the department of the blanket bond shall be in full compliance with the above provision requiring an individual well bond. A deposit in cash or a bank-issued irrevocable letter of credit may serve in lieu of either of the individual well or blanket bonds, and a property bond may be executed by an operator who owns all of the surface and mineral rights of a tract proposed for drilling. A certificate of deposit, the principal of which is pledged in lieu of a bond and whose interest is payable to the party making the pledge, may also be accepted by the department. If an operator is required to post individual well bonds exceeding a total of five thousand dollars ($5,000) or elects to post a blanket bond, the certificate of deposit shall be accepted by the department in lieu of that portion of the amount of the bonds exceeding five thousand dollars ($5,000). The bond or bonds referred to in this section shall be executed by the well operator as principal and, if a surety bond, by a corporate surety authorized to do business in the Commonwealth. A deposit in cash shall serve in lieu of either of the

above bonds; all cash bonds accepted by the department shall be deposited into an interest-bearing account, with the interest thereon payable to the special agency account known as the oil and gas well plugging fund, created in subsection (9) of this section, to be used in accordance with the purposes described therein. All cash bonds being held by the department on July 13, 1990, shall likewise be deposited in the interest-bearing account, with the proceeds to be used for the purposes established for the oil and gas well plugging fund. The bond amounts shall be applicable only to permits issued upon and after July 13, 1990. All bonds posted for permits issued prior to July 13, 1990, shall remain in full force and effect for the duration of the permits.

(6) A successor to the well operator shall post bond and notify the department in writing in advance of commencing use or operation of a well or wells. The successor shall assume the obligations of this chapter as to a particular well or wells and relieve the original permittee of responsibility under this chapter with respect to the well or wells. It shall be the responsibility of the selling operator to require the successor operator to post bond before use or operation is commenced by the successor and relief of responsibility under this chapter is granted to the original permittee.

(7) If the requirements of subsection (5) of this section with respect to proper plugging upon abandonment and submission of all required records on all well or wells have not been complied with within the time limits set by the department***, by administrative regulation,*** or by this chapter, the department shall cause a notice of noncompliance to be served upon the operator by certified mail, addressed to the permanent address shown on the application for a permit. The notice shall specify in what respects the operator has failed to comply with this chapter or the administrative regulations[~~ or orders~~] of the department. If the operator has not reached an agreement with the department or has not complied with the requirements set forth by it within forty-five (45) days after mailing of the notice, the bond shall be forfeited to the department.

(8) A bond forfeited pursuant to the provisions of this chapter may be collected by an attorney for the department or by the Attorney General, after notice from the director.

(9) All sums received ***under subsection (5) of this section or*** through the forfeiture of bonds shall be placed in the State Treasury and credited to a special agency account to be designated as the oil and gas well plugging fund, which shall be an interest-bearing account with the interest thereon payable to the fund. This fund shall be available to the department and shall be expended for the plugging of any abandoned wells coming within the authority of the department pursuant to this chapter. The plugging of any well pursuant to this subsection shall not be construed to relieve the operator or any other person from civil or criminal liability which would exist except for the plugging. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purpose of the fund until expended or until appropriated by subsequent legislative action.

(10) Upon request by any person applying for a permit for a geological or structure test hole, the department shall keep the location and elevation of the hole confidential until the information is allowed to be released by the person obtaining the permit.

(11) For the purpose of this chapter, "water supply well" shall not include:

(a) Any well for a potable water supply for domestic use or for livestock; or

(b) Any water well used primarily for cooling purposes in an industrial process.

Section 44. KRS 45A.730 is amended to read as follows:

As used in KRS 45A.730 to 45A.750, unless the context requires otherwise:

(1) "Architectural services" means any professional service involved in the practice of architecture as defined in KRS 323.010;

(2) "Engineering services" means any professional service as defined in KRS 322.010***(4) and (5)***[~~(3) and (4)~~];

(3) "Firm" means any individual, firm, partnership, corporation, or other legal entity permitted by law to practice the profession of architecture or engineering and provide the services defined in subsections (1) and (2) of this section;

(4) "Local public agency" shall have the same meaning given in KRS 45A.345;

(5) "Project" means any capital improvement project, study, plan, survey, or new or existing program activity of a political subdivision that requires architectural or ***professional*** engineering services;

(6) "Qualification statement" means federal form SF254 and any other supporting documents that present a firm's qualifications and performance data.

Section 45. KRS 376.075 is amended to read as follows:

(1) Any ***professional***[~~licensed~~] engineer, licensed architect, licensed landscape architect, and ***professional*** land surveyor who performs professional services or services as defined in KRS 322.010***(4)***[~~(3)~~] for ***professional*** engineers, KRS 323.010(3) for architects, KRS 323A.010(3) for landscape architects, and KRS 322.010***(10)***[~~(5)~~] for ***professional*** land surveyors shall have a lien on the building, structure, land, or project on which the services were performed, to secure the amount of the charges for services with interest as provided in KRS 360.040 and costs.

(2) The provisions of KRS 376.010(1) and (2) shall determine when a lien created under this section shall take precedence

over a mortgage or other contract lien or bona fide conveyance for value without notice.

(3) No person who has not contracted directly with the owner or his agent shall acquire a lien under this section.

(4) Any lien provided for under this section shall be dissolved unless the claimant, within six (6) months after he ceases to provide services, files in the office of the county clerk of the county in which the property is situated a statement of the amount due the claimant, with all just credits and setoffs known to him, together with a description of the property intended to be covered by the lien sufficiently accurate to identify it, the name of the owner, if known, and whether the services were furnished by contract with the owner or with a contractor or architect. This statement shall be subscribed and sworn to by the person claiming the lien or by someone in his behalf.

(5) Any lien created under this section shall be dissolved unless an action is brought to enforce the lien within twelve (12) months from the day of filing the statement in the clerk's office as required by subsection (4) of this section. If the lienholder complies with all filing requirements under this section, and does so within the time fixed, his lien shall be valid and effective against any creditor of, or bona fide or other purchaser from, the owner of the property.

(6) The provisions of this section shall in no way abridge or conflict with the provisions of KRS 376.210 which provide for liens on public improvements, and any potential lien or valid lien of ***a professional***~~[an]~~ engineer, architect, landscape architect, or ***professional*** land surveyor on a public improvement shall be governed by KRS 376.210.

Section 46. The following KRS sections are repealed:

322.130 Form of registration.

322.140 Registration prima facie evidence of right to practice.

322.150 Expiration date of registration.

322.350 Prohibited practices -- Board to prefer charges.

Section 47. By January 1, 1999, the Governor shall appoint two (2) members of the State Board of Licensure for Professional Engineers and Professional Land Surveyors in a manner consistent with the requirements of Section 22 of this Act.

Section 48. Sections 1 to 46 of this Act take effect January 1, 1999.

HB 649, AN ACT relating to the practice of pharmacy.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 315 IS CREATED TO READ AS FOLLOWS:

(1) The board shall establish an impaired pharmacist committee to promote the early identification, intervention, treatment, and rehabilitation of pharmacists and pharmacist interns who may be impaired by reason of illness, alcohol or drug abuse, or as a result of any other physical or mental condition.

(2) The board may enter into a contractual agreement with a nonprofit corporation, pharmacy professional organization, or similar organization for the purpose of creating, supporting, and maintaining an impaired pharmacist committee.

(3) The board may promulgate administrative regulations pursuant to KRS Chapter 13A to effectuate and implement the provisions of this section.

(4) Beginning July 15, 1998, the board shall collect an assessment of ten dollars ($10) to be added to each licensure renewal application fee payable to the board. This assessment shall be expended by the board on the operation of the impaired pharmacist committee.

(5) Members of an impaired pharmacist committee, any administrator, staff member, consultant, agent, volunteer, or employee of the committee acting within the scope of his or her duties and without actual malice and all other persons who furnish information to the committee in good faith and without actual malice shall not be liable for any claim or damages as a result of any statement, decision, opinion, investigation, or action taken by the committee or by any individual member of the committee.

(6) All information, interviews, reports, statements, memoranda, or other documents furnished to or produced by the impaired pharmacist committee, all communications to or from the committee, and all proceedings, findings, and conclusions of the committee, including those relating to intervention, treatment, or rehabilitation, that in any way pertain or refer to a pharmacist or pharmacist intern who is or may be impaired shall be privileged and confidential.

(7) All records and proceedings of the committee that pertain or refer to a pharmacist or pharmacist intern who is or may be impaired shall be privileged and confidential, used by the committee and its members only in the exercise of the proper function of the committee, not be considered public records, and not be subject to court subpoena, discovery, or introduction as evidence in any civil, criminal, or administrative proceedings, except as described in subsection (8) of this section.

(8) The committee may only disclose the information relative to an impaired pharmacist or pharmacist intern if:

(a) It is essential to disclose the information to persons or organizations needing the information in order to address the intervention, treatment, or rehabilitation needs of the impaired pharmacist or pharmacist intern;

(b) The release is authorized in writing by the impaired pharmacist or pharmacist intern; or

(c) The committee is required to make a report to the board pursuant to KRS 315.121.

Section 2. KRS 333.040 is amended to read as follows:

This chapter applies to all medical laboratories within the State of Kentucky, except:

(1) Medical laboratories operated by the United States government;

(2) Medical laboratories operated by a licensed physician, or a group of licensed physicians, solely and exclusively in connection with the diagnosis and treatment of their own patients; if any referred work is received or performed by such medical laboratories, all provisions of this chapter shall apply;

(3) Medical laboratories operated by hospitals licensed by the secretary for human resources;

(4) Medical laboratories operated and maintained exclusively for research purposes, involving no patient or public health service whatsoever***;***

(5) Medical laboratories operated by facilities holding a permit pursuant to KRS 315.035 and holding a valid certification issued pursuant to the Clinical Laboratory Improvement Act of 1988, as amended, solely and exclusively in connection with testing or treatment of their own patients. If any referred work is received or performed by these medical laboratories, all provisions of this chapter shall apply.

Section 3. KRS 315.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Administer" means the direct application of a drug to a patient or research subject by injection, inhalation, or ingestion, whether topically or by any other means;

(2) "Association" means the Kentucky Pharmacists Association;

(3) "Board" means the Kentucky Board of Pharmacy;

(4) "Collaborative care agreement" means a written agreement between a specifically identified individual practitioner and a pharmacist who is specifically identified, whereby the practitioner outlines a plan of cooperative management of a specifically identified individual patient's drug-related health care needs that fall within the practitioner's statutory scope of practice. The agreement shall be limited to specification of the drug-related regimen to be provided and any tests which may be necessarily incident to its provisions; stipulated conditions for initiating, continuing, or discontinuing drug therapy; directions concerning the monitoring of drug therapy and stipulated conditions which warrant modifications to dose, dosage regimen, dosage form, or route of administration;

(5) "Compound" or "compounding" means the preparation or labeling of a drug pursuant to or in anticipation of a valid prescription drug order including, but not limited to, packaging, intravenous admixture or manual combination of drug ingredients. Compounding, as used in this chapter, shall not preclude simple reconstitution, mixing, or modification of drug products prior to administration by nonpharmacists;

(6) "Confidential information" means information which is accessed or maintained by a pharmacist in a patient's record, or communicated to a patient as part of patient counseling, whether it is preserved on paper, microfilm, magnetic media, electronic media, or any other form;

(7) "Continuing education unit" means ten (10) contact hours of board approved continuing pharmacy education. A "contact hour" means fifty (50) continuous minutes without a break period;

(8) "Dispense" or "dispensing" means to deliver one (1) or more doses of a prescription drug in a suitable container, appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug;

(9) "Drug" means any of the following:

  (a) Articles recognized as drugs or drug products in any official compendium or supplement thereto; or

  (b) Articles, other than food, intended to affect the structure or function of the body of man or other animals; or

  (c) Articles, including radioactive substances, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; or

  (d) Articles intended for use as a component of any articles specified in paragraphs (a) to (c) of this subsection;

(10) "Drug regimen review" means retrospective, concurrent, and prospective review by a pharmacist of a patient's drug-related history, including but not limited to, the following areas:

  (a) Evaluation of prescription drug orders and patient records for:

    1. Known allergies;

2. Rational therapy contraindications;
3. Appropriate dose and route of administration;
4. Appropriate directions for use; or
5. Duplicative therapies.

(b) Evaluation of prescription drug orders and patient records for drug-drug, drug-food, drug-disease, and drug-clinical laboratory interactions;

(c) Evaluation of prescription drug orders and patient records for adverse drug reactions; or

(d) Evaluation of prescription drug orders and patient records for proper utilization and optimal therapeutic outcomes;

(11) "Immediate supervision" means under the physical and visual supervision of a pharmacist;

(12) "Manufacturer" means any person, except a pharmacist compounding in the normal course of professional practice, within the Commonwealth engaged in the commercial production, preparation, propagation, compounding, conversion or processing of a drug, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or both, and includes any packaging or repackaging of a drug or the labeling or relabeling of its container;

(13) "Medical order" means a lawful order of a specifically-identified practitioner for a specifically-identified patient for the patient's health care needs. "Medical order" may or may not include a prescription drug order;

(14) "Nonprescription drugs" means nonnarcotic medicines or drugs which may be sold without a prescription and are prepackaged and labeled for use by the consumer in accordance with the requirements of the statutes and regulations of this state and the federal government;

(15) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy;

(16) "Pharmacist intern" means a natural person who is:

(a) Currently certified by the board to engage in the practice of pharmacy under the direction of a licensed pharmacist and who satisfactorily progresses toward meeting the requirements for licensure as a pharmacist;

(b) A graduate of an approved college or school of pharmacy or a graduate who has established educational equivalency by obtaining a Foreign Pharmacy Graduate Examination Committee (FPGEC) certificate, who is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;

(c) A qualified applicant awaiting examination for licensure as a pharmacist or the results of an examination for licensure as a pharmacist; or

(d) An individual participating in a residency or fellowship program approved by the board for internship credit;

(17) "Pharmacy" means every place where:

(a) Drugs are dispensed under the direction of a pharmacist;

(b) Prescription drug orders are compounded under the direction of a pharmacist; or

(c) A registered pharmacist maintains patient records and other information for the purpose of engaging in the practice of pharmacy, whether or not prescription drug orders are being dispensed;

(18) "Pharmacy technician" means a natural person who works under the immediate supervision, or general supervision if otherwise provided for by statute or administrative regulation, of a pharmacist for the purpose of assisting a pharmacist with the practice of pharmacy;

(19) "Practice of pharmacy" means interpretation, evaluation, and implementation of medical orders and prescription drug orders; responsibility for dispensing prescription drug orders, including radioactive substances; participation in drug and drug-related device selection, administration of medication in the course of dispensing or maintaining a prescription drug order, and drug evaluation, utilization, or regimen review; maintenance of patient pharmacy records; and provision of patient counseling and those professional acts, professional decisions, or professional services necessary to maintain and manage all areas of a patient's pharmacy-related care, including pharmacy-related primary care as defined in this section;

(20) "Practitioner" has the same meaning given in KRS 217.015(23);

(21) "Prescription drug" means a drug which:

(a) Under federal law is required to be labeled with either of the following statements:

1. "Caution: Federal law prohibits dispensing without prescription"; or
2. "Caution: Federal law restricts this drug to use by, or on the order of, a licensed veterinarian"; or

(b) Is required by any applicable federal or state law or administrative regulation to be dispensed only pursuant to a prescription drug order or is restricted to use by practitioners;

(22) "Prescription drug order" means an original or new order from a practitioner for drugs, drug-related devices or treatment for a human or animal, including orders issued through collaborative care agreements. Lawful prescriptions result from a valid practitioner-patient relationship, are intended to address a legitimate medical need, and fall within the prescribing practitioner's scope of professional practice;

(23) "Pharmacy-related primary care" means the pharmacists' activities in patient education, health promotion, assistance in the selection and use of over-the-counter drugs and appliances for the treatment of common diseases and injuries as well as those other activities falling within their statutory scope of practice;

(24) "Society" means the Kentucky Society of Health-Systems Pharmacists;

(25) "Supervision" means the presence of a pharmacist on the premises to which a pharmacy permit is issued, who is responsible, in whole or in part, for the professional activities occurring in the pharmacy; and

(26) "Wholesaler" means any person[~~ within the Commonwealth~~] who legally buys drugs for resale or distribution to persons other than patients or consumers.

Section 4. KRS 315.065 is amended to read as follows:

(1) Because of the continuous introduction of new therapeutic and diagnostic agents and changing concepts in the practice of pharmacy, it is essential that a pharmacist undertake a program of continuing education to maintain his professional competency to practice in the public interest.

(2) No pharmacist's license shall be renewed until the license holder is able to submit written proof to the board that he has satisfactorily completed, in the previous renewal period, a continuing education program acceptable to the board. Such continuing education requirements shall be determined by regulation of the board, provided the course described in KRS 214.610(1) is included, but they shall not require more than an average of ***one and one-half (1-1/2)***[~~fifteen (15)~~] continuing education units (CEU) per year.

(3) The board shall adopt rules and regulations to carry out the provisions of this section, to include guidelines and criteria for reviewing and approving continuing education programs.

The Committee on Education reported **HB 446**, **HB 485**, and **HB 532**, with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 446, AN ACT relating to local school districts.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 160.470 is amended to read as follows:

(1) Each district board of education shall prepare a general school budget in formats prescribed and furnished by the Kentucky Board of Education, showing the amount of money needed for current expenses, debt service, capital outlay, and other necessary expenses of the schools during the succeeding fiscal year, the estimated total amount that will be received from the common school fund and other sources, the assessed valuation of property subject to local taxation in the school district furnished as provided in subsection (3) of KRS 160.460, an estimate made by the Revenue Cabinet of public service company assessments and assessments of other property in the school district not furnished under the provisions of subsection (3) of KRS 160.460, and the amount that will be needed to be raised by local taxation, including the rate of levy necessary to raise such an amount.

(2) (a) Notwithstanding any statutory provisions to the contrary, no district board of education shall levy a general tax rate, voted general tax rate, or voted building tax rate for 1979-80 which will produce more revenue, exclusive of revenue from net assessment growth as defined in KRS 132.010, than would be produced by application of the maximum general tax rate, voted general tax rate, or voted building tax rate, respectively, that could have been levied in 1978-79, to the 1978-79 assessment, except as provided in subsection (12) of this section and KRS 157.440. In succeeding years, no district board of education shall levy a general tax rate, a voted general tax rate, or a voted building tax rate which will produce more revenue, exclusive of revenue from net assessment growth as defined in KRS 132.010, than would be produced by application of the general tax rate, maximum voted general tax rate, or maximum voted building tax rate, respectively, that could have been levied in the preceding year to the preceding year's assessment, except as provided in subsection (12) of this section and KRS 157.440.

(b) If an election is held as provided for in KRS 132.017 and the question should fail, such failure shall not reduce the ". . .general tax rate, maximum voted general tax rate, or maximum voted building tax rate, respectively, that could have been levied in the preceding year. . .," referred to in subsection (2)(a) of this section, for purposes of computing the general tax rate, voted general tax rate, or voted building tax rate for succeeding years.

In the event of a merger of school districts, the limitations contained in this section shall be based upon the combined revenue of the merging districts, as computed under the provisions of this section.

(3) No district board of education shall levy a general tax rate, voted general tax rate, or voted building tax rate within the limits imposed in subsection (2) of this section which respectively exceeds the compensating tax rate defined in KRS

132.010, except as provided in subsection (12) of this section, KRS 157.440, and KRS 157.621, until the district board of education has complied with the provisions of subsection (10) of this section.

(4) The chief state school officer shall certify the following to each district board of education, by June 30 of each year:

(a) The general tax rate, voted general tax rate, or voted building tax rate that a district board of education could levy under the provisions of subsection (2) of this section, and the amount of revenue expected to be produced by each;

(b) The compensating tax rate as defined in KRS 132.010 for a district's general tax rate, voted general tax rate, or voted building tax rate, and the amount of revenue expected to be produced by each;

(c) The general tax rate, voted general tax rate, or voted building tax rate which will produce, respectively, no more revenue from real property, exclusive of revenue from new property, than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, and the amount of revenue expected to be produced by each.

(5) Upon completion of action on property assessment data, the Revenue Cabinet shall submit certified property assessment data as required in KRS 133.125 to the chief state school officer.

(6) Within thirty (30) days after the district board of education has received its assessment data, three (3) copies of the budget shall be forwarded to the Kentucky Board of Education for its approval or disapproval. The failure of the district board of education to furnish the budget within the time prescribed shall not invalidate any levy made thereafter.

(7) The budget shall be disapproved by the Kentucky Board of Education if it is financially unsound or fails to provide for:

(a) Payment of maturing principal and interest on any outstanding voted school improvement bonds of the school district, authorized and issued pursuant to KRS 162.080 and 162.090 with the written approval of the Kentucky Board of Education; or

(b) Payment of rentals in connection with any outstanding school building revenue bonds issued for the benefit of a school district by the appropriate city or county as authorized and provided under the provisions of KRS 162.120 to 162.300 and KRS 58.010 to 58.140, with the written approval of the Kentucky Board of Education; or

(c) Fails to comply with the law.

The Kentucky Board of Education shall state the reason for disapproval and the district board of education shall amend its budget, within the limitations of this section, to obviate the reasons for disapproval and resubmit the budget to the Kentucky Board of Education for final approval.

(8) If the budget as amended specifies a tax levy different from that levied under the disapproved budget, the tax-levying authority shall amend its levy so that the levy as amended shall comply with the provisions of subsection (1) of KRS 160.460. No general school budget shall become effective and no ad valorem levy shall be made until approved by the Kentucky Board of Education.

(9) (a) Each district board of education shall, on or before January 31 of each calendar year, formally and publicly examine detailed line item estimated revenues and proposed expenditures for the subsequent fiscal year. On or before May ***30***~~[15]~~ of each calendar year, each district board of education shall adopt a tentative working budget which shall include a minimum reserve of two percent (2%) of the total budget.

(b) Each district board of education shall submit to the Kentucky Board of Education no later than September ***30***~~[15]~~, a close estimate or working budget which shall conform to the administrative regulations prescribed by the Kentucky Board of Education, and which shall be consistent in its major divisions with the general school budget previously prepared.

(10) (a) Except as provided in subsection (12) of this section and KRS 157.440, a district board of education proposing to levy a general tax rate, voted general tax rate, or voted building tax rate within the limits of subsection (2) of this section which exceed the compensating tax rate defined in KRS 132.010 shall hold a public hearing to hear comments from the public regarding the proposed tax rate. The hearing shall be held in the principal office of the taxing district or, in the event the taxing district has no office, or the office is not suitable for such a hearing, the hearing shall be held in a suitable facility as near as possible to the geographic center of the district.

(b) The district board of education shall advertise the hearing by causing the following to be published at least twice for two (2) consecutive weeks, in the newspaper of largest circulation in the county, a display type advertisement of not less than twelve (12) column inches:

1. The general tax rate, voted general tax rate, and voted building tax rate levied in the preceding year, and the revenue produced by those rates;

2. The general tax rate, voted general tax rate, and voted building tax rate proposed for the current year, and the revenue expected to be produced by those rates;

3. The compensating general, voted general, and voted building tax rates, and the revenue expected from them;

4. The revenue expected from new property and personal property;

5. The general areas to which revenue in excess of the revenue produced in the preceding year is to be allocated;

6. A time and place for the public hearing which shall be held not less than seven (7) days nor more than ten (10) days after the day that the second advertisement is published;

7. The purpose of the hearing; and

8. A statement to the effect that the General Assembly has required publication of the advertisement and the information contained herein.

(c) In lieu of the two (2) published notices, a single notice containing the required information may be sent by first-class mail to each person owning real property, addressed to the property owner at his residence or principal place of business as shown on the current year property tax roll.

(d) The hearing shall be open to the public. All persons desiring to be heard shall be given an opportunity to present oral testimony. The district board of education may set reasonable time limits for testimony.

(11) (a) That portion of a general tax rate, a voted general tax rate, or a voted building tax rate, except as provided in subsection (12) of this section, KRS 157.440, and KRS 157.621, levied by an action of a district board of education which will produce, respectively, revenue from real property, exclusive of revenue from new property, more than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, shall be subject to a recall vote or reconsideration by the district board of education as provided for in KRS 132.017, and shall be advertised as provided for in paragraph (b) of this subsection.

(b) The district board of education shall, within seven (7) days following adoption of an ordinance, order, resolution, or motion to levy a general tax rate, voted general tax rate, or voted building tax rate, except as provided in subsection (12) of this section and KRS 157.440, which will produce revenue from real property, exclusive of revenue from new property as defined in KRS 132.010, more than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, cause the following to be published, in the newspaper of largest circulation in the county, a display type advertisement of not less than twelve (12) column inches:

1. The fact that the district board of education has adopted such a rate;

2. The fact that the part of the rate which will produce revenue from real property, exclusive of new property as defined in KRS 132.010, in excess of four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010 is subject to recall; and

3. The name, address, and telephone number of the county clerk of the county or urban-county in which the school district is located, with a notation to the effect that that official can provide the necessary information about the petition required to initiate recall of the tax rate.

(12) (a) Notwithstanding any statutory provisions to the contrary, effective for school years beginning after June 30, 1990, the board of education of each school district shall levy a minimum equivalent tax rate of thirty cents ($0.30) for general school purposes. Equivalent tax rate is defined as the rate which results when the income collected during the prior year from all taxes levied by the district for school purposes is divided by the total assessed value of property plus the assessment for motor vehicles certified by the Revenue Cabinet. School districts collecting school taxes authorized by KRS 160.593 to 160.597, 160.601 to 160.633, or 160.635 to 160.648 for less than twelve (12) months during a school year shall have included in income collected under this section the pro rata tax collection for twelve (12) months.

(b) If a board fails to comply with subsection (12)(a) of this section, its members shall be subject to removal from office for willful neglect of duty pursuant to KRS 156.132.

HB 485, AN ACT relating to the Kentucky Higher Education Student Loan Corporation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 11A.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted for profit;

(2) "Commission" means the Executive Branch Ethics Commission;

(3) "Compensation" means any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another;

(4) "Family" means spouse and children, as well as a person who is related to a public servant as any of the following,

whether by blood or adoption: parent, brother, sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister;

(5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received;

(6) "Income" means any money or thing of value received or to be received as a claim on future services, whether in the form of a fee, salary, expense allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of compensation or any combination thereof;

(7) "Officer" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems board of trustees, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Occupational Safety and Health Review Commission, the Kentucky Board of Education, the State Board for Adult and Technical Education, the Council on Postsecondary Education, ***the Kentucky Higher Education Student Loan Corporation,*** and any other management personnel with procurement authority;

(8) "Official duty" means any responsibility imposed on a public servant by virtue of his position in the state service;

(9) "Public servant" means:

(a) The Governor;

(b) The Lieutenant Governor;

(c) The Secretary of State;

(d) The Attorney General;

(e) The Treasurer;

(f) The Commissioner of Agriculture;

(g)[~~ The Superintendent of Public Instruction;~~

~~(h)~~] The Auditor of Public Accounts;

(h)[~~(i)~~] Each Railroad Commissioner; and

(i)[~~(j)~~] All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;

(10) "State agency" means every state office, department, division, board, commission, institution, public corporation, and authority within the executive branch;

(11) "Lobbyist" means any person employed as a legislative agent or legislative counsel to promote, oppose, or act with reference to any legislation which affects, or may affect, private pecuniary interests, as distinct from those of the whole people;

(12) "Lobbyist's principal" means the entity in whose behalf the lobbyist promotes, opposes, or acts with reference to legislative action; and

(13) "Candidate" means those persons who have officially filed candidacy papers or who have been nominated by their political party pursuant to KRS 118.105, 118.115, 118.325, or 118.760 for any of the offices enumerated in subsections (9)(a) to (i) of this section.

Section 2. KRS 164A.020 is amended to read as follows:

The following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings:

(1) "Board" means the board of directors of the corporation.

(2) "Bonds" or "notes" means the bonds or bond anticipation notes authorized to be issued by the corporation pursuant to this chapter.

(3) "Corporation" means the Kentucky Higher Education Student Loan Corporation, an independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky created to perform essential governmental services.

(4) ***"Educational loan" means a loan evidenced by a promissory note or a line of credit evidenced by appropriate documentation of indebtedness extended to an eligible borrower for the purpose of defraying the costs associated with attendance at an eligible institution. As used in connection with the origination, making, servicing, collection, acquisition, or other financing of educational loans by the corporation or under a program administered by the corporation, the term further means any contingent interest, security interest pledge, commitment, chose in action,***

or other equity or legal property interest in any loan. The term includes, but is not limited to, an insured student loan.

(5) "Eligible borrower" means an individual who meets eligibility criteria established by the corporation under administrative regulations or contracts between the corporation and eligible lenders and who applies for an educational loan. The term shall include a student and the parent of a dependent student or other creditworthy borrower on behalf of the student who demonstrates an intention and capacity to repay the loan. The student for whom the loan or other credit is extended shall be enrolled or accepted for enrollment at an eligible institution, making satisfactory progress toward completion of a program leading to a certificate, degree or diploma. The term includes, but is not limited to, a qualified student.

(6) "Eligible institution" means any educational institution described as an eligible institution in the federal act which has, if required by the guarantee agency, a contract in force with the guarantee agency pursuant to the federal act and this chapter.

(7)[~~(5)~~] "Eligible lender" means the Kentucky Higher Education Assistance Authority, a de jure political subdivision of the Commonwealth of Kentucky and the corporation and all other entities described as eligible lenders in the federal act which have in force a contract with the guarantee agency providing for loan guarantees to be issued by the guarantee agency to the subject lender under the federal act and this chapter.

(8)[~~(6)~~] "Federal act" means the Higher Education Act of 1965, as from time to time amended, codified as Title 20, United States Code, secs. 1001 et seq.

(9)[~~(7)~~] "Guarantee agency" means the Kentucky Higher Education Assistance Authority duly organized and existing pursuant to the statutory laws of the Commonwealth of Kentucky or any agency authorized as a guarantor pursuant to the federal act.

(10)[~~(8)~~] "Qualified student" means a student who qualifies for an insured student loan under the federal act.

(11)[~~(9)~~] "Insured student loan" means ***an educational***[~~a~~] loan to a qualified student ***or to a parent or former student to the extent authorized in KRS 164A.065,*** on which the payment of principal and interest is at least ninety-five percent (95%) insured by the guarantee agency and reinsured by the Secretary of Education of the United States in accordance with the requirements of the federal act, or at least ninety-five percent (95%) insured as to principal amount by the United States under the federal act or the Health Professions Educational Assistance Act of 1976, codified as Title 42, United States Code, secs. 294 et seq. as from time to time amended. As used in connection with the purchase, making, or acquisition of insured student loans by the corporation, the term insured student loan shall further mean and refer to any contingent interest, security interest, pledge, commitment, chose in action, or other property interest in any such loan.

Section 3. KRS 164A.040 is amended to read as follows:

(1) The General Assembly of the Commonwealth of Kentucky hereby finds and determines that as a result of the adoption of the education amendments of 1976 by the Congress of the United States, being Public Law 94-482, it is essential, in order that the Commonwealth of Kentucky may continue to provide adequate educational opportunities to all of its citizens and residents, that the corporation be created and empowered to finance student loan operations in Kentucky by the issuance of its bonds and notes for the purpose of making***,***[~~ and~~] purchasing***, or otherwise financing educational***[~~insured student~~] loans.

(2) The General Assembly hereby finds and declares further that in the performance of its duties, powers***,*** and responsibilities, the corporation will be performing essential public and governmental functions and shall be and constitute an independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky for the purpose of promoting higher educational opportunities through a program of financing, making and purchasing of ***educational***[~~insured student~~] loans.

Section 4. KRS 164A.060 is amended to read as follows:

The corporation shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, but without limiting the generality of the foregoing, the following powers:

(1) To make***, service, collect, or finance*** or participate in the making***, servicing, collecting, or financing*** of ***educational***[~~insured student~~] loans.

(2) To purchase or participate in the purchase of ***educational***[~~insured student~~] loans[~~, which purchase may be from eligible lenders~~].

(3) To sell or participate in the sale of ***educational***[~~insured student~~] loans, which sale may be to eligible lenders or to the student loan marketing association.

(4) To collect and pay reasonable fees and charges in connection with making, purchasing, ***collecting*** and servicing***, obtaining insurance for, or financing of educational loans***[~~or causing to be made, purchased, or serviced insured student loans by the corporation, including payment to the guarantee agency for services performed for the corporation~~].

(5) To procure insurance in respect of ***educational***[~~all student~~] loans made***,***[~~ or~~] purchased***, or financed*** by the corporation

and to insure or guarantee educational loans.

(6) To consent whenever it deems it necessary or desirable in the fulfillment of its corporate purposes to the modification of the rate of interest, time of payment of any installment of principal or interest or any other terms of any ***educational***[~~insured student~~] loan to which the corporation is a party; provided, that no such consent shall be made or given if the effect of same would be to obviate insurance coverage in respect of any ***insured*** student loan.

(7) To include in any borrowing such amounts as may be deemed necessary by the corporation to pay financing charges, interest on its obligations for a period not exceeding two (2) years from their date, consulting, advisory and legal fees, and such other expenses as are necessary or incident to any such borrowing.

(8) To make and publish rules and regulations respecting its lending programs and such other rules and regulations as are necessary to effectuate its corporate purposes.

(9) To make, execute, and effectuate any and all agreements or other documents with any federal or state agency or any person, corporation, association, partnership, or other organization or entity necessary to accomplish the purposes of this chapter.

(10) To accept appropriations, loans, grants, revenue sharing, devises, gifts, bequests and federal grants, and any other aid from any source whatsoever and to agree to, and to comply with, conditions incident thereto.

(11) To sue and be sued in its own name and to plead and be impleaded.

(12) To maintain an office in the city of Frankfort, Kentucky, in conjunction with or in close proximity to the Kentucky Higher Education Assistance Authority and such other regional offices as may be required.

(13) To adopt an official seal and alter the same at pleasure.

(14) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties.

(15) To employ fiscal consultants, attorneys, counselors, and such other consultants and employees as may be required in the judgment of the corporation and to fix and pay their compensation.

(16) To invest any funds held in reserves or in sinking fund accounts or any moneys not required for immediate disbursement in obligations guaranteed by the United States or its agencies and instrumentalities; provided, however, that the return on such investments shall not be violative of any laws and regulations regarding investment of the proceeds of any federal tax-exempt bond issue.

(17) To issue its bonds and notes for the purpose of carrying out its corporate powers and duties as set forth in this chapter.

(18) To service and collect educational loans for other lenders, holders, and educational institutions.

Section 5. KRS 164A.080 is amended to read as follows:

(1) The corporation may provide for the issuance, at one (1) time or from time to time, of not exceeding ***nine hundred fifty million dollars ($950,000,000)***[~~five hundred fifty three million dollars ($553,000,000)~~] in bonds of the corporation to carry out and effectuate its corporate purposes and powers. In anticipation of the issuance of bonds, the corporation may provide for the issuance, at one (1) time or from time to time, of bond anticipation notes. The principal of and the interest on bonds or notes shall be payable solely from the funds provided for payment. Any notes may be made payable from the proceeds of bonds or renewal notes or, if bond or renewal note proceeds are not available, notes may be paid from any available revenues or assets of the corporation. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the corporation at the price or prices and under the terms and conditions determined by the corporation. Any bonds or notes shall bear interest at a rate or rates determined by the corporation. Notes shall mature at a time or times not exceeding five (5) years from their date or dates and bonds shall mature at a time or times not exceeding thirty (30) years from their date or dates, as determined by the corporation. The corporation shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the state. If any officer whose signature or a facsimile of whose signature appears on any bonds or notes or coupons attached to them shall cease to be an officer before the delivery of the bonds or notes, the signature or facsimile shall be valid and sufficient for all purposes as if he had remained in office until the delivery. The corporation may also provide for the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes may be issued in coupon or in registered form, or both, as the corporation may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Upon the approval of a resolution of the corporation authorizing the sale of its bonds or notes, the bonds or notes may be sold in a manner, either at public or private sale, and for a price the corporation shall determine to be for the best interest of the corporation and best effectuate the purposes of this chapter if the sale is approved by the corporation.

(2) The proceeds of any bonds or notes shall be used solely for the purposes for which they are issued and shall be disbursed in a manner and under restrictions, if any, the corporation may provide in the resolution authorizing the issuance of

bonds or notes or in the trust agreement securing the bonds or notes. The principal of and interest on any bonds ***or notes*** issued by the corporation shall be payable[~~ only~~] from the proceeds derived by the corporation from ***educational***[~~insured student~~] loans made and purchased from the proceeds of the bonds ***or notes, and may also be payable from other funds available to the corporation for that purpose only to the extent the corporation may provide in the resolution authorizing the issuance of bonds or notes or in the trust agreement securing the bonds or notes***.

(3) (a) Prior to the issuance of any bonds or notes that are[~~ not~~] secured by the repayment of ***educational loans, except insured*** student loans ***that are*** at least ninety-five percent (95%) insured by the guarantee agency and reinsured by the United States of America, the corporation shall obtain approval of the issuance from the General Assembly in accordance with the provisions of KRS 56.870(1). This requirement shall not apply to refunding bond or note issues which are for the purpose of achieving debt service savings and which do not extend the term of the refunded bond or note ***or to bonds or notes issued under subsection (3) of Section 6 of this Act, if the aggregate amount of those bonds or notes that would be outstanding after completion of the issuance does not exceed five percent (5%) of the corporation's debt limit under subsection (1) of this section***.

(b) Notwithstanding paragraph (a) of this subsection, if during the interim of sessions of the General Assembly, the federal act is amended to reduce to less than ninety-five percent (95%) the maximum rate of insurance payable by the guarantee agency or reinsurance payable by the Secretary of Education of the United States on insured student loans, upon notification by the corporation to the Legislative Research Commission of the change in the federal act, the corporation may, until the adjournment of the next regular session of the General Assembly, issue bonds or notes for student loans insured by the guarantee agency and reinsured by the Secretary of Education of the United States to the maximum extent permitted by the federal act.

Section 6. KRS 164A.240 is amended to read as follows:

(1)[~~ As used in this section, the term "eligible borrower" shall mean a student, and the parent of a dependent student, who demonstrates an intention and capacity to repay the loan. The student shall be a Kentucky resident enrolled or accepted for enrollment, on at least a half-time basis, at an eligible institution, making satisfactory progress toward completion of a program leading to a certificate, degree or diploma other than theology, divinity, or religious education.~~

~~(2)~~] In addition to the authority granted by KRS 164A.010 to 164A.230, the corporation is authorized to establish, finance***,*** and operate[~~ such~~] educational loan programs[~~ as~~] the ***corporation***[~~Higher Education Assistance Authority~~] shall deem necessary in order to make available additional educational loans, which shall not be insured student loans as that term is defined by KRS 164A.020 to meet the financial needs of eligible borrowers. The corporation may, in connection with the program, enter into agreements with loan servicing organizations, guarantors, insurers, financial institutions, eligible lenders and eligible institutions. The[~~ educational loan~~] programs may provide for[~~ either~~] the ***corporation to extend, guarantee, or finance credit, or participate in a program to extend, guarantee, or finance credit***[~~making of educational loans directly to eligible institutions and the relending~~] to eligible borrowers or ***to others on behalf of eligible borrowers***[~~the making and purchasing of educational loans by the corporation~~].

(2)[~~(3)~~] The corporation may promulgate ***administrative regulations under KRS Chapter 13A pertaining to eligibility and participation of eligible borrowers and may otherwise adopt internal policies and procedures and contractual arrangements***[~~necessary rules and regulations~~] as shall be required to administer any [~~such ~~]program on a financially sound basis, including the requiring of guarantees, cosigning by parents or guardians, ***or other creditworthy borrowers,*** nongovernmental loan insurance if available, collateral pledges***,*** and other security provisions deemed requisite in the circumstances.

(3)[~~(4)~~] The corporation may finance the[~~ educational loan~~] programs ***authorized by this section*** through the issuance of its bonds or notes subject to the provisions set forth in KRS 164A.010 to 164A.230[~~, provided that the proceeds of the bonds may be used for the educational loan programs and shall not be commingled with the proceeds of bonds or notes financing insured student loans as defined by KRS 164A.020~~]. The bonds or notes issued under the provisions of this subsection shall be special and limited obligations, payable solely and only from the receipts pledged and shall not constitute an indebtedness or liability of the Commonwealth or a pledge of the faith and credit of the Commonwealth.

(4)[~~(5)~~] No bonds or notes may be issued ***under this section*** by the corporation for the purpose of financing ***an educational***[~~a nongovernmentally insured education~~] loan ***program***[~~pursuant to this section~~] except upon a finding by the Governor and ***a report by the corporation to*** the Legislative Research Commission that the ***educational loan program is***[~~loans are~~] necessary to meet the financial needs of Kentucky residents to obtain a postsecondary education. In making the determination of need the Governor and ***the corporation***[~~Legislative Research Commission~~] shall consider the availability of other student assistance resources.

(5)[~~(6)~~] The maximum annual[~~ loan~~] amount ***of any educational loan under this section*** shall not exceed the costs incurred by the ***student for whom the educational loan is obtained***[~~eligible borrower~~] related to attendance[~~ less other financial aid~~], as certified by the eligible institution ***or otherwise reasonably ascertained by the corporation***, or a lesser amount established by the board. The loan proceeds shall be used by the eligible borrower solely for those costs of attendance ***or requirements related to obtaining a license or certificate to practice***.

(6)[~~(7)~~] The corporation may issue taxable bonds or notes for the financing of any program authorized by this chapter.

[~~(8) The Higher Education Assistance Authority shall provide the services as the corporation may require to efficiently carry out the purposes of this section.~~]

HB 532, AN ACT relating to teachers' retirement and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 18A.225 is amended to read as follows:

(1) (a) The term "health maintenance organization" for the purposes of this section means a health maintenance organization as defined in KRS 304.38-030 or as a nonprofit hospital, medical-surgical, dental, and health service corporation, which has been licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board or its successor agency and issued a certificate of authority by the Department of Insurance as a health maintenance organization or as a nonprofit hospital, medical-surgical, dental, and health service corporation and which is qualified under the requirements of the United States Department of Health, Education and Welfare except as provided in subsection (2) of this section; and

(b) The term "state employee" for purposes of this section shall include a person, including an elected public official, who is regularly employed by any department, board, agency, branch of state government, or any municipal, urban-county, charter county, or county government, whose legislative body has opted to participate in the state health insurance program pursuant to KRS 79.080 and who is a contributing member to any one (1) of the retirement systems administered by the state and including any federally-funded time-limited employee. It shall also include a person who must fulfill the requirements established by the Kentucky Board of Education for eligibility and a person who is a present or future recipient of a retirement allowance from any of the Kentucky Retirement Systems who either satisfies the requirements of KRS 61.559 or who is board authorized under KRS 61.702(1), including a beneficiary of a retired employee as defined in KRS 61.542 who is receiving a retirement allowance from any of the Kentucky Retirement Systems and includes members of the Legislators' Retirement Plan as provided in KRS 18A.2287. ***It shall also include a person who is a present or future recipient of a retirement allowance from the Teachers' Retirement System of Kentucky who either satisfies the requirements of KRS 161.525, 161.620, and 161.675, or who is board certified including a beneficiary of a retired member who is receiving a retirement allowance from the Teachers' Retirement System of Kentucky.***

(2) The secretary of the Finance and Administration Cabinet, upon the recommendation of the commissioner of personnel, shall procure, in compliance with the provisions of KRS 45A.080, 45A.085, and 45A.090, from one (1) or more health, hospitalization, medical, major medical, and dental insurance companies or from one (1) or more health maintenance organizations authorized to do business in this state, a policy or policies of group health, hospitalization, medical, and major medical insurance or health maintenance organization coverage encompassing all or any class or classes of state employees. Health insurance coverage provided to state employees under this section shall, at a minimum, contain the same benefits as provided under Kentucky Kare Standard as of January 1, 1994. All state employees and other persons for whom the insurance or health maintenance organization coverage is provided or made available shall annually be given an option to elect either standard insurance coverage or coverage by a health maintenance organization; if a qualified health maintenance organization is not engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside, the state employees may annually be given the option to elect either standard insurance coverage or coverage by a health maintenance organization which has been licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board or its successor agency and issued a certificate of authority by the Department of Insurance as a health maintenance organization or as a nonprofit hospital, medical-surgical, dental, and health service corporation and which is engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside. The policy or policies shall be approved by the commissioner of insurance and may contain the provisions he approves, whether or not otherwise permitted by the insurance laws. It is intended that either insurance or health maintenance organization coverage may be made available for state employees, except that the procuring of each is permissive.

(3) The secretary of the Finance and Administration Cabinet, upon the recommendation of the commissioner of personnel, may procure from one (1) or more dental insurance companies, one (1) or more health maintenance organizations, one (1) or more nonprofit hospital, medical-surgical, dental, and health service corporations organized under subtitle 32 of KRS Chapter 304, or one (1) or more prepaid dental plan organizations organized under subtitle 43 of KRS Chapter 304, a policy or policies of group dental insurance or prepaid dental plan coverage encompassing all or any class or classes of state employees. All state employees for whom the dental insurance or prepaid dental plan coverage is provided shall annually be given an option to elect either standard dental insurance coverage, health maintenance organization coverage, or coverage by a prepaid dental plan. The policy or policies shall be approved by the commissioner of insurance and may contain the provisions he approves, whether or not otherwise permitted by the insurance laws. It is intended that either

dental insurance or prepaid dental plan coverage may be made available for state employees, except that the procuring of each is permissive.

(4) The premiums may be paid by the policyholder:

(a) Wholly from funds contributed by the insured employee, by payroll deduction or otherwise;

(b) Wholly from funds contributed by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government; or

(c) Partly from each, except that any premium due for health maintenance organization coverage or prepaid dental plan coverage over the premium amount contributed by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government for any other insurance coverage shall be paid by the employee.

(5) If an employee moves his place of residence or employment out of the service area of a health maintenance organization or of a prepaid dental plan organization, under which he has elected coverage, into either the service area of another health maintenance organization or prepaid dental plan organization or into an area of the state not within a health maintenance organization service area or prepaid dental plan service area, the employee shall be given an option, at the time of the move or transfer, to elect coverage either by the health maintenance organization or prepaid dental plan organization into which service area he moves or is transferred or to elect standard insurance coverage offered by the employer.

(6) No payment of premium by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government shall constitute compensation to an insured employee for the purposes of any statute fixing or limiting the compensation of such an employee. Any premium or other expense incurred by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government shall be considered a proper cost of administration.

(7) The policy or policies may contain the provisions with respect to the class or classes of employees covered, amounts of insurance or coverage for designated classes or groups of employees, policy options, terms of eligibility, continuation of insurance or coverage after retirement, and other provisions the commissioner of insurance may approve.

(8) The policy or policies shall contain the provision that employees or retired employees shall be allowed to change health insurance carriers during the reopening period without any limitation for pre-existing conditions if the employee has met the pre-existing condition limitation upon initial employment or reemployment with the group.

(9) The secretary of the Finance and Administration Cabinet is authorized to perform all acts necessary or advisable for the purpose of contracting for and maintaining insurance, prepaid dental plan organization coverage, and health maintenance organization coverage under the provisions of this section.

(10) Group rates under the insurance or health maintenance organization coverage acquired under this section shall be made available to the disabled child of a state employee regardless of the child's age if the entire premium for the disabled child's coverage is paid by the state employee. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.

(11) The health insurance contract or contracts for state employees shall be entered into for a period of not less than two (2) years, except the contract awarded October 1, 1984, shall be awarded for the period between October 1, 1984, and June 30, 1986.

(12) The commissioner of personnel shall appoint twenty-four (24) persons to an Advisory Committee of State Health Insurance Subscribers to advise the commissioner or his designee regarding the state health insurance program for state employees. The commissioner shall appoint, from a list of names submitted by appointing authorities, members representing school districts from each of the seven Supreme Court districts, members representing state government from each of the seven Supreme Court districts, two (2) members representing retirees under age sixty-five (65), one (1) member representing local health departments, and three (3) members at large. The commissioner shall also appoint two (2) members from a list of five (5) names submitted by the Kentucky Education Association, and two (2) members from a list of five (5) names submitted by the largest state employee organization of nonschool state employees. The advisory committee shall be appointed in November of each year and shall meet quarterly.

(13) Notwithstanding any other provision of law to the contrary, the policy or policies provided to state employees pursuant to this section shall not provide coverage for obtaining or performing an abortion, nor shall any state funds be used for the purpose of obtaining or performing an abortion on behalf of state employees or their dependents.

Section 2. KRS 161.155 is amended to read as follows:

(1) As used in this section:

(a) "Teacher" shall mean any person for whom certification is required as a basis of employment in the common schools of the state;

(b) "Employee" shall mean any person, other than a teacher, employed in the public schools, whether on a full or part-time basis;

(c) "Immediate family" shall mean the teacher's spouse, children including stepchildren, parents and spouse's parents, grandparents, and spouse's grandparents, without reference to the location or residence of said relative, and any other blood relative who resides in the teacher's home; and

(d) "Sick leave bank" shall mean an aggregation of sick leave days contributed by teachers for use by teachers who have exhausted all sick leave and other available paid leave days.

(2) Each district board of education shall allow to each teacher in its common school system not less than ten (10) days of sick leave during each school year, without deduction of salary. Sick leave shall be granted to a teacher if he presents a personal affidavit or a certificate of a physician stating that the teacher was ill, that the teacher was absent for the purpose of attending to a member of his immediate family who was ill, or for the purpose of mourning a member of his immediate family. The ten (10) days of sick leave herein granted may be taken by a teacher on any ten (10) days of the school year and shall be granted in addition to accumulated sick leave days that have been credited to the teacher under the provisions of subsection (3) of this section.

(3) Days of sick leave not taken by a teacher during any school year shall accumulate without limitation and be credited to that teacher. Accumulated sick leave may be taken in any school year. Any district board of education may, in its discretion, allow teachers in its common school system sick leave in excess of the number of days prescribed in this section and may allow school district employees and teachers to use up to three (3) days' sick leave per school year for emergency leave pursuant to KRS 161.152(3). Any accumulated sick leave days credited to a teacher shall remain so credited in the event he transfers his place of employment from one (1) school district to another within the state or to the Kentucky Department of Education or transfers from the Department of Education to a school district after June 30, 1985.

(4) Accumulated days of sick leave shall be granted to a teacher, if prior to the opening day of the school year, an affidavit or a certificate of a physician is presented to the district board of education, stating that the teacher is unable to commence his duties on the opening day of the school year, but will be able to assume his duties within a period of time that the board determines to be reasonable.

(5) Any school employee may repurchase previously used sick leave days with the concurrence of the local school board by paying to the district an amount equal to the total of all costs associated with the used sick leave.

(6) A district board of education may adopt a plan for a sick leave bank. The plan may include limitations upon the number of days a teacher may annually contribute to the bank and limitations upon the number of days a teacher may annually draw from the bank. Only those teachers who contribute to the bank may draw upon the bank. Days contributed will be deducted from the days available to the contributing teacher. The sick leave bank shall be administered in accordance with a policy adopted by the board of education.

(7) A teacher may use up to thirty (30) days of sick leave following the birth or adoption of a child or children. Additional days may be used when the need is verified by a physician's statement.

(8) After July 1, 1982, a district board of education may compensate, at the time of retirement, an employee or a teacher for each unused sick leave day. The rate of compensation for each unused sick leave day shall be based on a percentage of the daily salary rate calculated from the employee's or teacher's last annual salary, not to exceed thirty percent (30%). Payment for unused sick leave days shall be incorporated into the annual salary of the final year of service; provided that the member makes the regular retirement contribution for members on the sick leave payment ***and provided the state or school district makes the regular retirement contribution for employers plus additional payments to meet the full actuarial cost of including sick leave payments in the annual salary of the final year of service as provided in KRS Chapter 161.550. In the event that additional payments are not made to the Teachers' Retirement System to meet the full actuarial cost that result from inclusion of sick leave payments in the last annual salary of retiring members, the Teachers' Retirement System Board of Trustees shall determine the percentage of the sick leave payments that may be included for retirement purposes based upon the amount of additional funding that is provided to pay the resulting cost***. The accumulation of these days includes unused sick leave days held by the employee or teacher at the time of implementation of the program.

(9) Any statute to the contrary notwithstanding, employees and teachers who transferred from the Department of Education to a school district, from a school district to the Department of Education, or from one (1) school district to another school district after July 15, 1981, shall receive credit for any unused sick leave to which the employee or teacher was entitled on the date of transfer. This credit shall be for the purposes set forth in subsection (8) of this section.

Section 3. KRS 161.220 is amended to read as follows:

As used in KRS 161.230 to 161.716 and KRS 161.990:

(1) "Retirement system" means the arrangement provided for in KRS 161.230 to 161.716 and KRS 161.990 for payment of allowances to members;

(2) "Retirement allowance" means the amount annually payable during the course of his natural life to a member who has been retired by reason of service;

(3) "Disability allowance" means the amount annually payable to a member retired by reason of disability;

(4) "Member" means the chief state school officer, deputy commissioners, associate commissioners, and all division directors in the State Department of Education, and any regular or special teacher, or professional occupying a position requiring certification or graduation from a four (4) year college or university, as a condition of employment, and who is employed by public boards, institutions, or agencies as follows:

(a) Local boards of education;

(b) Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Western Kentucky University, and any community colleges established under the control of these universities, and the Kentucky Community and Technical College System and any community colleges or technical institutions established under its control;

(c) State-operated secondary area vocational education or area technology centers, Kentucky School for the Blind, and Kentucky School for the Deaf;

(d) The State Department of Education, other public education agencies as created by the General Assembly, and those members of the administrative staff of the Teachers' Retirement System of the State of Kentucky whom the board of trustees may designate by administrative regulation;

(e) Regional cooperative organizations formed by local boards of education or other public educational institutions listed in this subsection, for the purpose of providing educational services to the participating organizations;

(f) All full-time members of the staffs of the Kentucky Association of School Administrators, Kentucky Education Association, Kentucky Vocational Association, Kentucky High School Athletic Association, Kentucky Academic Association, and the Kentucky School Boards Association who were members of the Kentucky Teachers' Retirement System or were qualified for a position covered by the system at the time of employment by the association in the event that the board of directors of the respective association petitions to be included. The board of trustees of the Kentucky Teachers' Retirement System may designate by resolution whether part-time employees of the petitioning association are to be included. The state shall make no contributions on account of these employees, either full-time or part-time. The association shall make the employer's contributions, including any contribution that is specified under KRS 161.550. The provisions of this paragraph shall be applicable to persons in the employ of the associations on or subsequent to July 1, 1972;

(g) The Department for Adult Education and Literacy;

(h) The Department for Technical Education;

(i) The Office of General Counsel within the Office of the Secretary of the Cabinet for Workforce Development;

(j) The Office for Policy, Budget, and Personnel within the Office of the Secretary of the Cabinet for Workforce Development;

(k) The Office for Administrative Services within the Office of the Secretary of the Cabinet for Workforce Development;

(l) The Department of Vocational Rehabilitation;

(m) The Kentucky Educational Collaborative for State Agency Children;

(n) The Governor's Scholars Program; and

(o) Any person who is retired for service from the retirement system and is reemployed by an employer identified in this subsection in a position that the board of trustees deems to be a member.

(5) "Present teacher" means any teacher who was a teacher on or before July 1, 1940, and became a member of the retirement system created by 1938 (1st Extra. Sess.) Ky. Acts ch. 1, on the date of the inauguration of the system or within one (1) year after that date, and any teacher who was a member of a local teacher retirement system in the public elementary or secondary schools of the state on or before July 1, 1940, and continued to be a member of the system until he, with the membership of the local retirement system, became a member of the state Teachers' Retirement System or who becomes a member under the provisions of KRS 161.470(4);

(6) "New teacher" means any member not a present teacher;

(7) "Prior service" means the number of years during which the member was a teacher in Kentucky prior to July 1, 1941, except that not more than thirty (30) years' prior service shall be allowed or credited to any teacher;

(8) "Subsequent service" means the number of years during which the teacher is a member of the Teachers' Retirement System after July 1, 1941;

(9) "Final average salary" means the average of the five (5) highest annual salaries which the member has received for service in a covered position and on which the member has made contributions, or on which the public board, institution, or agency has picked-up employee contributions pursuant to KRS 161.540(2), or the average of the five (5) years of highest salaries as defined in KRS 61.680(2)(a), which shall include picked-up employee contributions. ***Additionally,***

the board of trustees may approve a final average salary based upon the average of the three (3) highest salaries for members who are at least fifty-five (55) years of age and have a minimum of twenty-seven (27) years of Kentucky service credit. However, if any of the five (5) ***or three (3)*** highest annual salaries used to calculate the final average salary was paid within the three (3) years immediately prior to the date of the member's retirement, the amount of salary to be included for each of those three (3) years for the purpose of calculating the final average salary shall be limited to the lesser of:

(a) The member's actual salary; or

(b) The member's annual salary that was used for retirement purposes during each of the prior three (3) years, plus a percentage increase equal to the percentage increase received by all other members employed by the public board, institution, or agency, or for employees of school districts, the highest percentage increase received by members on any one (1) rank and step of the salary schedule of the school district. The increase shall be computed on the salary that was used for retirement purposes.

This limitation shall not apply if the member receives an increase in salary in a percentage exceeding that received by the other members, and this increase was accompanied by a corresponding change in position or in length of employment. This limitation shall also not apply to the payment to a member for accrued annual leave or accrued sick leave which is authorized by statute and which shall be included as part of a retiring member's annual compensation for the member's last year of active service;

(10) "Annual compensation" means the total salary received by a member as compensation for all services performed in employment covered by the retirement system during a fiscal year. Annual compensation shall not include payment for any benefit or salary adjustments made by the public board, institution, or agency to the member or on behalf of the member which is not available as a benefit or salary adjustment to other members employed by that public board, institution, or agency. ***Annual compensation shall not include the salary supplement received by a member selected as a distinguished educator on or after July 1, 1996.*** The board of trustees shall determine if any benefit or salary adjustment qualifies as annual compensation;

(11) "Age of member" means the age attained on the first day of the month immediately following the birthdate of the member. This definition is limited to retirement eligibility and does not apply to tenure of members;

(12) "Age of entrance" means the age attained at the last birthday of any member at the time of the establishment of the retirement system, if the member was a member subject to membership in the system at that time. Otherwise it means the age attained as of July 1 of the fiscal year in which he first becomes a member of the retirement system. Any birthday occurring on February 29 shall be considered as occurring on February 28;

(13) "Regular interest" means interest at three percent (3%) per annum;

(14) "Accumulated contributions" means the contributions of a member to the teachers' savings fund, including picked-up employee contributions as described in KRS 161.540(2), plus accrued regular interest;

(15) "Annuitant" means a person who receives a retirement allowance or a disability allowance;

(16) "Local retirement system" means any teacher retirement or annuity system created in any public school district in Kentucky in accordance with the laws of Kentucky;

(17) "Fiscal year" means the twelve (12) month period from July 1 to June 30***. A contract for a member employed by a local board of education may not exceed two hundred sixty-one (261) days in the fiscal year***;

(18) "Public schools" means the schools and other institutions mentioned in subsection (4) of this section;

(19) "Dependent" as used in KRS 161.520 and 161.525 means a person who was receiving, at the time of death of the member, at least one-half (1/2) of the support from the member for maintenance, including board, lodging, medical care, and related costs;

(20) "Active contributing member" means a member currently making contributions to the Teachers' Retirement System, who made contributions in the next preceding fiscal year, for whom picked-up employee contributions are currently being made, or for whom these contributions were made in the next preceding fiscal year; and

(21) "Regular teacher, supervisor, or administrator," when used to determine eligibility for membership in the retirement system, means a professional employee holding a position which requires services on a continuing basis equal to at least seven-tenths (7/10) of normal full-time service on a daily or weekly basis.

Section 4. KRS 161.310 is amended to read as follows:

(1) The board of trustees shall from time to time promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business.

(2) All rules, regulations, or policies adopted by school districts, universities, or other employers participating in the Teachers' Retirement System that pertain to the retirement system shall conform to this chapter.

(3) All rules, regulations, or policies adopted by school districts, universities, or other employers participating in the Teachers' Retirement System that pertain to retirement incentives for members as defined in KRS 161.220(4) shall

contain provisions for the school district, university, or other employer to make full payment to the retirement system at the time a member retires for all actuarial obligations that occur to the retirement system as a result of retirement incentive payments.

Section 5. KRS 161.340 is amended to read as follows:

(1) The board of trustees shall elect from its membership a chairperson and a vice chairperson on an annual basis as prescribed by the administrative regulations of the board of trustees. The board of trustees shall employ an executive secretary by means of a contract not to exceed a period of four (4) years and fix the compensation and other terms of employment for this position without limitation of the provisions of KRS Chapters 18A, 45A, 56, and KRS 64.640. The executive secretary shall be the chief administrative officer of the board. The executive secretary, at the time of employment, shall be a graduate of a four (4) year college or university, and shall possess qualifications as the board of trustees may require. The executive secretary shall not have held by appointment or election an elective public office within the five (5) year period next preceding the date of employment.

(2) The board shall employ clerical, administrative, and other personnel as are required to transact the business of the retirement system. The compensation of all persons employed by the board shall be paid at the rates and in amounts as the board approves. Anything in the Kentucky Revised Statutes to the contrary notwithstanding, the power over and the control of determining and maintaining an adequate complement of employees in the system shall be under the exclusive jurisdiction of the board of trustees.

(3) The board shall contract for actuarial, auditing, medical, investment counseling, and other professional or technical services as are required to carry out the obligations of the board in accordance with the provisions of this chapter without limitations, including KRS Chapters 56, 57, and 45A, and shall provide for legal counsel and other legal services as may be required in defense of trustees, officers, and employees of the system who may be subjected to civil action arising from the performance of their legally assigned duties if counsel and services are not provided by the Attorney General.

(4) The board shall require the trustees, executive secretary, and employees it determines proper to execute bonds for the faithful performance of their duties notwithstanding the limitations of KRS Chapter 62.

(5) The board of trustees may expend funds from the expense fund as necessary to insure the trustees, employees, and officials of the Teachers' Retirement System against any liability arising out of an act or omission committed in the scope and course of performing legal duties.

(6) Notwithstanding any statute to the contrary, employees shall not be considered legislative agents as defined in KRS 6.611.

Section 6. KRS 161.420 is amended to read as follows:

All of the assets of the retirement system are for the exclusive purpose of providing benefits to members and annuitants and defraying reasonable expenses of administering the system. The board of trustees shall be the trustee of all funds of the system and shall have full power and responsibility for administering the funds. It is hereby declared that the restrictions and rights provided herein shall not be subject to reduction or impairment by alteration, amendment, or repeal. All the assets of the retirement system shall be credited according to the purpose for which they are held to one (1) of the following funds:

(1) The expense fund shall consist of the funds set aside from year to year by the board of trustees to defray the expenses of the administration of the retirement system. Each fiscal year an amount not greater than four percent (4%) of the income earned from investments during the immediate past fiscal year shall be set aside into the expense fund or expended for the administration of the retirement system;

(2) The teachers' savings fund shall consist of the contributions paid by members of the retirement system into this fund and regular interest assigned by the board of trustees from the guarantee fund. The accumulated contributions of a member returned to him upon his withdrawal or paid to his estate or designated beneficiary in the event of his death shall be paid from the teachers' savings fund. Any accumulated contributions forfeited by a failure of a teacher or his estate to claim these contributions shall be transferred from the teachers' savings fund to the guarantee fund. The accumulated contributions of a member shall be transferred from the teachers' savings fund to the allowance reserve fund in the event of retirement by reason of service or disability;

(3) The state accumulation fund shall consist of funds appropriated by the state for the purpose of providing annuities, survivor benefits, and death benefits, including any sums appropriated for meeting unfunded liabilities, together with regular interest assigned by the board of trustees from the guarantee fund. At the time of retirement or death of a member there shall be transferred from the state accumulation fund to the allowance reserve fund an amount which together with the sum transferred from the teachers' savings fund will be sufficient to provide the member a retirement allowance and provide for benefits under KRS 161.520, 161.525, and 161.655;

(4) The allowance reserve fund shall be the fund from which shall be paid all retirement allowances and benefits provided under KRS 161.520, 161.525, and 161.655. In addition, whenever a change in the status of a member results in an obligation on this fund, there shall be transferred to this fund from the teachers' savings fund, and the state accumulation fund, the amounts as may be held in those funds for the account or benefit of the member;

(5) The medical insurance fund shall consist of amounts accumulated for the purpose of providing benefits as provided in KRS 161.675. One and five tenths percent (1.5%) of the gross annual payroll of all members shall be deposited to this fund. One-half (1/2) of this amount shall derive from member contributions and one-half (1/2) from a state appropriation. ***The board of trustees may allocate up to a maximum of one and sixty-five hundredths percent (1.65%) of the three and twenty-five hundredths percent (3.25%) of the total salaries of active members that the state appropriates annually as provided under KRS 161.550.*** All claims for benefits under KRS 161.675 shall be paid from this fund. Any amounts not required to meet current costs shall be maintained as a reserve for these benefits; and

(6) The guarantee fund shall be maintained to facilitate the crediting of uniform interest on the amounts of the other funds, except the expense fund, to finance operating expenses directly related to investment management services, and to provide a contingent fund out of which special requirements of any of the other funds may be covered. All income, interest, and dividends derived from the authorized deposits and investments shall be paid into the guarantee fund. Any funds received from gifts and bequests, which the board is hereby authorized to accept, shall be credited to the guarantee fund. Any funds transferred from the teachers' savings fund by reason of lack of claimant or because of a surplus in any fund and any other moneys whose disposition is not otherwise provided for, shall also be credited to the guarantee fund. The interest allowed by the board of trustees to each of the other funds shall be paid to these funds from the guarantee fund. Any deficit occurring in any fund that would not be automatically covered shall be met by the payments from the guarantee fund to that fund. The board of trustees may, at any time during a fiscal year, transfer from the guarantee fund to the medical insurance fund an amount not to exceed four percent (4%) of the income earned from investments during the immediate past year.

(7) The school employee annuity fund shall consist of those funds voluntarily contributed under the provisions of section 403(b) of the Internal Revenue Code by ***a retired***[~~any~~] member of the Teachers' Retirement System ***with accounts that existed on or after July 1, 1996***[~~, or the employer of the member, or both~~]. The contributions shall not be picked up as provided in KRS 161.540(2).[~~ The contributions shall be invested as provided in KRS 161.430.~~] Separate member accounts shall be maintained for each member. The board of trustees may promulgate administrative regulations pursuant to KRS Chapter 13A to manage this program.

Section 7. KRS 161.500 is amended to read as follows:

(1) At the close of each fiscal year, the retirement system shall add service credit to the account of each member who made contributions to his or her account during the year. Members shall be entitled to a full year of service credit if their total paid days were not less than one hundred eighty (180) days of a one hundred eighty-five (185) day contract for a regular school or fiscal year. In the event a member is paid for less than one hundred eighty (180) days, the member may purchase credit according to administrative regulations established by the board of trustees. In no case shall more than one (1) year of service be credited for all service performed in one (1) fiscal year. Members who complete their employment contract prior to the close of a fiscal year and elect to retire prior to the close of a fiscal year shall have their service credit reduced by eight percent (8%) for each calendar month that the retirement becomes effective prior to July 1.

(2) Members who are employed and paid for less than the number of days required in their normal employment year shall be entitled to pro rata service credit for the fractional service. Such credit shall be based upon the number of days employed and the number of days in the member's annual employment agreement or normal employment year.

(3) Service credit may not exceed the ratio between the school or fiscal year and the number of months or fraction of a month the member is employed during that year.

Section 8. KRS 161.545 is amended to read as follows:

(1) Members may make contributions and receive service credit for substitute, part-time, or any service other than regular full-time teaching as provided in the administrative regulations of the board of trustees.[~~ A member may also obtain credit for part-time service performed prior to becoming a member upon payment of the amount determined for the member's contribution and an amount actuarially determined equal to the increased liability of the Teachers' Retirement System, if the service was at least half (1/2) time and occurred in the two (2) years preceding the individual's becoming a member of the retirement system.~~] Members placed on leave of absence may make contributions and receive service credit for this leave only if contributions are made by the end of the fiscal year next succeeding the year in which the leave was effective as provided in administrative regulations promulgated by the board of trustees. Contributions permitted after August 1, 1982, shall not be picked-up pursuant to KRS 161.540(2).

(2) Active contributing members of the Teachers' Retirement System, or former members who are currently participating in a state-administered retirement system, who were granted leaves of absence since July 1, 1964, for reasons of health, child rearing, or to improve their educational qualifications, and did not qualify at the time of the leave of absence to make contributions to the retirement system for the leave of absence as provided in subsection (1) of this section, may obtain credit for the leave of absence under the following conditions:

(a) The leave of absence shall be verified by a copy of the board of education minutes which granted the leave of absence; and

(b) The member shall contribute the required percentage based on the salary received for the year immediately preceding the leave of absence plus interest at the rate of eight percent (8%) compounded annually from the beginning of the school year following the year of the leave of absence, and by depositing in the state accumulation fund an amount equal to this total.

(c) The member shall receive credit for no more than two (2) years under the provisions of this subsection.

(3) Active contributing members who had breaks in their participation in the retirement system for reasons of health or for the purpose of obtaining Rank I status, a master's degree in education, or a doctorate degree in education and did not qualify at the time of the absence to obtain credit for the absence, may qualify to obtain credit for the absence under the following conditions:

(a) The period of a qualified absence shall be substantiated and verified in a manner required by the board of trustees;

(b) The member shall receive credit for no more than two (2) years of service under the provisions of this subsection;

(c) The member shall contribute the required percentage based on the salary received the year immediately preceding the qualified absence plus interest at the rate of eight percent (8%) compounded annually from the beginning of the school year following the year of the absence, and by depositing an amount equal to this total in the state accumulation fund; and

(d) Credit for service obtained under this subsection shall be purchased prior to July 1, 1997.

(4) Contributions permitted under this section after August 1, 1982, shall not be picked-up pursuant to KRS 161.540(2).

Section 9. KRS 161.550 is amended to read as follows:

Beginning with July 1, each employer, except as provided under KRS 161.555, shall contribute annually to the retirement system a permanent amount equal to that contributed by its employees who are members of the retirement system plus an additional three and one-fourths percent (3.25%) of the total of salaries of its employees who are members of the retirement system to discharge the system's unfunded obligations with interest assumed by the state ***and to provide funding to the medical insurance fund as provided under KRS 161.420(5)***. Each employer shall remit the required employer contributions to the retirement system under the terms and conditions specified for member contributions under KRS 161.560. The state shall provide annual appropriations based upon estimated funds needed to meet the requirements of KRS 161.155; 161.507(4); 161.515; 161.545; 161.620(1), (3), (5), (6), and (7); and 161.553. In the event an annual appropriation is less than the amount of these requirements, the state shall make up the deficit in the next biennium budget appropriation to the retirement system. Employer contributions to the retirement system are for the exclusive purpose of providing benefits to members and annuitants and these contributions shall be considered deferred compensation to the members.

Section 10. KRS 161.553 is amended to read as follows:

(1) The cost of providing statutory benefit improvements for annuitants may be funded by annual appropriations from the state on an actuarial amortized basis over the lifetime of the annuitants. The schedules in subsections (1)(a) and (1)(b) of this section are the annual appropriations which shall be made by the state for benefit improvements approved in the respective fiscal years or bienniums prior to July 1, 1998:

(a)

Cost of Living Allowance Succeeding Fiscal Year	***1998-1999***~~[1996-1997]~~	Each
~~[1982-1984~~	~~$ 809,100~~	~~$ 809,100 through 1997-98]~~
1986-1988	$ 4,465,400	$ 4,465,400 through 2000-2001 and $ 2,331,300 in 2001-2002
1988-1990	$ 5,761,700	$ 5,761,700 through 2002-2003 and $ 2,972,700 in 2003-2004
1990-1992	$ 4,901,700	$ 4,901,700 through 2004-2005 and $ 2,486,800 in 2005-2006
1992-1994	$ 2,229,400	$ 2,229,400 through 2006-2007 and $ 1,125,700 in 2007-2008
1994-1996	$6,142,000	$ 6,142,000 through ***2010-2011***~~[2011-2012]~~

	1996-1998	***$4,459,000***~~[$2,257,700]~~	***$4,459,000 through 2010-2011***~~[$2,257,700 in 1997-98 and $5,163,600 through 2012-2013]~~
	1998-2000	***$7,395.300***	***$15,333,900 through 2012-2013*** ***and*** ***$7,938,600 through 2013-2014***
(b)	Minimum Value Annuities Succeeding Fiscal Year	***1998-1999***~~[1996-1997]~~	Each
	1986-1988	$ 1,227,000	$ 1,227,000 through 2000-2001 and $ 1,020,400 in 2001-2002
	1988-1990	$ 1,718,200	$ 1,718,200 through 2002-2003 and $ 879,500 in 2003-2004
	1990-1992	$ 2,246,900	$ 2,246,900 through 2004-2005 and $ 1,232,100 in 2005-2006
	1992-1994	$ 2,217,700	$ 2,217,700 through 2006-2007
	1994-1996	$ 2,126,000	$ 2,126,000 through ***2008-2009***~~[2009-2010]~~

(2) The present values of providing statutory cost-of-living increases for annuitants not included in subsection (1) of this section are to be assigned to the unfunded obligations of the retirement system and are identified as follows:

1986-1988	$34,689,893
1990-1992	$68,107,473
1992-1994	$15,749,976

Section 11. KRS 161.597 is amended to read as follows:

(1) A member in active contributing status may purchase any service credit which the member is authorized to purchase by making installment payments in lieu of a lump-sum payment.

(2) To initiate an installment payment plan, a member shall make a written request to the retirement system for an estimate to purchase service credit by making installment payments.

(3) To qualify for installment payments, the member contribution plus interest of eight percent (8%) per annum shall exceed one thousand dollars ($1000).

(4) A member may select the service credit to be purchased by installment payments and that service credit shall be purchased before any other credit may be purchased by installment payments.

(5) Installment payments shall be at least fifty dollars ($50) per month and shall be made for a period of time which is not less than twelve (12) months nor more than sixty (60) months.

(6) Installment payments shall be made on a monthly basis by payroll deduction ***or electronic fund transfer*** and forwarded separately to the Teachers' Retirement System on forms or by computer format not later than fifteen (15) days following the end of each month. The payments shall be considered accumulated contributions and shall not be picked up as provided in KRS 161.560.

(7) A member may elect to terminate payroll deductions at any time and purchase the remaining service credit by lump-sum payment. A member on a leave of absence may make personal installment payments. Termination of employment in a covered position shall terminate ***installment payments***~~[payroll deductions]~~. If the member is later employed by a different employer in a covered position, the member may request a new estimate and reinstate installment payments. A member that misses two (2) consecutive installment payments shall be in default. A member in default shall receive service credit on a pro rata basis for the total amount of contributions made by installment payments. A member in default may not reinstate installment payments for twelve (12) months from the date the member was in default.

(8) If a member dies before completing scheduled installment payments, the named beneficiary of the member's retirement account may pay the remaining balance due by a lump-sum payment within thirty (30) days of the death of the member.

Section 12. KRS 161.605 is amended to read as follows:

(1) Retired members may perform substitute teaching in the public schools for the equivalent of one hundred (100) days in any one (1) school year and receive compensation based on a standard salary schedule adopted by a district for all

substitute teachers without reduction in retirement annuities.

(2) A retired member may be employed as a part-time or temporary teacher in the public schools for a period not to exceed the equivalent of one hundred (100) days in any one (1) school year.

(3) Retired members may be employed part-time or temporarily in a nonteaching capacity in the public schools and receive compensation for this employment without reduction in retirement annuities, except that retired members may not be employed in excess of a one hundred (100) day period in any one (1) school year in the same position from which they retired, or a position substantially similar to the one from which they retired, or any position listed in KRS 161.220(4) which requires membership in the retirement system. Positions which generally require certification or graduation from a four (4) year college or university as a condition of employment which are created, or changed to remove the position from coverage under KRS 161.220(4) are also subject to the one hundred (100) day limitation in this subsection. The board of trustees shall determine if employment in a nonteaching position qualifies for an exemption under this subsection.

(4) Members retired from ***an agency***[~~a university~~] listed in KRS 161.220(4)(b) may be employed in a part-time teaching capacity by one (1) of the universities ***participating in the Teachers' Retirement System***, not to exceed the equivalent of twelve (12) teaching hours in any one (1) fiscal year.

(5) Calculation of the number of days for part-time teaching, substitute teaching, or part-time employment in a nonteaching capacity under this section shall not exceed the ratio between a school year and the actual months of retirement for the member during that school year. The board of trustees by administrative regulation may establish fractional equivalents of a day of teaching service.

(6) When a retired member returns to employment as a part-time teacher or in a nonteaching capacity as provided in subsections (2), (3), and (4) of this section, the employer ***contribute annually to the retirement system on the compensation paid to the retired member at rates determined by the retirement system actuary that reflect accrued liability for nonuniversity and university members***[~~shall withhold and remit regular retirement contributions. These contributions shall be maintained in a separate account by the retirement system and shall not be used to increase the annuity of the retiree. Upon request of the retired member at the close of a fiscal year, the retirement system shall return the retiree's contribution with regular interest on funds held beyond one (1) year, but the retired member shall have no claim on any contributions made by the state or employer or to contributions made to the medical insurance fund. Upon death of the retired member, the retirement system shall pay to the retired member's estate or designated beneficiary the amount that would have been refunded to the retired member~~].

Section 13. KRS 161.620 is amended to read as follows:

(1) The retirement allowance, in the form of a life annuity with refundable balance, of a member retiring for service shall be calculated as follows:

(a) For retirements effective July 1, ***1998***[~~1984~~], and thereafter, the annual allowance for each year of service ***shall be two percent (2%) of the final average salary for service performed prior to July 1, 1983, and two and one-half percent (2.5%) of the final average salary for service performed after July 1, 1983, for all members not employed by a state college or university***[~~performed prior to January 1, 1984, shall be two percent (2%) of the final average salary~~]. ***The annual retirement allowance for each year of service performed at state colleges or universities that participate in the Teachers' Retirement System shall be two percent (2%) of the final average salary.*** Actuarial discounts due to age or service credit at retirement may be applied as provided in this section; ***and***

(b)[~~For retirements effective January 1, 1984, and thereafter, the annual allowance shall be determined as set out in subsection (1)(a) of this section, except that the allowance for service performed after January 1, 1984, shall be valued at the annual rate of two and one-half percent (2.5%) of the final average salary for all members not employed by a state university or college. For purposes of implementing the change in the value of a year of service, the board of trustees shall establish, by administrative regulation, the value of services performed during the 1983-84 fiscal year, but in no case shall the value of service performed during the 1983-84 fiscal year exceed two and one quarter percent (2.25%); and~~

~~(c)~~] The retirement allowance of a member at retirement shall not exceed the member's last annual compensation or the member's final average salary, whichever is the greater amount.

(2) Effective July 1, 1990, and annually on July 1 thereafter, the retirement allowance of each retired member and of each beneficiary of a retirement option who has been retired at least ten (10) months shall be increased in the amount of one and one-half percent (1.5%).

(3) Any member qualifying for retirement under a life annuity with refundable balance shall be entitled to receive an annual allowance amounting to not less than ***three hundred***[~~two hundred sixty~~] dollars ***($300)***[~~($260)~~] effective July 1, ***1998***[~~1994~~], ***and not less than three hundred ten dollars ($310) effective July 1, 1999,*** multiplied by the service credit years of the member. These minimums shall apply to the retired members receiving annuity payments and to those members retiring on or subsequent to the effective dates listed in this subsection.[~~ The increases provided for in this~~

~~subsection shall not be implemented unless funding is provided in the 1994-96 biennium budget appropriation.]~~

(4) The minimum retirement allowance provided in this section shall apply in the case of members retired or retiring under an option other than a life annuity with refundable balance in the same proportion to the benefits of the member and his beneficiary or beneficiaries as provided in the duly-adopted option tables at the time of the member's retirement.

(5) Effective July 1, ***1998***~~[1996]~~, the monthly allowance of each member retired ***for at least one (1) year***~~[on or before July 1, 1995]~~, and each recipient of a retirement option of the retired member shall be increased in an amount not to exceed ***one and one-half***~~[three]~~ percent ***(1.5%)***~~[(3%)]~~ of the monthly allowance in effect the previous month~~[where the monthly allowance is less than eight hundred thirty-four dollars ($834) and in an amount not to exceed one percent (1%) of the monthly allowance in effect the previous month where the monthly allowance is eight hundred thirty-four dollars ($834) or more based on an assumed maximum monthly allowance of one thousand two hundred fifty dollars ($1,250)]~~. The level of increase provided for in this subsection shall be determined by the funding provided in the ***1998-2000***~~[1996-98]~~ biennium budget appropriation.

(6) Effective July 1, ***1999***~~[1997]~~, the monthly allowance of each member retired ***for at least one (1) year***~~[on or before July 1, 1996]~~, and each recipient of a retirement option of the retired member shall be increased in an amount not to exceed ***one and one-half***~~[three]~~ percent ***(1.5%)***~~[(3%)]~~ of the monthly allowance in effect the previous month~~[where the monthly allowance is less than eight hundred thirty-four dollars ($834)]~~. The level of increase provided for in this subsection shall be determined by the funding provided in the ***1998-2000***~~[1996-98]~~ biennium budget appropriation.

(7) Effective July 1, 1990, monthly payments of two hundred dollars ($200) shall be payable for the benefit of an adult child of a member retired for service when the child's mental or physical condition is sufficient to cause dependency on the member at the time of retirement. Eligibility for this payment shall continue for the life of the child or until the time the mental or physical condition creating the dependency no longer exists or the child marries. Benefits under this subsection shall apply to legally adopted survivors provided the proceedings for the adoption were initiated at least one (1) year prior to the death of the member. The board of trustees shall be the sole judge of eligibility or dependency and may require formal application or information relating thereto.

(8) Members of the Teachers' Retirement System shall be subject to the annuity income limitations imposed by Section 415 of the Internal Revenue Service Code as enacted in 1988.

(9) Compensation in excess of the limitations imposed by Section 401(a)(17) of the Internal Revenue Code shall be disregarded. The limitation on compensation for eligible members shall not be less than the amount which was allowed to be taken into account by the retirement system in effect on July 1, 1993. For this purpose, an eligible member is an individual who was a member of the retirement system before the first plan year beginning after December 31, 1995.

Section 14. KRS 161.640 is amended to read as follows:

(1) Retirement annuities shall be payable monthly. The first payment to an annuitant shall be made at the payment date at the end of one (1) full payment period after his retirement and shall consist of one (1) regular monthly payment. Retirement for a member receiving one (1) full year of service credit during a fiscal year, shall be no earlier than July 1 next following the end of such fiscal year.

(2) The board of trustees may enter into agreements with retired members for payroll deductions when it is deemed in the best interest of the retired members and the retirement system.

(3) All new retirees, on or after July 1, 1998, shall receive their monthly annuity checks by electronic fund transfer. All annuity and survivor monthly allowance payments shall be made by electronic fund transfer by December 31, 1998.

Section 15. KRS 161.655 is amended to read as follows:

(1) ***Effective July 1, 1998,*** upon the death of a member retired for service or disability, a death benefit of ***three***~~[two]~~ thousand~~[and eight hundred]~~ dollars ***($3,000)***~~[($2,800)]~~ shall be paid to the member's estate or to a party designated by the member on a form prescribed by the retirement system. Upon the death of an active contributing member, a death benefit of two thousand dollars ($2,000) shall be paid to the member's estate or to a party designated by the member on a form prescribed by the retirement system. Application for the death benefit shall be made to the Teachers' Retirement System together with acceptable evidence of death and eligibility. The reciprocal provisions of KRS 61.680(2)(a) shall not apply to the payment of death benefits under this section.

(2) Suit or civil action shall not be required for the collection of the death benefit provided for by this section, but nothing in this section shall prevent the maintenance of suit or civil action against the beneficiary or legal representative receiving the death benefit.

Section 16. KRS 161.675 is amended to read as follows:

(1) ***(a)*** The board of trustees ***shall***~~[is empowered to]~~ enter into contracts with insurance carriers ***or other health care providers*** for the purpose of providing a ~~[broad]~~program of hospital and medical insurance coverage to members ***who are age sixty-five (65) or older and*** retired for service~~[or disability. Coverage may be extended to the spouses and minor children of retired members, provided the member began participating in the Teachers' Retirement System prior to July 1, 1978. Coverage may also be extended to spouses and to minor children of members in active contributing status who~~

~~are deceased prior to retirement if the surviving spouse is eligible to receive the member's retirement benefit as provided in KRS 161.525 and elects to receive those retirement benefits]~~.

(b) The board of trustees may enter into contracts with insurance carriers or other health providers for the purpose of providing a broad program of hospital and medical insurance coverage to members below age sixty-five (65) who are retired for service or disability and to the surviving spouse of deceased members who are eligible to receive the member's retirement benefits as provided in KRS 161.525.

(c) The board of trustees may offer, on a cost basis, coverage of spouses ***and***~~[or]~~ dependents not eligible for regular coverage.

(2) The coverage provided shall be as set forth in the contracts and the administrative regulations of the board of trustees. The board of trustees may change the levels of coverage to meet the changing needs of the annuitants and when necessary to contain the expenses of the insurance program within the funds available to finance the insurance program. The contracts and administrative regulations shall provide for, but not be limited to, hospital room and board, surgical procedures, doctors' care in the hospital, and miscellaneous hospital costs. A retiree whose effective date of retirement is July 1, 1974, and thereafter, must have a minimum of five (5) years creditable Kentucky service in the Teachers' Retirement System or of combined service in the Kentucky Employees Retirement System, of which at least two (2) years was creditable service under KRS 161.510 and 161.607(2), to qualify for the coverage. The board of trustees shall offer coverage to the disabled child of a retired member regardless of the disabled child's age if the retired member pays the entire premium for the disabled child's coverage. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.

(3) The board of trustees is empowered to require the annuitant and the annuitant's spouse to pay a premium charge to assist in the financing of the hospital and medical insurance program. The board of trustees is empowered to pay the expenses for insurance coverage from the medical insurance fund, from the premium charges received from the annuitants and the spouses, and from funds that may be appropriated or allocated by statute. The board may provide insurance coverage by making payment to insurance carriers including health insurance plans that are available to ***active and retired*** state employees ***and active teachers***, institutions, and individuals for services performed, or the board of trustees may elect to provide insurance on a "self-insurance" basis or a combination of these provisions.

(4) Contracts negotiated may include the provision that a stated amount of hospital cost or period of hospitalization shall incur no obligation on the part of the insurance carrier or the retirement system.

(5) The board of trustees is empowered to promulgate administrative regulations to assure efficient operation of the hospital and medical insurance program.

(6) Premiums paid for hospital and medical insurance coverage procured under authority of this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the insurance fund shall not constitute taxable income to an insured recipient.

Section 17. Whereas, retirement annuity adjustments are implemented at the beginning of the fiscal year, an emergency is declared to exist, and the provisions of this Act shall become effective July 1, 1998.

The Committee Substitute to **HB 532** is as follows:

AN ACT relating to teachers' retirement and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 18A.225 is amended to read as follows:

(1) (a) The term "health maintenance organization" for the purposes of this section means a health maintenance organization as defined in KRS 304.38-030 or as a nonprofit hospital, medical-surgical, dental, and health service corporation, which has been licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board or its successor agency and issued a certificate of authority by the Department of Insurance as a health maintenance organization or as a nonprofit hospital, medical-surgical, dental, and health service corporation and which is qualified under the requirements of the United States Department of Health, Education and Welfare except as provided in subsection (2) of this section; and

(b) The term "state employee" for purposes of this section shall include a person, including an elected public official, who is regularly employed by any department, board, agency, branch of state government, or any municipal, urban-county, charter county, or county government, whose legislative body has opted to participate in the state health insurance program pursuant to KRS 79.080 and who is a contributing member to any one (1) of the retirement systems administered by the state and including any federally-funded time-limited employee. It shall also include a person who must fulfill the requirements established by the Kentucky Board of Education for eligibility and a person who is a present or future recipient of a retirement allowance from any of the Kentucky Retirement Systems who either satisfies the requirements of KRS 61.559 or who is board authorized under KRS

61.702(1), including a beneficiary of a retired employee as defined in KRS 61.542 who is receiving a retirement allowance from any of the Kentucky Retirement Systems and includes members of the Legislators' Retirement Plan as provided in KRS 18A.2287. ***It shall also include a person who is a present or future recipient of a retirement allowance from the Teachers' Retirement System of Kentucky who either satisfies the requirements of KRS 161.525, 161.620, and 161.675, or who is board certified including a beneficiary of a retired member who is receiving a retirement allowance from the Teachers' Retirement System of Kentucky.***

(2) The secretary of the Finance and Administration Cabinet, upon the recommendation of the commissioner of personnel, shall procure, in compliance with the provisions of KRS 45A.080, 45A.085, and 45A.090, from one (1) or more health, hospitalization, medical, major medical, and dental insurance companies or from one (1) or more health maintenance organizations authorized to do business in this state, a policy or policies of group health, hospitalization, medical, and major medical insurance or health maintenance organization coverage encompassing all or any class or classes of state employees. Health insurance coverage provided to state employees under this section shall, at a minimum, contain the same benefits as provided under Kentucky Kare Standard as of January 1, 1994. All state employees and other persons for whom the insurance or health maintenance organization coverage is provided or made available shall annually be given an option to elect either standard insurance coverage or coverage by a health maintenance organization; if a qualified health maintenance organization is not engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside, the state employees may annually be given the option to elect either standard insurance coverage or coverage by a health maintenance organization which has been licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board or its successor agency and issued a certificate of authority by the Department of Insurance as a health maintenance organization or as a nonprofit hospital, medical-surgical, dental, and health service corporation and which is engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside. The policy or policies shall be approved by the commissioner of insurance and may contain the provisions he approves, whether or not otherwise permitted by the insurance laws. It is intended that either insurance or health maintenance organization coverage may be made available for state employees, except that the procuring of each is permissive.

(3) The secretary of the Finance and Administration Cabinet, upon the recommendation of the commissioner of personnel, may procure from one (1) or more dental insurance companies, one (1) or more health maintenance organizations, one (1) or more nonprofit hospital, medical-surgical, dental, and health service corporations organized under subtitle 32 of KRS Chapter 304, or one (1) or more prepaid dental plan organizations organized under subtitle 43 of KRS Chapter 304, a policy or policies of group dental insurance or prepaid dental plan coverage encompassing all or any class or classes of state employees. All state employees for whom the dental insurance or prepaid dental plan coverage is provided shall annually be given an option to elect either standard dental insurance coverage, health maintenance organization coverage, or coverage by a prepaid dental plan. The policy or policies shall be approved by the commissioner of insurance and may contain the provisions he approves, whether or not otherwise permitted by the insurance laws. It is intended that either dental insurance or prepaid dental plan coverage may be made available for state employees, except that the procuring of each is permissive.

(4) The premiums may be paid by the policyholder:

(a) Wholly from funds contributed by the insured employee, by payroll deduction or otherwise;

(b) Wholly from funds contributed by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government; or

(c) Partly from each, except that any premium due for health maintenance organization coverage or prepaid dental plan coverage over the premium amount contributed by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government for any other insurance coverage shall be paid by the employee.

(5) If an employee moves his place of residence or employment out of the service area of a health maintenance organization or of a prepaid dental plan organization, under which he has elected coverage, into either the service area of another health maintenance organization or prepaid dental plan organization or into an area of the state not within a health maintenance organization service area or prepaid dental plan service area, the employee shall be given an option, at the time of the move or transfer, to elect coverage either by the health maintenance organization or prepaid dental plan organization into which service area he moves or is transferred or to elect standard insurance coverage offered by the employer.

(6) No payment of premium by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government shall constitute compensation to an insured employee for the purposes of any statute fixing or limiting the compensation of such an employee. Any premium or other expense incurred by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government shall be considered a proper cost of administration.

(7) The policy or policies may contain the provisions with respect to the class or classes of employees covered, amounts of insurance or coverage for designated classes or groups of employees, policy options, terms of eligibility, continuation of

insurance or coverage after retirement, and other provisions the commissioner of insurance may approve.

(8) The policy or policies shall contain the provision that employees or retired employees shall be allowed to change health insurance carriers during the reopening period without any limitation for pre-existing conditions if the employee has met the pre-existing condition limitation upon initial employment or reemployment with the group.

(9) The secretary of the Finance and Administration Cabinet is authorized to perform all acts necessary or advisable for the purpose of contracting for and maintaining insurance, prepaid dental plan organization coverage, and health maintenance organization coverage under the provisions of this section.

(10) Group rates under the insurance or health maintenance organization coverage acquired under this section shall be made available to the disabled child of a state employee regardless of the child's age if the entire premium for the disabled child's coverage is paid by the state employee. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.

(11) The health insurance contract or contracts for state employees shall be entered into for a period of not less than two (2) years, except the contract awarded October 1, 1984, shall be awarded for the period between October 1, 1984, and June 30, 1986.

(12) The commissioner of personnel shall appoint twenty-four (24) persons to an Advisory Committee of State Health Insurance Subscribers to advise the commissioner or his designee regarding the state health insurance program for state employees. The commissioner shall appoint, from a list of names submitted by appointing authorities, members representing school districts from each of the seven Supreme Court districts, members representing state government from each of the seven Supreme Court districts, two (2) members representing retirees under age sixty-five (65), one (1) member representing local health departments, and three (3) members at large. The commissioner shall also appoint two (2) members from a list of five (5) names submitted by the Kentucky Education Association, and two (2) members from a list of five (5) names submitted by the largest state employee organization of nonschool state employees. The advisory committee shall be appointed in November of each year and shall meet quarterly.

(13) Notwithstanding any other provision of law to the contrary, the policy or policies provided to state employees pursuant to this section shall not provide coverage for obtaining or performing an abortion, nor shall any state funds be used for the purpose of obtaining or performing an abortion on behalf of state employees or their dependents.

Section 2. KRS 161.155 is amended to read as follows:

(1) As used in this section:

(a) "Teacher" shall mean any person for whom certification is required as a basis of employment in the common schools of the state;

(b) "Employee" shall mean any person, other than a teacher, employed in the public schools, whether on a full or part-time basis;

(c) "Immediate family" shall mean the teacher's spouse, children including stepchildren, parents and spouse's parents, grandparents, and spouse's grandparents, without reference to the location or residence of said relative, and any other blood relative who resides in the teacher's home; and

(d) "Sick leave bank" shall mean an aggregation of sick leave days contributed by teachers for use by teachers who have exhausted all sick leave and other available paid leave days.

(2) Each district board of education shall allow to each teacher in its common school system not less than ten (10) days of sick leave during each school year, without deduction of salary. Sick leave shall be granted to a teacher if he presents a personal affidavit or a certificate of a physician stating that the teacher was ill, that the teacher was absent for the purpose of attending to a member of his immediate family who was ill, or for the purpose of mourning a member of his immediate family. The ten (10) days of sick leave herein granted may be taken by a teacher on any ten (10) days of the school year and shall be granted in addition to accumulated sick leave days that have been credited to the teacher under the provisions of subsection (3) of this section.

(3) Days of sick leave not taken by a teacher during any school year shall accumulate without limitation and be credited to that teacher. Accumulated sick leave may be taken in any school year. Any district board of education may, in its discretion, allow teachers in its common school system sick leave in excess of the number of days prescribed in this section and may allow school district employees and teachers to use up to three (3) days' sick leave per school year for emergency leave pursuant to KRS 161.152(3). Any accumulated sick leave days credited to a teacher shall remain so credited in the event he transfers his place of employment from one (1) school district to another within the state or to the Kentucky Department of Education or transfers from the Department of Education to a school district after June 30, 1985.

(4) Accumulated days of sick leave shall be granted to a teacher, if prior to the opening day of the school year, an affidavit or a certificate of a physician is presented to the district board of education, stating that the teacher is unable to commence his duties on the opening day of the school year, but will be able to assume his duties within a period of time that the board determines to be reasonable.

(5) Any school employee may repurchase previously used sick leave days with the concurrence of the local school board by paying to the district an amount equal to the total of all costs associated with the used sick leave.

(6) A district board of education may adopt a plan for a sick leave bank. The plan may include limitations upon the number of days a teacher may annually contribute to the bank and limitations upon the number of days a teacher may annually draw from the bank. Only those teachers who contribute to the bank may draw upon the bank. Days contributed will be deducted from the days available to the contributing teacher. The sick leave bank shall be administered in accordance with a policy adopted by the board of education.

(7) A teacher may use up to thirty (30) days of sick leave following the birth or adoption of a child or children. Additional days may be used when the need is verified by a physician's statement.

(8) After July 1, 1982, a district board of education may compensate, at the time of retirement, an employee or a teacher for each unused sick leave day. The rate of compensation for each unused sick leave day shall be based on a percentage of the daily salary rate calculated from the employee's or teacher's last annual salary, not to exceed thirty percent (30%). Payment for unused sick leave days shall be incorporated into the annual salary of the final year of service; provided that the member makes the regular retirement contribution for members on the sick leave payment ***and provided the state or school district makes the regular retirement contribution for employers plus additional payments to meet the full actuarial cost of including sick leave payments in the annual salary of the final year of service as provided in KRS Chapter 161.550. In the event that additional payments are not made to the Teachers' Retirement System to meet the full actuarial cost that result from inclusion of sick leave payments in the last annual salary of retiring members, the Teachers' Retirement System Board of Trustees shall determine the percentage of the sick leave payments that may be included for retirement purposes based upon the amount of additional funding that is provided to pay the resulting cost***. The accumulation of these days includes unused sick leave days held by the employee or teacher at the time of implementation of the program.

(9) Any statute to the contrary notwithstanding, employees and teachers who transferred from the Department of Education to a school district, from a school district to the Department of Education, or from one (1) school district to another school district after July 15, 1981, shall receive credit for any unused sick leave to which the employee or teacher was entitled on the date of transfer. This credit shall be for the purposes set forth in subsection (8) of this section.

Section 3. KRS 161.220 is amended to read as follows:

As used in KRS 161.230 to 161.716 and KRS 161.990:

(1) "Retirement system" means the arrangement provided for in KRS 161.230 to 161.716 and KRS 161.990 for payment of allowances to members;

(2) "Retirement allowance" means the amount annually payable during the course of his natural life to a member who has been retired by reason of service;

(3) "Disability allowance" means the amount annually payable to a member retired by reason of disability;

(4) "Member" means the chief state school officer, deputy commissioners, associate commissioners, and all division directors in the State Department of Education, and any regular or special teacher, or professional occupying a position requiring certification or graduation from a four (4) year college or university, as a condition of employment, and who is employed by public boards, institutions, or agencies as follows:

  (a) Local boards of education;

  (b) Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Western Kentucky University, and any community colleges established under the control of these universities[~~, and the Kentucky Community and Technical College System and any community colleges or technical institutions established under its control~~];

  (c) State-operated secondary area vocational education or area technology centers, Kentucky School for the Blind, and Kentucky School for the Deaf;

  (d) The State Department of Education, other public education agencies as created by the General Assembly, and those members of the administrative staff of the Teachers' Retirement System of the State of Kentucky whom the board of trustees may designate by administrative regulation;

  (e) Regional cooperative organizations formed by local boards of education or other public educational institutions listed in this subsection, for the purpose of providing educational services to the participating organizations;

  (f) All full-time members of the staffs of the Kentucky Association of School Administrators, Kentucky Education Association, Kentucky Vocational Association, Kentucky High School Athletic Association, Kentucky Academic Association, and the Kentucky School Boards Association who were members of the Kentucky Teachers' Retirement System or were qualified for a position covered by the system at the time of employment by the association in the event that the board of directors of the respective association petitions to be included. The board of trustees of the Kentucky Teachers' Retirement System may designate by resolution whether part-time employees of the petitioning association are to be included. The state shall make no contributions on account of these employees, either full-time or part-time. The association shall make the employer's contributions, including any contribution that is specified under KRS 161.550. The provisions of this paragraph shall be applicable to persons in the employ of the associations on or subsequent to July 1, 1972;

(g) The Department for Adult Education and Literacy;

(h) The Department for Technical Education;

(i) The Office of General Counsel within the Office of the Secretary of the Cabinet for Workforce Development;

(j) The Office for Policy, Budget, and Personnel within the Office of the Secretary of the Cabinet for Workforce Development;

(k) The Office for Administrative Services within the Office of the Secretary of the Cabinet for Workforce Development;

(l) The Department of Vocational Rehabilitation;

(m) The Kentucky Educational Collaborative for State Agency Children;

(n) The Governor's Scholars Program;~~[and]~~

(o) Any person who is retired for service from the retirement system and is reemployed by an employer identified in this subsection in a position that the board of trustees deems to be a member***;***

(p) Employees of the Workforce Development Cabinet who are transferred to the Kentucky Community and Technical College System and who occupy positions covered by the Kentucky Teachers' Retirement System shall remain in the Teachers' Retirement System. New employees occupying these positions, as well as newly created positions qualifying for Teachers' Retirement System coverage that would have previously been included in the Workforce Development Cabinet, shall be members of the Teachers' Retirement System; and

(q) Effective January 1, 1998, employees of state community colleges who are transferred to the Kentucky Community and Technical College System shall continue to participate in federal old age, survivors, disability, and hospital insurance and a retirement plan other than the Kentucky Teachers' Retirement System offered by Kentucky Community and Technical College System. New employees occupying positions in the Kentucky Community and Technical College System as referenced in KRS 164.5807(5) that would not have previously been included in the Workforce Development Cabinet, shall participate in federal old age, survivors, disability, and hospital insurance and have a choice at the time of employment of participating in a retirement plan provided by the Kentucky Community and Technical College System, including participation in the Kentucky Teachers' Retirement System, on the same basis as faculty of the state universities as provided in KRS 161.540 and 161.620.

(5) "Present teacher" means any teacher who was a teacher on or before July 1, 1940, and became a member of the retirement system created by 1938 (1st Extra. Sess.) Ky. Acts ch. 1, on the date of the inauguration of the system or within one (1) year after that date, and any teacher who was a member of a local teacher retirement system in the public elementary or secondary schools of the state on or before July 1, 1940, and continued to be a member of the system until he, with the membership of the local retirement system, became a member of the state Teachers' Retirement System or who becomes a member under the provisions of KRS 161.470(4);

(6) "New teacher" means any member not a present teacher;

(7) "Prior service" means the number of years during which the member was a teacher in Kentucky prior to July 1, 1941, except that not more than thirty (30) years' prior service shall be allowed or credited to any teacher;

(8) "Subsequent service" means the number of years during which the teacher is a member of the Teachers' Retirement System after July 1, 1941;

(9) "Final average salary" means the average of the five (5) highest annual salaries which the member has received for service in a covered position and on which the member has made contributions, or on which the public board, institution, or agency has picked-up employee contributions pursuant to KRS 161.540(2), or the average of the five (5) years of highest salaries as defined in KRS 61.680(2)(a), which shall include picked-up employee contributions. ***Additionally, the board of trustees may approve a final average salary based upon the average of the three (3) highest salaries for members who are at least fifty-five (55) years of age and have a minimum of twenty-seven (27) years of Kentucky service credit.*** However, if any of the five (5) ***or three (3)*** highest annual salaries used to calculate the final average salary was paid within the three (3) years immediately prior to the date of the member's retirement, the amount of salary to be included for each of those three (3) years for the purpose of calculating the final average salary shall be limited to the lesser of:

(a) The member's actual salary; or

(b) The member's annual salary that was used for retirement purposes during each of the prior three (3) years, plus a percentage increase equal to the percentage increase received by all other members employed by the public board, institution, or agency, or for employees of school districts, the highest percentage increase received by members on any one (1) rank and step of the salary schedule of the school district. The increase shall be computed on the salary that was used for retirement purposes.

This limitation shall not apply if the member receives an increase in salary in a percentage exceeding that received by the other members, and this increase was accompanied by a corresponding change in position or in length of employment. This limitation shall also not apply to the payment to a member for accrued annual leave or accrued sick leave which is authorized by statute and which shall be included as part of a retiring member's annual compensation for the member's last year of active service;

(10) "Annual compensation" means the total salary received by a member as compensation for all services performed in employment covered by the retirement system during a fiscal year. Annual compensation shall not include payment for any benefit or salary adjustments made by the public board, institution, or agency to the member or on behalf of the member which is not available as a benefit or salary adjustment to other members employed by that public board, institution, or agency. ***Annual compensation shall not include the salary supplement received by a member selected as a distinguished educator on or after July 1, 1996.*** The board of trustees shall determine if any benefit or salary adjustment qualifies as annual compensation;

(11) "Age of member" means the age attained on the first day of the month immediately following the birthdate of the member. This definition is limited to retirement eligibility and does not apply to tenure of members;

(12) "Age of entrance" means the age attained at the last birthday of any member at the time of the establishment of the retirement system, if the member was a member subject to membership in the system at that time. Otherwise it means the age attained as of July 1 of the fiscal year in which he first becomes a member of the retirement system. Any birthday occurring on February 29 shall be considered as occurring on February 28;

(13) "Regular interest" means interest at three percent (3%) per annum;

(14) "Accumulated contributions" means the contributions of a member to the teachers' savings fund, including picked-up employee contributions as described in KRS 161.540(2), plus accrued regular interest;

(15) "Annuitant" means a person who receives a retirement allowance or a disability allowance;

(16) "Local retirement system" means any teacher retirement or annuity system created in any public school district in Kentucky in accordance with the laws of Kentucky;

(17) "Fiscal year" means the twelve (12) month period from July 1 to June 30***. A contract for a member employed by a local board of education may not exceed two hundred sixty-one (261) days in the fiscal year***;

(18) "Public schools" means the schools and other institutions mentioned in subsection (4) of this section;

(19) "Dependent" as used in KRS 161.520 and 161.525 means a person who was receiving, at the time of death of the member, at least one-half (1/2) of the support from the member for maintenance, including board, lodging, medical care, and related costs;

(20) "Active contributing member" means a member currently making contributions to the Teachers' Retirement System, who made contributions in the next preceding fiscal year, for whom picked-up employee contributions are currently being made, or for whom these contributions were made in the next preceding fiscal year; and

(21) "Regular teacher, supervisor, or administrator," when used to determine eligibility for membership in the retirement system, means a professional employee holding a position which requires services on a continuing basis equal to at least seven-tenths (7/10) of normal full-time service on a daily or weekly basis.

Section 4. KRS 161.310 is amended to read as follows:

(1) The board of trustees shall from time to time promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business.

(2) All rules, regulations, or policies adopted by school districts, universities, or other employers participating in the Teachers' Retirement System that pertain to the retirement system shall conform to this chapter.

(3) All rules, regulations, or policies adopted by school districts, universities, or other employers participating in the Teachers' Retirement System that pertain to retirement incentives for members as defined in KRS 161.220(4) shall contain provisions for the school district, university, or other employer to make full payment to the retirement system at the time a member retires for all actuarial obligations that occur to the retirement system as a result of retirement incentive payments.

Section 5. KRS 161.340 is amended to read as follows:

(1) The board of trustees shall elect from its membership a chairperson and a vice chairperson on an annual basis as prescribed by the administrative regulations of the board of trustees. The board of trustees shall employ an executive secretary by means of a contract not to exceed a period of four (4) years and fix the compensation and other terms of employment for this position without limitation of the provisions of KRS Chapters 18A, 45A, 56, and KRS 64.640. The executive secretary shall be the chief administrative officer of the board. The executive secretary, at the time of employment, shall be a graduate of a four (4) year college or university, and shall possess qualifications as the board of

trustees may require. The executive secretary shall not have held by appointment or election an elective public office within the five (5) year period next preceding the date of employment.

(2) The board shall employ clerical, administrative, and other personnel as are required to transact the business of the retirement system. The compensation of all persons employed by the board shall be paid at the rates and in amounts as the board approves. Anything in the Kentucky Revised Statutes to the contrary notwithstanding, the power over and the control of determining and maintaining an adequate complement of employees in the system shall be under the exclusive jurisdiction of the board of trustees.

(3) The board shall contract for actuarial, auditing, medical, investment counseling, and other professional or technical services as are required to carry out the obligations of the board in accordance with the provisions of this chapter without limitations, including KRS Chapters 56, 57, and 45A, and shall provide for legal counsel and other legal services as may be required in defense of trustees, officers, and employees of the system who may be subjected to civil action arising from the performance of their legally assigned duties if counsel and services are not provided by the Attorney General.

(4) The board shall require the trustees, executive secretary, and employees it determines proper to execute bonds for the faithful performance of their duties notwithstanding the limitations of KRS Chapter 62.

(5) The board of trustees may expend funds from the expense fund as necessary to insure the trustees, employees, and officials of the Teachers' Retirement System against any liability arising out of an act or omission committed in the scope and course of performing legal duties.

(6) Notwithstanding any statute to the contrary, employees shall not be considered legislative agents as defined in KRS 6.611.

Section 6. KRS 161.420 is amended to read as follows:

All of the assets of the retirement system are for the exclusive purpose of providing benefits to members and annuitants and defraying reasonable expenses of administering the system. The board of trustees shall be the trustee of all funds of the system and shall have full power and responsibility for administering the funds. It is hereby declared that the restrictions and rights provided herein shall not be subject to reduction or impairment by alteration, amendment, or repeal. All the assets of the retirement system shall be credited according to the purpose for which they are held to one (1) of the following funds:

(1) The expense fund shall consist of the funds set aside from year to year by the board of trustees to defray the expenses of the administration of the retirement system. Each fiscal year an amount not greater than four percent (4%) of the income earned from investments during the immediate past fiscal year shall be set aside into the expense fund or expended for the administration of the retirement system;

(2) The teachers' savings fund shall consist of the contributions paid by members of the retirement system into this fund and regular interest assigned by the board of trustees from the guarantee fund. The accumulated contributions of a member returned to him upon his withdrawal or paid to his estate or designated beneficiary in the event of his death shall be paid from the teachers' savings fund. Any accumulated contributions forfeited by a failure of a teacher or his estate to claim these contributions shall be transferred from the teachers' savings fund to the guarantee fund. The accumulated contributions of a member shall be transferred from the teachers' savings fund to the allowance reserve fund in the event of retirement by reason of service or disability;

(3) The state accumulation fund shall consist of funds appropriated by the state for the purpose of providing annuities, survivor benefits, and death benefits, including any sums appropriated for meeting unfunded liabilities, together with regular interest assigned by the board of trustees from the guarantee fund. At the time of retirement or death of a member there shall be transferred from the state accumulation fund to the allowance reserve fund an amount which together with the sum transferred from the teachers' savings fund will be sufficient to provide the member a retirement allowance and provide for benefits under KRS 161.520, 161.525, and 161.655;

(4) The allowance reserve fund shall be the fund from which shall be paid all retirement allowances and benefits provided under KRS 161.520, 161.525, and 161.655. In addition, whenever a change in the status of a member results in an obligation on this fund, there shall be transferred to this fund from the teachers' savings fund, and the state accumulation fund, the amounts as may be held in those funds for the account or benefit of the member;

(5) The medical insurance fund shall consist of amounts accumulated for the purpose of providing benefits as provided in KRS 161.675. One and five tenths percent (1.5%) of the gross annual payroll of all members shall be deposited to this fund. One-half (1/2) of this amount shall derive from member contributions and one-half (1/2) from a state appropriation. ***The board of trustees may allocate up to a maximum of one and sixty-five hundredths percent (1.65%) of the three and twenty-five hundredths percent (3.25%) of the total salaries of active members that the state appropriates annually as provided under KRS 161.550.*** All claims for benefits under KRS 161.675 shall be paid from this fund. Any amounts not required to meet current costs shall be maintained as a reserve for these benefits; and

(6) The guarantee fund shall be maintained to facilitate the crediting of uniform interest on the amounts of the other funds, except the expense fund, to finance operating expenses directly related to investment management services, and to provide a contingent fund out of which special requirements of any of the other funds may be covered. All income, interest, and dividends derived from the authorized deposits and investments shall be paid into the guarantee fund. Any

funds received from gifts and bequests, which the board is hereby authorized to accept ***and expend without limitation in a manner either expressed by the donor or deemed to be in the best interest of the membership***, shall be credited to the guarantee fund. Any funds transferred from the teachers' savings fund by reason of lack of claimant or because of a surplus in any fund and any other moneys whose disposition is not otherwise provided for, shall also be credited to the guarantee fund. The interest allowed by the board of trustees to each of the other funds shall be paid to these funds from the guarantee fund. Any deficit occurring in any fund that would not be automatically covered shall be met by the payments from the guarantee fund to that fund. The board of trustees may, at any time during a fiscal year, transfer from the guarantee fund to the medical insurance fund an amount not to exceed four percent (4%) of the income earned from investments during the immediate past year.

(7) The school employee annuity fund shall consist of those funds voluntarily contributed under the provisions of section 403(b) of the Internal Revenue Code by ***a retired***[~~any~~] member of the Teachers' Retirement System ***with accounts that existed on or after July 1, 1996***[~~, or the employer of the member, or both~~]. The contributions shall not be picked up as provided in KRS 161.540(2).[~~ The contributions shall be invested as provided in KRS 161.430.~~] Separate member accounts shall be maintained for each member. The board of trustees may promulgate administrative regulations pursuant to KRS Chapter 13A to manage this program.

Section 7. KRS 161.500 is amended to read as follows:

(1) At the close of each fiscal year, the retirement system shall add service credit to the account of each member who made contributions to his or her account during the year. Members shall be entitled to a full year of service credit if their total paid days were not less than one hundred eighty (180) days of a one hundred eighty-five (185) day contract for a regular school or fiscal year. In the event a member is paid for less than one hundred eighty (180) days, the member may purchase credit according to administrative regulations established by the board of trustees. In no case shall more than one (1) year of service be credited for all service performed in one (1) fiscal year. Members who complete their employment contract prior to the close of a fiscal year and elect to retire prior to the close of a fiscal year shall have their service credit reduced by eight percent (8%) for each calendar month that the retirement becomes effective prior to July 1.

(2) Members who are employed and paid for less than the number of days required in their normal employment year shall be entitled to pro rata service credit for the fractional service. Such credit shall be based upon the number of days employed and the number of days in the member's annual employment agreement or normal employment year.

(3) Service credit may not exceed the ratio between the school or fiscal year and the number of months or fraction of a month the member is employed during that year.

Section 8. KRS 161.545 is amended to read as follows:

(1) Members may make contributions and receive service credit for substitute, part-time, or any service other than regular full-time teaching as provided in the administrative regulations of the board of trustees.[~~ A member may also obtain credit for part-time service performed prior to becoming a member upon payment of the amount determined for the member's contribution and an amount actuarially determined equal to the increased liability of the Teachers' Retirement System, if the service was at least half (1/2) time and occurred in the two (2) years preceding the individual's becoming a member of the retirement system.~~] Members placed on leave of absence may make contributions and receive service credit for this leave only if contributions are made by the end of the fiscal year next succeeding the year in which the leave was effective as provided in administrative regulations promulgated by the board of trustees. Contributions permitted after August 1, 1982, shall not be picked-up pursuant to KRS 161.540(2).

(2) Active contributing members of the Teachers' Retirement System, or former members who are currently participating in a state-administered retirement system, who were granted leaves of absence since July 1, 1964, for reasons of health, child rearing, or to improve their educational qualifications, and did not qualify at the time of the leave of absence to make contributions to the retirement system for the leave of absence as provided in subsection (1) of this section, may obtain credit for the leave of absence under the following conditions:

(a) The leave of absence shall be verified by a copy of the board of education minutes which granted the leave of absence; and

(b) The member shall contribute the required percentage based on the salary received for the year immediately preceding the leave of absence plus interest at the rate of eight percent (8%) compounded annually from the beginning of the school year following the year of the leave of absence, and by depositing in the state accumulation fund an amount equal to this total.

(c) The member shall receive credit for no more than two (2) years under the provisions of this subsection.

(3) Active contributing members who had breaks in their participation in the retirement system for reasons of health or for the purpose of obtaining Rank I status, a master's degree in education, or a doctorate degree in education and did not qualify at the time of the absence to obtain credit for the absence, may qualify to obtain credit for the absence under the following conditions:

(a) The period of a qualified absence shall be substantiated and verified in a manner required by the board of trustees;

(b) The member shall receive credit for no more than two (2) years of service under the provisions of this subsection;

(c) The member shall contribute the required percentage based on the salary received the year immediately preceding the qualified absence plus interest at the rate of eight percent (8%) compounded annually from the beginning of the school year following the year of the absence, and by depositing an amount equal to this total in the state accumulation fund; and

(d) Credit for service obtained under this subsection shall be purchased prior to July 1, 1997.

(4) Contributions permitted under this section after August 1, 1982, shall not be picked-up pursuant to KRS 161.540(2).

Section 9. KRS 161.550 is amended to read as follows:

Beginning with July 1, each employer, except as provided under KRS 161.555, shall contribute annually to the retirement system a permanent amount equal to that contributed by its employees who are members of the retirement system plus an additional three and one-fourths percent (3.25%) of the total of salaries of its employees who are members of the retirement system to discharge the system's unfunded obligations with interest assumed by the state ***and to provide funding to the medical insurance fund as provided under KRS 161.420(5)***. Each employer shall remit the required employer contributions to the retirement system under the terms and conditions specified for member contributions under KRS 161.560. The state shall provide annual appropriations based upon estimated funds needed to meet the requirements of KRS 161.155; 161.507(4); 161.515; 161.545; 161.620(1), (3), (5), (6), and (7); and 161.553. In the event an annual appropriation is less than the amount of these requirements, the state shall make up the deficit in the next biennium budget appropriation to the retirement system. Employer contributions to the retirement system are for the exclusive purpose of providing benefits to members and annuitants and these contributions shall be considered deferred compensation to the members.

Section 10. KRS 161.553 is amended to read as follows:

(1) The cost of providing statutory benefit improvements for annuitants may be funded by annual appropriations from the state on an actuarial amortized basis over the lifetime of the annuitants. The schedules in subsections (1)(a)***,***~~[and]~~ (1)(b)***, and (1)(c)*** of this section are the annual appropriations which shall be made by the state for benefit improvements approved in the respective fiscal years or bienniums prior to July 1, 1998:

(a)

Cost of Living Allowance	***1998-1999***~~[1996-1997]~~	Each Succeeding Fiscal Year
~~[1982-1984~~	~~$ 809,100~~	~~$ 809,100 through 1997-98]~~
1986-1988	$ 4,465,400	$ 4,465,400 through 2000-2001 and $ 2,331,300 in 2001-2002
1988-1990	$ 5,761,700	$ 5,761,700 through 2002-2003 and $ 2,972,700 in 2003-2004
1990-1992	$ 4,901,700	$ 4,901,700 through 2004-2005 and $ 2,486,800 in 2005-2006
1992-1994	$ 2,229,400	$ 2,229,400 through 2006-2007 and $ 1,125,700 in 2007-2008
1994-1996	$6,142,000	$ 6,142,000 through ***2010-2011***~~[2011-2012]~~
1996-1998	***$4,459,000***~~[$2,257,700]~~	***$4,459,000 through 2010-2011***~~[$2,257,700 in 1997-98 and $5,163,600 through 2012-2013]~~
1998-2000	***$7,395.300***	***$15,333,900 through 2012-2013*** ***and*** ***$7,938,600 through 2013-2014***

(b) Minimum Value ***1998-1999***~~[1996-1997]~~ Each

	Annuities			
	Succeeding Fiscal Year			
	1986-1988	$ 1,227,000	$ 1,227,000 through 2000-2001 and $ 1,020,400 in 2001-2002	
	1988-1990	$ 1,718,200	$ 1,718,200 through 2002-2003 and $ 879,500 in 2003-2004	
	1990-1992	$ 2,246,900	$ 2,246,900 through 2004-2005 and $ 1,232,100 in 2005-2006	
	1992-1994	$ 2,217,700	$ 2,217,700 through 2006-2007	
	1994-1996	$ 2,126,000	$ 2,126,000 through ***2008-2009***[~~2009-2010~~]	
(c)	***Sick Leave Allowance***	***1998-1999***	***$3,657,000***	***$7,828,000 in 1999-2000***
	Each Succeeding Fiscal Year		***$7,828,000 through 2012-2013*** ***and*** ***$4,171,000 through 2013-2014***	

(2) The present values of providing statutory cost-of-living increases for annuitants not included in subsection (1) of this section are to be assigned to the unfunded obligations of the retirement system and are identified as follows:

1986-1988	$34,689,893
1990-1992	$68,107,473
1992-1994	$15,749,976

Section 11. KRS 161.597 is amended to read as follows:

(1) A member in active contributing status may purchase any service credit which the member is authorized to purchase by making installment payments in lieu of a lump-sum payment.

(2) To initiate an installment payment plan, a member shall make a written request to the retirement system for an estimate to purchase service credit by making installment payments.

(3) To qualify for installment payments, the member contribution plus interest of eight percent (8%) per annum shall exceed one thousand dollars ($1000).

(4) A member may select the service credit to be purchased by installment payments and that service credit shall be purchased before any other credit may be purchased by installment payments.

(5) Installment payments shall be at least fifty dollars ($50) per month and shall be made for a period of time which is not less than twelve (12) months nor more than sixty (60) months.

(6) Installment payments shall be made on a monthly basis by payroll deduction ***or electronic fund transfer*** and forwarded separately to the Teachers' Retirement System on forms or by computer format not later than fifteen (15) days following the end of each month. The payments shall be considered accumulated contributions and shall not be picked up as provided in KRS 161.560.

(7) A member may elect to terminate payroll deductions at any time and purchase the remaining service credit by lump-sum payment. A member on a leave of absence may make personal installment payments. Termination of employment in a covered position shall terminate ***installment payments***[~~payroll deductions~~]. If the member is later employed by a different employer in a covered position, the member may request a new estimate and reinstate installment payments. A member that misses two (2) consecutive installment payments shall be in default. A member in default shall receive service credit on a pro rata basis for the total amount of contributions made by installment payments. A member in default may not reinstate installment payments for twelve (12) months from the date the member was in default.

(8) If a member dies before completing scheduled installment payments, the named beneficiary of the member's retirement account may pay the remaining balance due by a lump-sum payment within thirty (30) days of the death of the member.

Section 12. KRS 161.605 is amended to read as follows:

(1) Retired members may perform substitute teaching in the public schools for the equivalent of one hundred (100) days in any one (1) school year and receive compensation based on a standard salary schedule adopted by a district for all substitute teachers without reduction in retirement annuities.

(2) A retired member may be employed as a part-time or temporary teacher in the public schools for a period not to exceed the equivalent of one hundred (100) days in any one (1) school year.

(3) Retired members may be employed part-time or temporarily in a nonteaching capacity in the public schools and receive compensation for this employment without reduction in retirement annuities, except that retired members may not be employed in excess of a one hundred (100) day period in any one (1) school year in the same position from which they retired, or a position substantially similar to the one from which they retired, or any position listed in KRS 161.220(4) which requires membership in the retirement system. Positions which generally require certification or graduation from a four (4) year college or university as a condition of employment which are created, or changed to remove the position from coverage under KRS 161.220(4) are also subject to the one hundred (100) day limitation in this subsection. The board of trustees shall determine if employment in a nonteaching position qualifies for an exemption under this subsection.

(4) Members retired from ***an agency***[~~a university~~] listed in KRS 161.220(4)(b) may be employed in a part-time teaching capacity by one (1) of the universities ***participating in the Teachers' Retirement System***, not to exceed the equivalent of twelve (12) teaching hours in any one (1) fiscal year.

(5) Calculation of the number of days for part-time teaching, substitute teaching, or part-time employment in a nonteaching capacity under this section shall not exceed the ratio between a school year and the actual months of retirement for the member during that school year. The board of trustees by administrative regulation may establish fractional equivalents of a day of teaching service.

(6) When a retired member returns to employment as a part-time teacher or in a nonteaching capacity as provided in subsections (2), (3), and (4) of this section, the employer shall ***contribute annually to the retirement system on the compensation paid to the retired member at rates determined by the retirement system actuary that reflect accrued liability for nonuniversity and university members***[~~withhold and remit regular retirement contributions. These contributions shall be maintained in a separate account by the retirement system and shall not be used to increase the annuity of the retiree. Upon request of the retired member at the close of a fiscal year, the retirement system shall return the retiree's contribution with regular interest on funds held beyond one (1) year, but the retired member shall have no claim on any contributions made by the state or employer or to contributions made to the medical insurance fund. Upon death of the retired member, the retirement system shall pay to the retired member's estate or designated beneficiary the amount that would have been refunded to the retired member~~].

Section 13. KRS 161.620 is amended to read as follows:

(1) The retirement allowance, in the form of a life annuity with refundable balance, of a member retiring for service shall be calculated as follows:

(a) For retirements effective July 1, ***1998***[~~1984~~], and thereafter, the annual allowance for each year of service ***shall be two percent (2%) of the final average salary for service performed prior to July 1, 1983, and two and one-half percent (2.5%) of the final average salary for service performed after July 1, 1983, for all members not employed by a state college or university***[~~performed prior to January 1, 1984, shall be two percent (2%) of the final average salary~~]. ***The annual retirement allowance for each year of service performed at state colleges or universities that participate in the Teachers' Retirement System shall be two percent (2%) of the final average salary.*** Actuarial discounts due to age or service credit at retirement may be applied as provided in this section; ***and***

(b)[~~For retirements effective January 1, 1984, and thereafter, the annual allowance shall be determined as set out in subsection (1)(a) of this section, except that the allowance for service performed after January 1, 1984, shall be valued at the annual rate of two and one-half percent (2.5%) of the final average salary for all members not employed by a state university or college. For purposes of implementing the change in the value of a year of service, the board of trustees shall establish, by administrative regulation, the value of services performed during the 1983-84 fiscal year, but in no case shall the value of service performed during the 1983-84 fiscal year exceed two and one quarter percent (2.25%); and~~

~~(c)~~] The retirement allowance of a member at retirement shall not exceed the member's last annual compensation or the member's final average salary, whichever is the greater amount.

(2) Effective July 1, 1990, and annually on July 1 thereafter, the retirement allowance of each retired member and of each beneficiary of a retirement option who has been retired at least ten (10) months shall be increased in the amount of one and one-half percent (1.5%).

(3) Any member qualifying for retirement under a life annuity with refundable balance shall be entitled to receive an annual allowance amounting to not less than ***three hundred***[~~two hundred sixty~~] dollars ***($300)***[~~($260)~~] effective July 1, ***1998***[~~1994~~], ***and not less than three hundred ten dollars ($310) effective July 1, 1999,*** multiplied by the service credit years of the member. These minimums shall apply to the retired members receiving annuity payments and to those members retiring on or subsequent to the effective dates listed in this subsection.[~~The increases provided for in this subsection shall not be implemented unless funding is provided in the 1994-96 biennium budget appropriation.~~]

(4) The minimum retirement allowance provided in this section shall apply in the case of members retired or retiring under an option other than a life annuity with refundable balance in the same proportion to the benefits of the member and his beneficiary or beneficiaries as provided in the duly-adopted option tables at the time of the member's retirement.

(5) Effective July 1, ***1998***[~~1996~~], the monthly allowance of each member retired ***for at least one (1) year***[~~on or before July 1, 1995~~], and each recipient of a retirement option of the retired member shall be increased in an amount not to exceed ***one and one-half***[~~three~~] percent ***(1.5%)***[~~(3%)~~] of the monthly allowance in effect the previous month[~~ where the monthly allowance is less than eight hundred thirty-four dollars ($834) and in an amount not to exceed one percent (1%) of the monthly allowance in effect the previous month where the monthly allowance is eight hundred thirty-four dollars ($834) or more based on an assumed maximum monthly allowance of one thousand two hundred fifty dollars ($1,250)~~]. The level of increase provided for in this subsection shall be determined by the funding provided in the ***1998-2000***[~~1996-98~~] biennium budget appropriation.

(6) Effective July 1, ***1999***[~~1997~~], the monthly allowance of each member retired ***for at least one (1) year***[~~on or before July 1, 1996~~], and each recipient of a retirement option of the retired member shall be increased in an amount not to exceed ***one and one-half***[~~three~~] percent ***(1.5%)***[~~(3%)~~] of the monthly allowance in effect the previous month[~~ where the monthly allowance is less than eight hundred thirty-four dollars ($834)~~]. The level of increase provided for in this subsection shall be determined by the funding provided in the ***1998-2000***[~~1996-98~~] biennium budget appropriation.

(7) Effective July 1, 1990, monthly payments of two hundred dollars ($200) shall be payable for the benefit of an adult child of a member retired for service when the child's mental or physical condition is sufficient to cause dependency on the member at the time of retirement. Eligibility for this payment shall continue for the life of the child or until the time the mental or physical condition creating the dependency no longer exists or the child marries. Benefits under this subsection shall apply to legally adopted survivors provided the proceedings for the adoption were initiated at least one (1) year prior to the death of the member. The board of trustees shall be the sole judge of eligibility or dependency and may require formal application or information relating thereto.

(8) Members of the Teachers' Retirement System shall be subject to the annuity income limitations imposed by Section 415 of the Internal Revenue Service Code as enacted in 1988.

(9) Compensation in excess of the limitations imposed by Section 401(a)(17) of the Internal Revenue Code shall be disregarded. The limitation on compensation for eligible members shall not be less than the amount which was allowed to be taken into account by the retirement system in effect on July 1, 1993. For this purpose, an eligible member is an individual who was a member of the retirement system before the first plan year beginning after December 31, 1995.

Section 14. KRS 161.640 is amended to read as follows:

(1) Retirement annuities shall be payable monthly. The first payment to an annuitant shall be made at the payment date at the end of one (1) full payment period after his retirement and shall consist of one (1) regular monthly payment. Retirement for a member receiving one (1) full year of service credit during a fiscal year, shall be no earlier than July 1 next following the end of such fiscal year.

(2) The board of trustees may enter into agreements with retired members for payroll deductions when it is deemed in the best interest of the retired members and the retirement system.

(3) All new retirees, on or after July 1, 1998, shall receive their monthly annuity checks by electronic fund transfer. All annuity and survivor monthly allowance payments shall be made by electronic fund transfer by December 31, 1998.

Section 15. KRS 161.655 is amended to read as follows:

(1) ***Effective July 1, 1998,*** upon the death of a member retired for service or disability, a death benefit of ***three***[~~two~~] thousand[~~ and eight hundred~~] dollars ***($3,000)***[~~($2,800)~~] shall be paid to the member's estate or to a party designated by the member on a form prescribed by the retirement system. Upon the death of an active contributing member, a death benefit of two thousand dollars ($2,000) shall be paid to the member's estate or to a party designated by the member on a form prescribed by the retirement system. Application for the death benefit shall be made to the Teachers' Retirement System together with acceptable evidence of death and eligibility. The reciprocal provisions of KRS 61.680(2)(a) shall not apply to the payment of death benefits under this section.

(2) Suit or civil action shall not be required for the collection of the death benefit provided for by this section, but nothing in this section shall prevent the maintenance of suit or civil action against the beneficiary or legal representative receiving the death benefit.

Section 16. KRS 161.675 is amended to read as follows:

(1) ***(a)*** The board of trustees ***shall***[~~is empowered to~~] enter into contracts with insurance carriers ***or other health care providers*** for the purpose of providing a [~~broad~~]program of hospital and medical insurance coverage to members ***who are age sixty-five (65) or older and*** retired for service[~~ or disability. Coverage may be extended to the spouses and minor children of retired members, provided the member began participating in the Teachers' Retirement System prior to July 1, 1978. Coverage may also be extended to spouses and to minor children of members in active contributing status who are deceased prior to retirement if the surviving spouse is eligible to receive the member's retirement benefit as provided~~

~~in KRS 161.525 and elects to receive those retirement benefits~~].

(b) The board of trustees may enter into contracts with insurance carriers or other health providers for the purpose of providing a broad program of hospital and medical insurance coverage to members below age sixty-five (65) who are retired for service or disability and to the surviving spouse of deceased members who are eligible to receive the member's retirement benefits as provided in KRS 161.525.

(c) The board of trustees may offer, on a cost basis, coverage of spouses ***and***~~[or]~~ dependents not eligible for regular coverage.

(2) The coverage provided shall be as set forth in the contracts and the administrative regulations of the board of trustees. The board of trustees may change the levels of coverage to meet the changing needs of the annuitants and when necessary to contain the expenses of the insurance program within the funds available to finance the insurance program. The contracts and administrative regulations shall provide for, but not be limited to, hospital room and board, surgical procedures, doctors' care in the hospital, and miscellaneous hospital costs. A retiree whose effective date of retirement is July 1, 1974, and thereafter, must have a minimum of five (5) years creditable Kentucky service in the Teachers' Retirement System or of combined service in the Kentucky Employees Retirement System, of which at least two (2) years was creditable service under KRS 161.510 and 161.607(2), to qualify for the coverage. The board of trustees shall offer coverage to the disabled child of a retired member regardless of the disabled child's age if the retired member pays the entire premium for the disabled child's coverage. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.

(3) The board of trustees is empowered to require the annuitant and the annuitant's spouse to pay a premium charge to assist in the financing of the hospital and medical insurance program. The board of trustees is empowered to pay the expenses for insurance coverage from the medical insurance fund, from the premium charges received from the annuitants and the spouses, and from funds that may be appropriated or allocated by statute. The board may provide insurance coverage by making payment to insurance carriers including health insurance plans that are available to ***active and retired*** state employees ***and active teachers***, institutions, and individuals for services performed, or the board of trustees may elect to provide insurance on a "self-insurance" basis or a combination of these provisions.

(4) Contracts negotiated may include the provision that a stated amount of hospital cost or period of hospitalization shall incur no obligation on the part of the insurance carrier or the retirement system.

(5) The board of trustees is empowered to promulgate administrative regulations to assure efficient operation of the hospital and medical insurance program.

(6) Premiums paid for hospital and medical insurance coverage procured under authority of this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the insurance fund shall not constitute taxable income to an insured recipient.

SECTION 17. A NEW SECTION OF KRS 161.230 TO 161.716 IS CREATED TO READ AS FOLLOWS:

On or after August 1, 1998, a member of the Teachers' Retirement System in active contributing status who has a minimum of twenty (20) years of service credit may purchase up to a maximum of five (5) years of service credit that is not otherwise purchasable under any of the provisions of KRS 161.230 to 161.716 and that meets the definition of nonqualified service as provided in Section 1526 of the Federal Taxpayer Relief Act of 1997. The member shall pay the full actuarial cost of the service credit as determined by the Teachers' Retirement System. The payment shall not be picked up by the employer as described in KRS 161.540(2), and the member's payment shall be credited to the member's contribution account and shall be considered accumulated contributions of the member. Payment by the member may be by lump sum or by installment payments as provided in KRS 161.597.

Section 18. Whereas, retirement annuity adjustments are implemented at the beginning of the fiscal year, an emergency is declared to exist, and the provisions of this Act shall become effective July 1, 1998.

The Committee on Counties and Special Districts reported **HB 279**, **HB 467**, with Committee Substitute attached thereto, **HB 545**, with Committee Amendment attached thereto, **HB 548**, **HB 624**, with Committee Substitute attached thereto, **SB 13**, **SB 43**, with Committee Amendment attached thereto, and **SB 182** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 279, AN ACT relating to public health taxing districts.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 212.755 is amended to read as follows:

(1) If, after the establishment of the public health taxing district as provided for in this section and KRS 212.750, the tax levying authorities of the district, in the opinion of the county or city-county board of health, do not appropriate an amount sufficient to meet the public health needs of the county or the city-county health department or do not appropriate an amount sufficient to meet the standards prescribed by the Cabinet for Human Resources for local health departments,

the county or city-county board of health, acting as the governing body of the taxing district shall, with the approval of the Cabinet for Human Resources, request the fiscal court to impose by resolution a special ad valorem public health tax in ***an***[~~such~~] amount that it deems sufficient, but not in excess of ***ten cents ($0.10)***[~~four cents ($0.04)~~] per one hundred dollars ($100) of full value assessed valuation. The fiscal court may***,*** upon receipt of a duly certified copy of ***the***[~~said~~] resolution, include in the next county ad valorem tax levy ***the***[~~said~~] special public health tax imposed by the county or city-county board of health which shall be in addition to all other county ad valorem taxes. If levied by the fiscal court, ***the***[~~said~~] special public health tax shall be collected in the same manner as are other county ad valorem taxes and turned over to the county or city-county board of health to be used solely for the maintenance and operation of the county, city-county, or district health department and as provided in KRS 212.740.

(2) Public health taxing districts[~~ heretofore~~] organized pursuant to the provisions of KRS 212.720 to 212.740 or organized pursuant to this section and KRS 212.750 shall not be subject to the provisions of the compensating tax rate as defined by KRS 132.010 nor to Chapter 2, 1965 First Extraordinary Session of the General Assembly; provided, however, that no public health taxing district shall impose a rate higher than ***ten cents ($0.10)***[~~four cents ($0.04)~~] per one hundred dollars ($100) of full value assessed valuation.

Section 2. This Act takes effect January 1, 1999.

HB 467, AN ACT relating to the funding of county jails.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 441.206 is amended to read as follows:

(1) For the care and maintenance of prisoners charged with or convicted of violations of state law, each county shall receive a contribution from the State Treasury in an amount equal to that paid to the county pursuant to this section in fiscal year 1983-84 or the amount that should have been paid to the county in fiscal year 1983-84 under the conditions set forth in subsection ***(7)***[~~(5)~~] of this section. Any additional moneys appropriated for county jails***, except moneys appropriated to fulfill the requirements of subsection (2) of this section*** shall be allocated on the basis of a formula comprised of the following factors:

(a) Sixty percent (60%) of the allocation shall be based on the amount of the 1983-84 funding formula each county received, or should have received under the conditions set forth in subsection ***(7)***[~~(5)~~] of this section;

(b) Ten percent (10%) of the allocation shall be based on each county's comparative ranking of median household income in inverse order, as determined by the 1980 federal census of population; and

(c) Thirty percent (30%) of the allocation shall be based on the proportion of each county's age at risk population (18-34) to the state total, as determined by the 1980 federal census of population.

(2) ***In addition to the state contribution established by subsection (1) of this section, each county shall receive the following for the care and maintenance of state prisoners:***

(a) Thirty dollars ($30) per day for minimum security state prisoners. "Minimum security state prisoners" means prisoners who have been classified in writing as minimum security by the Department of Corrections; and

(b) Thirty-five dollars ($35) per day for all other state prisoners. "All other state prisoners" includes, but is not limited to, parole violators, controlled intake prisoners, and inmates who have received final sentences but who have not been classified

(3) (a) Routine medical expenses and the cost of inmate pay for qualified inmates shall be paid from the per diem amount established in paragraphs (a) and (b) of subsection (1) of this section. Nonroutine medical expenses shall be paid by the Commonwealth and shall include:

1. Inpatient medical and surgical procedures;

2. Outpatient surgical procedures;

3. Costs of anesthesia;

4. Costs associated with admission of the inmate to a hospital; and

5. Costs of all medical care, medicine, and other costs related to follow-up or continuing care of an inmate for a condition specified in subparagraphs 1. to 4. of this paragraph, so long as the inmate remains incarcerated.

Nonroutine medical expenses not of an emergency nature shall receive prior approval from the Department of Corrections.

(b) The dollar amounts established in paragraphs (a) and (b) of subsection (2) of this section shall be adjusted annually based on the annual consumer price index, as released by the federal Bureau of Labor Statistics.

(4) Payments of the state contribution for jail operating expenses ***and the per diem payments established under subsection (2) of this section*** shall be made monthly by the Department of Corrections to the county treasurer. The election by a county to close its jail and to contract with another county for the incarceration of prisoners, as permitted by KRS 441.025, shall not affect the state contribution provided for in subsection (1) of this section.

(5)[~~(3)~~] All state funds paid to a county under this section, any funds paid to a county by the United States government, a city, or another county for the incarceration of prisoners and any interest earned on the funds shall be expended on the incarceration of prisoners, as provided in KRS 441.025. Any funds paid under subsection (1) ***or (2)*** of this section and any interest earned on the funds shall be expended on the incarceration of prisoners, in accordance with regulations promulgated pursuant to KRS 441.055, within twelve (12) months of the close of the fiscal year in which the funds were received. Any funds received by a county under subsection (1) ***or (2)*** of this section that are not expended for this purpose shall be returned to the State Treasury.

(6)[~~(4)~~] A county shall not receive less than twenty-four thousand dollars ($24,000) pursuant to ***subsection (1) of*** this section from the State Treasury for the care and maintenance of prisoners charged with or convicted of violations of state law.

(7)[~~(5)~~] If the capacity of a jail was substantially increased during the years 1980 through 1982 due to construction or renovation, and if, a result, the amount paid to the county in fiscal year 1983-84 pursuant to this section and to 1982 Ky. Acts ch. 385, sec. 3, was not representative of the true jail population, then the commissioner of the Department of Corrections may, upon proper documentation by the county, permit an estimate of the current capacity of the jail to be used as a basis for calculating the amount that should have been paid to the county in fiscal year 1983-84. The estimate of current capacity shall be used to calculate payments made pursuant to subsection (1) of this section after July 14, 1992, but shall not be used to recalculate past payments.

The Committee Substitute to **HB 467** is as follows:

AN ACT relating to the funding of county jails.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 441.206 is amended to read as follows:

(1) For the care and maintenance of prisoners charged with or convicted of violations of state law, each county shall receive a contribution from the State Treasury in an amount equal to that paid to the county pursuant to this section in fiscal year 1983-84 or the amount that should have been paid to the county in fiscal year 1983-84 under the conditions set forth in subsection ***(7)***[~~(5)~~] of this section. Any additional moneys appropriated for county jails***, except moneys appropriated to fulfill the requirements of subsection (2) of this section*** shall be allocated on the basis of a formula comprised of the following factors:

(a) Sixty percent (60%) of the allocation shall be based on the amount of the 1983-84 funding formula each county received~~,~~ or should have received under the conditions set forth in subsection ***(7)***[~~(5)~~] of this section;

(b) Ten percent (10%) of the allocation shall be based on each county's comparative ranking of median household income in inverse order, as determined by the 1980 federal census of population; and

(c) Thirty percent (30%) of the allocation shall be based on the proportion of each county's age at risk population (18-34) to the state total, as determined by the 1980 federal census of population.

(2) ***In addition to the state contribution established by subsection (1) of this section, each county shall receive the following for the care and maintenance of state prisoners:***

(a) Thirty dollars ($30) per day for minimum security state prisoners. "Minimum security state prisoners" means prisoners who have been classified in writing as minimum security by the Department of Corrections; and

(b) Thirty-five dollars ($35) per day for all other state prisoners. "All other state prisoners" includes, but is not limited to, parole violators, controlled intake prisoners, and inmates who have received final sentences but who have not been classified.

(3) (a) Routine medical expenses and the cost of inmate pay for qualified inmates shall be paid from the per diem amount established in paragraphs (a) and (b) of subsection (2) of this section. Nonroutine medical expenses shall be paid by the Commonwealth and shall include:

1. Inpatient medical and surgical procedures;

2. Outpatient surgical procedures;

3. Costs of anesthesia;

4. Costs associated with admission of the inmate to a hospital; and

5. Costs of all medical care, medicine, and other costs related to follow-up or continuing care of an inmate for a condition specified in subparagraphs 1. to 4. of this paragraph, so long as the inmate remains incarcerated.

Nonroutine medical expenses not of an emergency nature shall receive prior approval from the Department of Corrections.

(b) The dollar amounts established in paragraphs (a) and (b) of subsection (2) and in subsection (8) of this section shall be adjusted annually based on the annual consumer price index, as released by the federal Bureau of Labor Statistics.

(4) Payments of the state contribution for jail operating expenses ***and the per diem payments established under subsection (2) of this section*** shall be made monthly by the Department of Corrections to the county treasurer. The election by a county to close its jail and to contract with another county for the incarceration of prisoners, as permitted by KRS 441.025, shall not affect the state contribution provided for in subsection (1) of this section.

(5)~~[(3)]~~ All state funds paid to a county under this section, any funds paid to a county by the United States government, a city, or another county for the incarceration of prisoners and any interest earned on the funds shall be expended on the incarceration of prisoners, as provided in KRS 441.025. Any funds paid under subsection (1) ***or (2)*** of this section and any interest earned on the funds shall be expended on the incarceration of prisoners, in accordance with regulations promulgated pursuant to KRS 441.055, within twelve (12) months of the close of the fiscal year in which the funds were received. Any funds received by a county under subsection (1) ***or (2)*** of this section that are not expended for this purpose shall be returned to the State Treasury.

(6)~~[(4)]~~ A county shall not receive less than twenty-four thousand dollars ($24,000) pursuant to ***subsection (1) of*** this section from the State Treasury for the care and maintenance of prisoners charged with or convicted of violations of state law.

(7)~~[(5)]~~ If the capacity of a jail was substantially increased during the years 1980 through 1982 due to construction or renovation, and if, a result, the amount paid to the county in fiscal year 1983-84 pursuant to this section and to 1982 Ky. Acts ch. 385, sec. 3, was not representative of the true jail population, then the commissioner of the Department of Corrections may, upon proper documentation by the county, permit an estimate of the current capacity of the jail to be used as a basis for calculating the amount that should have been paid to the county in fiscal year 1983-84. The estimate of current capacity shall be used to calculate payments made pursuant to subsection (1) of this section after July 14, 1992, but shall not be used to recalculate past payments.

(8) No county shall charge another county a per diem in excess of twenty-five dollars ($25) for housing a pretrial inmate or a sentenced misdemeanor county inmate.

HB 545, AN ACT relating to utilities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 278.210 is amended to read as follows:

(1) The commission may provide instruments for, and carry on, the examination and testing of any meter or appliance used to measure the product or service of any utility, and the examination and testing of any instrument used by a utility to test the accuracy of any meter or appliance used to measure its products or services.

(2) Any patron of a utility may, upon request and payment of the fees fixed by the commission, have a test made of the meter or appliance by which his use of the products or services of the utility is measured.

(3) The commission may establish reasonable fees for testing such meters and appliances at the request of a patron of a utility. If the appliance is found to be commercially defective or inaccurate to the extent of more than two percent (2%) to the disadvantage of the patron, the fees shall be repaid to the patron and paid by the utility.

(4) If a utility demonstrates through sample testing that no significant number of its meters over-register above the limits set out in subsection (3) of this section, the meter testing frequency shall be that which is determined by the utility to be cost effective. This determination by the utility shall be based on established scientific, engineering, and economic methods and shall be documented in an application properly filed with the commission.

The Committee Amendment No. 1 to **HB 545** is as follows:

On page 1, line 14 after the words "***that no***" by inserting the word "***statistically***".

HB 548, AN ACT relating to joint sewer agencies.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 76.231 is amended to read as follows:

(1) *As* an alternative to establishing a metropolitan sewer district pursuant to KRS 76.010, any city of the second class together with the county in which it is located, may jointly establish a sewer agency for the purpose of providing sewer and drainage facilities within the city and the county.

(2) A joint sewer agency shall be established upon the enactment of identical ordinances establishing and setting out the powers of the agency by both the legislative body of the city and the fiscal court of the county.

(3) All the powers granted a metropolitan sewer district in cities of the first class by KRS 76.010 to 76.279 may be granted by ordinance to the sewer agency except that ***these***[~~such~~] powers may be restricted or qualified in order to conform to the local needs of the county and the city.

(4) The legislative body of the city and the fiscal court of the county shall establish a schedule of rates, rentals and charges to be collected from all real property served by the facilities of the sewer agency in the manner provided by KRS 76.090. If for whatever reason the city and county cannot agree to amendments to a rate schedule, the current schedule shall remain in effect until such time as an agreement can be reached.

(5) ***For purposes of establishing a schedule of rates, rentals, and charges to be collected, the legislative body of the city and the fiscal court of the county may prescribe by joint ordinance for the creation of a rate adjustment board that shall be comprised of the members of both legislative bodies, sitting as a single body. Upon the creation of a rate adjustment board, a simple majority of the combined membership of the rate adjustment board shall be required to establish rates, rentals, and charges to be collected.***

(6) The joint sewer agency shall be administered as a separate legal entity or by a jointly appointed administrator or joint board as set out in the establishing ordinances.

(7)[~~(6)~~] The joint sewer agency may be dissolved only by a joint action of the legislative body of the city and the fiscal court of the county. The establishing ordinance may be amended in the same manner as originally enacted.

(8)[~~(7)~~] The legislative body of any city of the third to sixth class may by ordinance elect to be within the jurisdiction of a joint sewer agency established pursuant to this section.

HB 624, AN ACT relating to a compact between a city of the first class and a county containing a city of the first class and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 79.310 is amended to read as follows:

(1) Within one hundred and twenty (120) days of July 15, 1986, there shall be entered into by each city of the first class and a county containing such city of the first class a cooperative compact pursuant to this section and KRS 79.315 to 79.330. Such compact shall provide a framework for cooperation between the city and the county and shall contain such provisions as are required by this section and KRS 79.315 to 79.330 and may contain any other provisions which are not in conflict with this section and KRS 79.315 to 79.330 as may be agreed upon by the city and the county. The compact shall be executed by the mayor of the city of the first class with the consent of the legislative body of the city and the county judge/executive of the county with the consent of the fiscal court.

(2) The compact entered into pursuant to subsection (1) of this section shall be for a period of twelve (12) years, except that if any mandatory provision of the compact or 1986 Acts Chapter 77 is adjudicated invalid or if any provision of this section or KRS 79.315 to 79.330 is amended or repealed by subsequent act of the General Assembly, the compact shall immediately terminate.

(3) ***Upon the expiration or termination of the cooperative compact entered into according to subsection (1) of this section, a city of the first class and a county containing a city of the first class may renew the cooperative compact according to this section and KRS 79.315 to 79.330. Any cooperative compact renewed in accordance with this subsection shall be for a term of ten (10) years, and shall provide a framework for cooperation between the city and the county, shall contain the provisions as required by this section and KRS 79.315 to 79.330, and may contain any other provisions which are not in conflict with this section and KRS 79.315 to 79.330 as may be agreed to by the city and the county. To become effective, the compact shall be executed by the mayor of the city of the first class with approval by the legislative body of the city and the county judge/executive of the county containing a city of the first class, with the approval by the fiscal court.***

(4) Any compact entered into pursuant to this section and KRS 79.315 to 79.330 may be amended by the city and the county, provided that no such amendment shall conflict with the provisions of this section and KRS 79.315 to 79.330.

Section 2. KRS 81A.005 is amended to read as follows:

(1) When a city of the first class, which has in effect a compact with the county pursuant to KRS 79.310 to 79.330, desires to annex unincorporated territory, the legislative body of the city shall enact an ordinance stating the intention of the city to

annex. If an ordinance proposing to annex unincorporated territory has been enacted prior to July 15, 1986, and the ordinance annexing the territory to the city has not been enacted, then in order for the city to annex the territory during the time the compact is in effect, the legislative body of the city shall reenact the ordinance only including the same territory as the original and stating the intention of the city to annex. Such ordinances shall accurately define the boundary of the unincorporated territory proposed to be annexed, and declare it desirable to annex the unincorporated territory.

(2) The mayor of the city shall deliver a certified copy of the ordinance to the county clerk of the county in which the territory proposed to be annexed is located, who shall have prepared to be placed before the voters in each precinct embraced in whole or in part within the territory proposed to be annexed the question: "Are you in favor of being annexed to the city of ....?" If only a part of any precinct is embraced within the territory proposed to be annexed only persons who reside within the territory proposed to be annexed shall be permitted to vote. The question shall be submitted to the voters at the next regular election if the ordinance is filed with the county clerk not later than the second Tuesday in August preceding the regular election. The clerk shall cause the sheriff or sheriffs to deliver to the election officers in each precinct in the appropriate counties copies of the ordinance proposing to annex:

(a) If more than fifty percent (50%) of those voting on the question approve of the annexation, the legislative body may proceed to annex the territory. Within sixty (60) days of the certification of the election results in which more than fifty percent (50%) of those voting in the election approved the annexation, the legislative body of the city may enact an ordinance annexing to the city the territory described in the ordinance. Upon enactment of the ordinance the territory shall become part of the city for all purposes; or

(b) If fifty percent (50%) or less of those voting on the question approve the annexation, the ordinance proposing annexation shall become ineffectual for any purpose, subject to the provisions of KRS 81A.460.

(3) Once the ordinance stating the intention of the city to annex an area has been given its first reading or enacted by the city legislative body, no part of such area may be incorporated or be annexed by another city, unless such incorporation or annexation is pending at the time the ordinance is given its first reading, until the annexation proposal by the city of the first class is defeated pursuant to subsection (2) of this section or until the ordinance is withdrawn, repealed, or amended as to the area to be annexed ***according to subsection (4) of this section***. This subsection shall apply to any proposing ordinance which has had a first reading or has been enacted as of January 1, 1986. Notwithstanding anything to the contrary in this subsection, any annexation by a city other than the first class or incorporation prior to January 1, 1986, shall not be nullified by the application of KRS 79.310 to 79.330; provided, however, that any city of the first class shall retain any legal annexation priorities which existed on January 1, 1986, to the territory so annexed or incorporated. All pending litigation challenging annexation of a specific unincorporated territory by the city of the first class arising from ordinances proposing to annex such territory enacted prior to July 15, 1986, shall, at the discretion of the court, be remanded on the docket of the appropriate court without prejudice during the term of the compact.

(4) The legislative body of the city may elect to amend the description of the territory proposed to be annexed under an ordinance stating the intention of the city to annex an area as described in subsection (1) of this section at any time after the effective date of this Act and prior to September 30, 1998, for the purpose of excluding a specific area or areas from the ordinance in order to permit these areas to be annexed by an abutting city located in the county according to KRS 81A. 412. Amendment of the ordinance according to this subsection shall not affect the priority granted this annexation proposal according to subsection (3) of this section.

SECTION 3. A NEW SECTION OF KRS CHAPTER 79 IS CREATED TO READ AS FOLLOWS:

If any provision of Sections 1 and 2 of this Act or KRS 79.315 to 79.330 is held to be unconstitutional or invalid, that provision shall not be severable but Sections 1 and 2 of this Act and KRS 79.315 to 79.330 shall be invalidated, because it is the intention of the General Assembly that the provisions of Sections 1 and 2 of this Act and KRS 79.315 to 79.330 are so essentially and inseparably connected with and dependent upon every other provision that Sections 1 and 2 of this Act and KRS 79.315 to 79.330 would have not been enacted without the inclusion of every provision in Sections 1 and 2 of this Act and in KRS 79.315 to 79.330.

Section 4. Whereas the compact entered into pursuant to Section 1 of this Act terminates on June 30, 1998, an emergency is declared to exist and this Act takes effect on June 1, 1998.

The Committee Substitute to **HB 624** is as follows:

AN ACT relating to a compact between a city of the first class and a county containing a city of the first class and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 79.310 is amended to read as follows:

(1) Within one hundred and twenty (120) days of July 15, 1986, there shall be entered into by each city of the first class and a county containing such city of the first class a cooperative compact pursuant to this section and KRS 79.315 to 79.330.

Such compact shall provide a framework for cooperation between the city and the county and shall contain such provisions as are required by this section and KRS 79.315 to 79.330 and may contain any other provisions which are not in conflict with this section and KRS 79.315 to 79.330 as may be agreed upon by the city and the county. The compact shall be executed by the mayor of the city of the first class with the consent of the legislative body of the city and the county judge/executive of the county with the consent of the fiscal court.

(2) The compact entered into pursuant to subsection (1) of this section shall be for a period of twelve (12) years, except that if any mandatory provision of the compact or 1986 Acts Chapter 77 is adjudicated invalid or if any provision of this section or KRS 79.315 to 79.330 is amended or repealed by subsequent act of the General Assembly, the compact shall immediately terminate.

(3) *Upon the expiration or termination of the cooperative compact entered into according to subsection (1) of this section, a city of the first class and a county containing a city of the first class may renew the cooperative compact according to this section and KRS 79.315 to 79.330. Any cooperative compact renewed in accordance with this subsection shall be for a term of ten (10) years, and shall provide a framework for cooperation between the city and the county, shall contain the provisions as required by this section and KRS 79.315 to 79.330, and may contain any other provisions which are not in conflict with this section and KRS 79.315 to 79.330 as may be agreed to by the city and the county. To become effective, the compact shall be executed by the mayor of the city of the first class with approval by the legislative body of the city and the county judge/executive of the county containing a city of the first class, with the approval by the fiscal court.*

(4) Any compact entered into pursuant to this section and KRS 79.315 to 79.330 may be amended by the city and the county, provided that no such amendment shall conflict with the provisions of this section and KRS 79.315 to 79.330.

Section 2. KRS 81A.005 is amended to read as follows:

(1) When a city of the first class, which has in effect a compact with the county pursuant to KRS 79.310 to 79.330, desires to annex unincorporated territory, the legislative body of the city shall enact an ordinance stating the intention of the city to annex. If an ordinance proposing to annex unincorporated territory has been enacted prior to July 15, 1986, and the ordinance annexing the territory to the city has not been enacted, then in order for the city to annex the territory during the time the compact is in effect, the legislative body of the city shall reenact the ordinance only including the same territory as the original and stating the intention of the city to annex. Such ordinances shall accurately define the boundary of the unincorporated territory proposed to be annexed, and declare it desirable to annex the unincorporated territory.

(2) The mayor of the city shall deliver a certified copy of the ordinance to the county clerk of the county in which the territory proposed to be annexed is located, who shall have prepared to be placed before the voters in each precinct embraced in whole or in part within the territory proposed to be annexed the question: "Are you in favor of being annexed to the city of ....?" If only a part of any precinct is embraced within the territory proposed to be annexed only persons who reside within the territory proposed to be annexed shall be permitted to vote. The question shall be submitted to the voters at the next regular election if the ordinance is filed with the county clerk not later than the second Tuesday in August preceding the regular election. The clerk shall cause the sheriff or sheriffs to deliver to the election officers in each precinct in the appropriate counties copies of the ordinance proposing to annex:

(a) If more than fifty percent (50%) of those voting on the question approve of the annexation, the legislative body may proceed to annex the territory. Within sixty (60) days of the certification of the election results in which more than fifty percent (50%) of those voting in the election approved the annexation, the legislative body of the city may enact an ordinance annexing to the city the territory described in the ordinance. Upon enactment of the ordinance the territory shall become part of the city for all purposes; or

(b) If fifty percent (50%) or less of those voting on the question approve the annexation, the ordinance proposing annexation shall become ineffectual for any purpose, subject to the provisions of KRS 81A.460.

(3) Once the ordinance stating the intention of the city to annex an area has been given its first reading or enacted by the city legislative body, no part of such area may be incorporated or be annexed by another city, unless such incorporation or annexation is pending at the time the ordinance is given its first reading, until the annexation proposal by the city of the first class is defeated pursuant to subsection (2) of this section or until the ordinance is withdrawn, repealed*,* or amended as to the area to be annexed *according to subsection (4) of this section*. This subsection shall apply to any proposing ordinance which has had a first reading or has been enacted as of January 1, 1986. Notwithstanding anything to the contrary in this subsection, any annexation by a city other than the first class or incorporation prior to January 1, 1986, shall not be nullified by the application of KRS 79.310 to 79.330; provided, however, that any city of the first class shall retain any legal annexation priorities which existed on January 1, 1986, to the territory so annexed or incorporated. All pending litigation challenging annexation of a specific unincorporated territory by the city of the first class arising from ordinances proposing to annex such territory enacted prior to July 15, 1986, shall, at the discretion of the court, be remanded on the docket of the appropriate court without prejudice during the term of the compact.

(4) The legislative body of the city may elect to amend the description of the territory proposed to be annexed under an

ordinance stating the intention of the city to annex an area as described in subsection (1) of this section at any time after the effective date of this Act and prior to September 30, 1998, for the purpose of excluding a specific area or areas from the ordinance in order to permit these areas to be annexed by an abutting city located in the county according to KRS 81A. 412. Amendment of the ordinance according to this subsection shall not affect the priority granted this annexation proposal according to subsection (3) of this section.

SECTION 3. A NEW SECTION OF KRS CHAPTER 79 IS CREATED TO READ AS FOLLOWS:

If any provision of Sections 1 and 2 of this Act or KRS 79.315 to 79.330 is held to be unconstitutional or invalid, that provision shall not be severable but Sections 1 and 2 of this Act and KRS 79.315 to 79.330 shall be invalidated, because it is the intention of the General Assembly that the provisions of Sections 1 and 2 of this Act and KRS 79.315 to 79.330 are so essentially and inseparably connected with and dependent upon every other provision that Sections 1 and 2 of this Act and KRS 79.315 to 79.330 would have not been enacted without the inclusion of every provision in Sections 1 and 2 of this Act and in KRS 79.315 to 79.330.

Section 4. Whereas the expiration of cooperative compacts in counties containing a city of the first class are to expire in 1998; and whereas, this expiration and the possible renewal of any cooperative compact should lend itself to scrutiny by the citizens of those counties in order to assure the provision of the most efficient use of governmental resources within each of those counties, there is created a Task Force on Local Government for each county containing a city of the first class to review and study local government in those counties and ways to promote efficiency, avoid duplication, and advance sound, economical management and practices relating to the governmental resources of the citizens of those counties.

(1) The task force as a part of its work, shall include, but not be limited to, the review and study of any cooperative compact adopted in a county containing a city of the first class. The task force shall also make findings, and, if necessary, issue any necessary legislative recommendations relating to the most efficient structure and function of local governments in these counties.

(2) The membership of each task force shall be as follows:

    (a) All legislators representing the citizens of each county with a city of the first class;

    (b) The mayor and all members of the board of alderman of each city of the first class;

    (c) The county judge/executive and all other members of the fiscal court of each county containing a city of the first class;

    (d) The sheriff in each county containing a city of the first class;

    (e) The county clerk in each county containing a city of the first class; and

    (f) Six (6) members appointed by a group representing a consortium of cities in a county containing a city of the first class, of which one (1) member shall represent a city of the second class, one (1) member shall represent a city of the third class, one (1) member shall represent a city of the fourth class, one (1) member shall represent a city of the fifth class, and one (1) member shall represent a city of the sixth class. Where a particular class of cities does not exist in a county with a city of the first class, or the number of members representing those classes of cities does not equal six (6), that remaining number of representatives shall be chosen at large by the group representing the consortium of cities.

(3) Each task force shall begin its activities no later than June 1, 1998, and shall report their findings and recommendations to the Legislative Research Commission and the members of the Kentucky General Assembly no later than August 1, 1999.

(4) Each task force shall be jointly chaired by the chair and vice chairs of the legislative delegation in each county containing a city of the first class.

(5) Task force members, other than members of the General Assembly, shall be reimbursed for necessary expenses for travel to meetings outside of each county containing a city of the first class. The members of the General Assembly shall be paid their regular per diem allotment and necessary travel expenses for their attendance the same as for regular interim committee meetings.

(6) Staff services to be utilized in completing this study are estimated to cost fifty thousand dollars ($50,000). These staff services shall be provided from the regular Commission budget and are subject to the limitations and other research responsibilities of the Commission.

Section 5. Whereas the compacts entered into pursuant to Section 1 of this Act terminate on June 30, 1998, an emergency is declared to exist and this Act takes effect on June 1, 1998.

SB 13, AN ACT relating to the Kentucky Law Enforcement Foundation Program fund and the Firefighters Foundation Program fund.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 15.420 is amended to read as follows:

As used in KRS 15.410 to 15.510, unless the context otherwise requires:

(1) "Local unit of government" means any city or county,~~[or any]~~ combination of cities and counties, ***state or public university, or county sheriff's office*** of the Commonwealth.

(2) "Police officer" means a full-time member of a lawfully organized police department of county or city government***,*** ***sheriff, or full-time deputy sheriff appointed pursuant to KRS 70.030, or state or public university police officer*** who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of the state, but does not include Kentucky State Police, any ***sheriff who earns the maximum constitutional salary for his office, any special***~~[elected officer, sheriff,]~~ deputy sheriff ***appointed pursuant to KRS 70.045***, ***any*** constable, deputy constable, district detective, deputy district detective, special local peace officer, auxiliary police officer or any other peace officer not specifically authorized in KRS 15.410 to 15.510.

(3) "Council" means the Kentucky Law Enforcement Council.

(4) "Validated job task analysis" means the core job description which describes the minimum entry level requirements, qualifications, and training requirements for peace officers in the Commonwealth which is based upon an actual survey and study of police officer duties and responsibilities conducted by an entity recognized by the Kentucky Law Enforcement Council as being competent to conduct such a study.

Section 2. KRS 15.440 is amended to read as follows:

Each local unit of government which meets the following requirements shall be eligible to share in the distribution of funds from the Law Enforcement Foundation Program fund:

(1) Employs one (1) or more police officers;

(2) Pays every police officer ***at least the***~~[a]~~ minimum ***federal wage***~~[annual salary of four thousand three hundred fifty dollars ($4,350)]~~;

(3) Maintains the minimum educational requirement of a high school degree, or its equivalent as determined by the Kentucky Law Enforcement Council, for employment of police officers on or after July 1, 1972***, and for all sheriffs appointed or elected on or after the effective date of this Act, and all deputy sheriffs, and state or public university police officers employed after the effective date of this Act***; provided, however, that all police officers employed prior to July 1, 1972, shall be deemed to have met the requirements of this subsection***, and that all sheriffs serving in office on the effective date of this Act, all deputy sheriffs, and state or public university police, employed prior to the effective date of this Act shall be deemed to have met the requirements of this subsection***;

(4) Requires all police officers employed on or after July 1, 1972, ***and all sheriffs appointed or elected on or after the effective date of this Act, and deputy sheriffs, and state or public university police officers employed on or after the effective date of this Act*** to successfully complete a basic training course of at least four hundred (400) hours' duration within one year of the date of employment at a school certified or recognized by the Kentucky Law Enforcement Council***. All sheriffs serving in office on the effective date of this Act, all deputy sheriffs, and state or public university police, employed prior to the effective date of this Act shall be deemed to have met the requirements of this subsection. The council may, by the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A, set the number of hours for basic training at a number higher than four hundred (400) hours based upon a training curriculum approved by the Kentucky Law Enforcement Council as determined by a validated job task analysis***~~[; notwithstanding the authority of any department or administrative agency of state government to promulgate administrative regulations, no such department or administrative agency may, by administrative action, increase the minimum number of hours for a basic training course specified in this subsection]~~;

(5) Requires all police officers, whether originally employed before or after July 1, 1972, ***and all sheriffs appointed or elected before, on, or after the effective date of this Act, and all deputy sheriffs, and state or public university police officers employed before, on, or after the effective date of this Act,*** to successfully complete each calendar year an in-service training course, appropriate to the officer's rank and responsibility and the size and location of his department, of at least forty (40) hours' duration at a school certified or recognized by the Kentucky Law Enforcement Council;

(6) Requires compliance with all provisions of law applicable to local police, ***state or public university police, or sheriffs and their deputies,*** including transmission of data to the centralized criminal history record information system as required by KRS 17.150;

(7) Requires compliance with all reasonable rules and regulations, appropriate to the size and location of the local police department, ***state or pubic university police department, or sheriff's office,*** issued by the Justice Cabinet to facilitate the administration of the fund and further the purposes of KRS 15.410 to 15.510;

(8) Provided, however, that no local unit of government which meets the criteria of this section shall be eligible to continue sharing in the distribution of funds from the Law Enforcement Foundation Program fund unless the local police department***, state or public university police department, or sheriff's office*** actually begins and continues to comply

with the requirements of this section; provided, further, that no local unit shall be eligible to share in the distribution of funds from the Law Enforcement Foundation Program fund until the local police department***, state or public university police department, or sheriff's office*** has substantially complied with subsections (6) and (7) of this section.

Section 3. KRS 15.460 is amended to read as follows:

(1) Beginning ***the effective date of this Act***[~~July 1, 1982~~], an eligible local unit of government shall be entitled to receive annually a supplement of two thousand ***seven***[~~five~~] hundred ***fifty*** dollars ***($2,750)***[~~($2,500)~~] for each qualified police officer it employs***, and beginning on July 1, 1999, an annual supplement of three thousand dollars ($3,000) for each qualified police officer it employs***, plus an amount equal to the required employer's contribution on the supplement to the defined benefit pension plan to which the officer belongs, but no more than the required employer's contribution to the County Employees Retirement System hazardous duty category. In the case of County Employees Retirement System membership, the pension contribution on the supplement shall be paid whether the officer enters the system under hazardous duty coverage or nonhazardous coverage. The local unit of government shall pay the amount received for retirement coverage to the appropriate retirement system to cover the required employer contribution on the pay supplement. Should the foundation program funds be insufficient to pay employer contributions to the system, then the total amount available for pension payments shall be prorated to each eligible government so that each receives the same percentage of required pension costs attributable to the cash salary supplement.

(2) Each qualified police officer, whose local government receives a supplement pursuant to subsection (1) of this section, shall be paid by the local government the supplement which his qualifications brought to the local government. The supplement paid each police officer shall be in addition to his regular salary.

(3) (a) Each qualified sheriff who receives the maximum salary allowed by Section 246 of the Constitution of Kentucky and KRS 64.527 shall not receive the supplement.

(b) Each qualified sheriff who does not receive the maximum salary allowed by Section 246 of the Kentucky Constitution and KRS 64.527, exclusive of the expense allowance provided by KRS 70.170, shall upon final settlement with the fiscal court pursuant to KRS 134.310, receive that portion of the supplement that will not cause his compensation to exceed the maximum salary.

(c) Each qualified sheriff who seeks to participate in the fund shall forward a copy of the final settlement prepared pursuant to KRS 134.310 to the fund. The fund shall be reimbursed by the sheriff if an audit of the final settlement conducted pursuant to KRS 134.310 reflects that the sheriff received all or a portion of the supplement in violation of this section. A sheriff who fails to provide a copy of the final settlement to the fund or to reimburse the fund after correction by audit, if required, shall not be qualified to participate in the fund for a period of two (2) years.

(d) Each qualified deputy sheriff shall receive the supplement from the sheriff if the sheriff administers his own budget or from the county treasurer if the sheriff pools his fees. The failure of a sheriff to comply with the provisions of this section shall not affect the qualification of his deputies for participation in the fund.

Section 4. KRS 95A.250 is amended to read as follows:

(1) Beginning July 1, 1982, an eligible local government shall be entitled to receive annually a supplement of two thousand ***seven***[~~five~~] hundred ***fifty*** dollars ***($2,750)***[~~($2,500)~~] for each qualified professional firefighter it employs, ***and beginning on July 1, 1999, an annual supplement of three thousand dollars ($3,000) for each qualified professional firefighter it employs,*** plus an amount equal to the required employer's contribution on the supplement to the defined benefit pension plan, or to a plan qualified under Section 401(a) or Section 457 of the Internal Revenue Code of 1954 as amended, provided that the employer's contribution on the supplement to any of these plans shall not exceed that amount which is required of employers under the County Employees Retirement System pursuant to KRS Chapter 78, to which the officer belongs, but no more than the required employer's contribution to the County Employees Retirement System hazardous duty category. In the case of County Employees Retirement System membership, the pension contribution on the supplement shall be paid whether the officer enters the system under hazardous duty coverage or nonhazardous coverage. The local unit of government shall pay the amount received for retirement coverage to the appropriate retirement system to cover the required employer contribution on the pay supplement. Should the foundation program funds be insufficient to pay employer contributions to the system, then the total amount available for pension payments shall be prorated to each eligible government so that each receives the same percentage of required pension costs attributable to the cash salary supplement.

(2) Each qualified professional firefighter, whose local government receives a supplement pursuant to subsection (1) of this section, shall be paid by that local government the supplement which his qualifications brought to the local government. The supplement paid each qualified firefighter shall be in addition to his regular salary.

Section 5. KRS 95A.262 is amended to read as follows:

(1) The Commission on Fire Protection Personnel Standards and Education shall, in cooperation with the Cabinet for Human Resources, develop and implement a continuing program to inoculate every paid and volunteer firefighter in Kentucky

against hepatitis B. The program shall be funded from revenues allocated to the Firefighters Foundation Program fund pursuant to KRS 136.392 and 42.190. Any fire department which has inoculated its personnel during the period of July 1, 1991 to July 14, 1992, shall be reimbursed from these revenues for its costs incurred up to the amount allowed by the Cabinet for Human Resources for hepatitis B inoculations.

(2) Except as provided in subsection (3) of this section and KRS 61.316, the Commission on Fire Protection Personnel Standards and Education shall allot on an annual basis a share of the funds accruing to and appropriated for volunteer fire department aid to volunteer fire departments in cities of all classes, fire protection districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083, and volunteer fire departments created as nonprofit corporations pursuant to KRS Chapter 273. The commission shall allot ***eight***[~~five~~] thousand dollars ***($8,000)***[~~($5,000)~~] annually to each qualifying department***, and beginning on July 1 of 1999, the commission shall allot eight thousand dollars ($8,000) annually to each qualifying department***. Any qualifying department which fails to participate satisfactorily in the Kentucky fire incident reporting system as described in KRS 304.13-380 shall forfeit annually five hundred dollars ($500) of its allotment. The commission shall recommend to the commissioner of the Department of Housing, Buildings and Construction the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A to define satisfactory participation in the Kentucky fire incident reporting system. Administrative regulations for determining qualifications shall be based on the number of both paid firefighters and volunteer firemen within a volunteer fire department, the amount of equipment, housing facilities available, and such other matters or standards as will best effect the purposes of the volunteer fire department aid law. A qualifying department shall include at least twelve (12) firefighters, a chief, and at least one (1) operational fire apparatus or one (1) on order. Fifty percent (50%) of the firefighters shall have completed at least one half (1/2) of one hundred fifty (150) training hours toward certification within the first six (6) months of the first year of the department's application for certification, and there shall be a plan to complete the one hundred fifty (150) training hours within the second year. These personnel, equipment, and training requirements shall not be made more stringent by the promulgation of administrative regulations. No allotment shall exceed the total value of the funds, equipment, lands, and buildings made available to the local fire units from any source whatever for the year in which the allotment is made. A portion of the funds provided for above may be used to purchase group or blanket health insurance and shall be used to ***purchase*** workers' compensation insurance, and the remaining funds shall be distributed as set forth in this section.

(3) There shall be allotted two hundred thousand dollars ($200,000) of the insurance premium surcharge proceeds accruing to the Firefighters Foundation Program fund that shall be allocated each fiscal year of the biennium to the firefighters training center fund, which is hereby created and established, for the purposes of constructing new or upgrading existing training centers for firefighters. If any moneys in the training center fund remain uncommitted, unobligated, or unexpended at the close of the first fiscal year of the biennium, then such moneys shall be carried forward to the second fiscal year of the biennium, and shall be reallocated to and for the use of the training center fund, in addition to the second fiscal year's allocation of two hundred thousand dollars ($200,000). Prior to funding any project pursuant to this subsection, a proposed project shall be approved by the Commission on Fire Protection Personnel Standards and Education as provided in subsection (4) of this section and shall comply with state laws applicable to capital construction projects.

(4) Applications for funding low-interest loans and firefighters training centers shall be submitted to the Commission on Fire Protection Personnel Standards and Education for their recommendation, approval, disapproval, or modification. The commission shall review applications periodically, and shall, subject to funds available, recommend which applications shall be funded and at what levels, together with any terms and conditions the commission deems necessary.

(5) Any department or entity eligible for and receiving funding pursuant to this section shall have a minimum of fifty percent (50%) of its personnel certified as recognized by the Commission on Fire Protection Personnel Standards and Education.

(6) Upon the written request of any department, the Commission on Fire Protection Personnel Standards and Education shall make available a certified training program in a county of which such department is located.

(7) The amount of reimbursement for any given year for costs incurred by the department for administering these funds, including, but not limited to the expenses and costs of commission operations, shall be determined by the commission and shall not exceed five percent (5%) of the total amount of moneys accruing to the Firefighters Foundation Program fund which are allotted for the purposes specified in this section during any fiscal year.

(8) The commission shall withhold from the general distribution of funds under subsection (2) of this section an amount which it deems sufficient to reimburse volunteer fire departments for equipment lost or damaged beyond repair due to hazardous material incidents.

(9) Moneys withheld pursuant to subsection (8) of this section shall be distributed only under the following terms and conditions:

(a) A volunteer fire department has lost or damaged beyond repair items of personal protective clothing or equipment due to that equipment having been lost or damaged as a result of an incident in which a hazardous material (as defined in any state or federal statute or regulation) was the causative agent of the loss;

(b) The volunteer fire department has made application in writing to the commission for reimbursement in a manner approved by the commission and the loss and the circumstances thereof have been verified by the commission;

(c) The loss of or damage to the equipment has not been reimbursed by the person responsible for the hazardous materials incident or by any other person;

(d) The commission has determined that the volunteer fire department does not have the fiscal resources to replace the equipment;

(e) The commission has determined that the equipment sought to be replaced is immediately necessary to protect the lives of the volunteer firefighters of the fire department;

(f) The fire department has agreed in writing to subrogate all claims for and rights to reimbursement for the lost or damaged equipment to the Commonwealth to the extent that the Commonwealth provides reimbursement to the department; and

(g) The department has shown to the satisfaction of the commission that it has made reasonable attempts to secure reimbursement for its losses from the person responsible for the hazardous materials incident and has been unsuccessful in the effort.

(10) If a volunteer fire department has met all of the requirements of subsection (9) of this section, the commission may authorize a reimbursement of equipment losses not exceeding ten thousand dollars ($10,000) or the actual amount of the loss, whichever is less.

(11) Moneys which have been withheld during any fiscal year which remain unexpended at the end of the fiscal year shall be distributed in the normal manner required by subsection (2) of this section during the following fiscal year.

(12) No volunteer fire department may receive funding for equipment losses more than once during any fiscal year.

(13) The commission shall make reasonable efforts to secure reimbursement from the responsible party for any moneys awarded to a fire department pursuant to this section.

(14) There shall be allotted each year of the 1992-93 biennium one million dollars ($1,000,000), and each year of the 1994-95, 1996-97, 1998-99, and 2000-01 bienniums one million dollars ($1,000,000) of the insurance premium surcharge proceeds accruing to the Firefighters Foundation Program fund for the purpose of creating a revolving low-interest loan fund, which shall thereafter be self-sufficient and derive its operating revenues from principal and interest payments. The commission, in accordance with the procedures in subsection (4) of this section, may make low-interest loans, and the interest thereon shall not exceed three percent (3%) annually or the amount needed to sustain operating expenses of the loan fund, whichever is less, to volunteer fire departments for the purposes of major equipment purchases and facility construction. Loans shall be made to departments which achieve the training standards necessary to qualify for volunteer fire department aid allotted pursuant to subsection (2) of this section, and which do not have other sources of funds at rates which are favorable given their financial resources. The proceeds of loan payments shall be returned to the loan fund for the purpose of providing future loans. If a department does not make scheduled loan payments, the commission may withhold any grants payable to the department pursuant to subsection (2) of this section until the department is current on its payments. Money in the low-interest loan fund shall be used only for the purposes specified in this subsection. Any funds remaining in the fund at the end of a fiscal year shall be carried forward to the next fiscal year for the purposes of the fund.

Section 6. KRS 42.190 is amended to read as follows:

(1) On June 1, 1982, and then on or before the first day of each December, March, June, and September thereafter, the cabinet shall request in writing of the administrator of the Firefighters Foundation Program fund, which is established by KRS 95A.220, and of the administrator of the Law Enforcement Foundation Program fund, which is established by KRS 15.430, cost projections of their respective funds for the next quarter. Based on these projections, the cabinet shall determine the proportionate share of total insurance premium surcharge proceeds, prescribed in KRS 136.392, to accrue to each fund.

(2) On or before the first day of each quarter, the cabinet shall certify to the State Treasurer a distribution schedule describing the proportionate share of total insurance premium surcharge proceeds accruing to each fund during such quarter, and the State Treasurer shall pay into each fund's trust and agency account its proportionate share of all deposited tax moneys as set forth and in the manner as prescribed in KRS 136.392.

(3) Moneys deposited in the Firefighters Foundation Program fund's trust and agency account, and in the Law Enforcement Foundation Program fund's trust and agency account, shall be invested by the state in accordance with state investment practices, and all earnings from such investments shall accrue to, and be paid into the respective account from which such investments are made. All moneys remaining on deposit at the close of the state's fiscal year in the Firefighters Foundation Program fund's trust and agency account and all earnings from investments made from moneys in this account in excess of ***three***[~~one~~] million dollars ***($3,000,000)***[~~($1,000,000)~~], beginning with fiscal year 1994-95***, through June 30, 1999***, shall lapse, except that moneys in the revolving loan fund established in KRS 95A.262 shall not lapse. All moneys remaining on deposit at the close of the state's fiscal year in the Law Enforcement Foundation Program fund's trust and agency account, and all earnings from investments made from moneys in this account, in excess of ***three***[~~one~~]

million dollars ***($3,000,000)***[~~($1,000,000)~~], beginning with fiscal year 1994-95***, through June 30, 1999***, shall lapse. ***On and after July 1, 1999, moneys in these accounts shall not lapse.***

(4) The cabinet shall provide monthly financial reports to the administrator of the Firefighters Foundation Program fund and the administrator of the Law Enforcement Foundation Program fund respecting the amount of funds received and on deposit in each fund and the amount of earnings accruing to each fund from their investment.

Section 7. KRS 15.430 is amended to read as follows:

(1) There is hereby established the Law Enforcement Foundation Program fund consisting of appropriations from the general fund of the Commonwealth of Kentucky, and insurance premium surcharge proceeds which accrue to this fund pursuant to KRS 42.190 and 136.392. Any other funds, gifts, or grants made available to the state for distribution to local units of government in accordance with the provisions of KRS 15.410 to 15.510 also shall be made a part of this fund.

(2) All moneys remaining in this fund on July 1, 1982, and deposited thereafter, including earnings from their investment, shall be deemed a trust and agency account, but, beginning with fiscal year 1994-95***, through June 30, 1999***, moneys remaining in the account at the end of the fiscal year in excess of three million dollars ($3,000,000) shall lapse. ***On and after July 1, 1999, moneys in this account shall not lapse.***

Section 8. KRS 95A.220 is amended to read as follows:

(1) There is established the "Firefighters Foundation Program Fund" consisting of appropriations from the general fund of the Commonwealth of Kentucky, and insurance premium surcharge proceeds and earnings on the investments of those proceeds which accrue to this fund pursuant to KRS 42.190 and 136.392. The fund may also receive any other funds, gifts or grants made available to the state for distribution to local governments and volunteer fire departments in accordance with the provisions of KRS 95A.200 to 95A.300 and KRS 95A.262.

(2) All moneys remaining in this fund on July 1, 1982, and deposited thereafter, including earnings from their investment, shall be deemed a trust and agency account. Beginning with the fiscal year 1994-95***, through June 30, 1999***, moneys remaining in the account at the end of the fiscal year in excess of three million dollars ($3,000,000) shall lapse, but moneys in the revolving loan fund established in KRS 95A.262 shall not lapse. ***On and after July 1, 1999, moneys in this account shall not lapse.***

Section 9. KRS 136.392 is amended to read as follows:

(1) (a) Every domestic, foreign, or alien insurer, other than life and health insurers, which is either subject to or exempted from Kentucky premium taxes as levied pursuant to the provisions of either KRS 136.340, 136.350, 136.370, or 136.390, shall charge and collect a surcharge of one dollar and fifty cents ($1.50) upon each one hundred dollars ($100) of premium, assessments, or other charges, except for those municipal premium taxes, made by it for insurance coverage provided to its policyholders, on risk located in this state, whether the charges are designated as premiums, assessments, or otherwise. The premium surcharge shall be collected by the insurer from its policyholders at the same time and in the same manner that its premium or other charge for the insurance coverage is collected. The premium surcharge shall be disclosed to policyholders pursuant to administrative regulations promulgated by the commissioner of insurance. However, no insurer or its agent shall be entitled to any portion of any premium surcharge as a fee or commission for its collection. On or before the twentieth day of each month, each insurer shall report and remit to the Revenue Cabinet, on forms as it may require, all premium surcharge moneys collected by it during its preceding monthly accounting period less any moneys returned to policyholders as applicable to the unearned portion of the premium on policies terminated by either the insured or the insurer. Insurers with an annual liability of less than one thousand dollars ($1,000) for each of the previous two (2) calendar years may report and remit to the Revenue Cabinet all premium surcharge moneys collected on a calendar year basis on or before the twentieth (20th) day of January of the following calendar year. The funds derived from the premium surcharge shall be deposited in the State Treasury, and shall constitute a fund allocated for the uses and purposes of the Firefighters Foundation Program fund (KRS 95A.220 and 95A.262) and the Law Enforcement Foundation Program fund (KRS 15.430).

(b) Effective July 1, 1992, the surcharge rate in paragraph (a) of this subsection shall be adjusted by the secretary of revenue to a rate calculated to provide sufficient funds for the uses and purposes of the Firefighters Foundation Program fund as prescribed by KRS 95A.220 and 95A.262 and the Law Enforcement Foundation Program fund as prescribed by KRS 15.430 for each fiscal year. The rate shall be calculated using as its base the number of local government units eligible for participation in the funds under applicable statutes as of January 1, 1994. To allow the secretary of revenue to calculate an appropriate rate, the secretary for the Public Protection and Regulation Cabinet and the secretary for the Justice Cabinet shall certify to the secretary of revenue, no later than January 1, of each year, the estimated budgets for the respective funds specified above, including any surplus moneys in the funds, which shall be incorporated into the consideration of the adjusted rate for the next biennium. As soon as practical, the secretary of revenue shall advise the commissioner of insurance of the new rate and the commissioner shall inform the affected insurers. The rate adjustment process shall continue on a biennial basis.

(2) Within five (5) days after the end of each month, all insurance premium surcharge proceeds deposited in the State

Treasury as set forth in this section shall be paid by the State Treasurer into the Firefighters Foundation Program fund trust and agency account and the Law Enforcement Foundation Program fund trust and agency account. The amount paid into each account shall be proportionate to each fund's respective share of the total deposits, pursuant to KRS 42.190. Moneys deposited to the Law Enforcement Foundation Program fund trust and agency account shall not be disbursed, expended, encumbered or transferred by any state official for uses and purposes other than those prescribed by KRS 15.410 to 15.500, except that beginning with fiscal year 1994-95***, through June 30, 1999***, moneys remaining in the account at the end of the fiscal year in excess of three million dollars ($3,000,000) shall lapse. ***On and after July 1, 1999, moneys in this account shall not lapse.*** Money deposited to the Firefighters Foundation Program fund trust and agency account shall not be disbursed, expended, encumbered, or transferred by any state official for uses and purposes other than those prescribed by KRS 95A.200 to 95A.300, except that beginning with fiscal year 1994-95***, through June 30, 1999***, moneys remaining in the account at the end of the fiscal year in excess of three million dollars ($3,000,000) shall lapse, but moneys in the revolving loan fund established in KRS 95A.262 shall not lapse. ***On and after July 1, 1999, moneys in this account shall not lapse.***

(3) Insurance premium surcharge funds collected from the policyholders of any domestic mutual company, cooperative, or assessment fire insurance company shall be deposited in the State Treasury, and shall be paid monthly by the State Treasurer into the Firefighters Foundation Program fund trust and agency account as provided in KRS 95A.220 to 95A.262. However, insurance premium surcharge funds collected from policyholders of any mutual company, cooperative, or assessment fire insurance company which transfers its corporate domicile to this state from another state after July 15, 1994, shall continue to be paid into the Firefighters Foundation Program fund and the Law Enforcement Foundation Program fund as prescribed.

SB 43, AN ACT relating to county financial management.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 68.275 is amended to read as follows:

(1) Claims against the county that are within the amount of line items of the county budget and arise pursuant to contracts duly authorized by the fiscal court shall be paid by the county judge/executive by a warrant drawn on the county and co-signed by the county treasurer.

(2) The county judge/executive shall present all claims to the fiscal court for review prior to payment and the court, for good cause shown, may order that a claim not be paid.

(3) The fiscal court may adopt an order, called a standing order, to preapprove the payment of recurrent monthly payroll and utility expenses. No other expenses shall be preapproved pursuant to this subsection without the written consent of the state local finance officer. All standing orders adopted by the fiscal court may be renewed annually and submitted to the state local finance officer by July 1 of each fiscal year with the submission of the county budget.

The Committee Amendment No. 1 to **SB 43** is as follows:

On page 1, line 12, after the words "***fiscal court***" by deleting the word "***may***" and replacing it with the word "***shall***"; and

On line 14, after the word "***budget***" by inserting the following: "***if the fiscal court wishes to continue the standing order. Otherwise, after July 1, the standing order shall expire and no more payments designated in the standing order shall be preapproved unless a new order is adopted by the fiscal court according to the provisions of this subsection***".

SB 182, AN ACT relating to sheriffs.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 64.121 is amended to read as follows:

(1) "Incapacity" means a condition under which a sheriff or his or her personal representative may apply to the Circuit or District Court Judge that presides over the sheriff's county for an order to determine that the sheriff is physically or mentally unable to discharge the duties of his or her office. The application to the Circuit or District Court Judge shall include and be supported by an affidavit by the sheriff's physician documenting the sheriff's incapacitating condition.

(2) If a[~~When any~~] sheriff in ***a county***[~~counties~~] containing a population of less than seventy thousand (70,000) dies ***or is incapacitated*** during his ***or her*** term of office, the fiscal court of ***that***[~~any such~~] county shall on or before the first day of March of the year following the death ***or date of incapacity*** of ***the***[~~such~~] sheriff pay to the ***sheriff or to the*** personal representative of the[~~ deceased~~] sheriff sufficient money to reimburse ***the sheriff or*** his ***or her*** estate for the salaries of his deputies and assistants and other necessary expenses of his ***or her*** office ***that were paid***~~[incurred]~~ by the~~[deceased]~~ sheriff during the year of his ***or her*** death ***or incapacity***. ***Additionally, for each month that the sheriff or his or her personal representative performed the duties of sheriff during the year of his or her death or incapacity, the fiscal court shall pay to the sheriff or to the sheriff's personal representative a sum of money equal to one-twelfth (1/12) of the total salary received by the county's sheriff in the year prior to the year of the death or incapacity.*** The ***sheriff's salary***~~[fiscal court shall also pay to the deceased sheriff's personal representative a sum of money equal to a salary rate of six hundred dollars ($600) per month for the actual number of months which he performed the duties of sheriff during the year of his death. The total of all such sums of money in no event shall exceed one-twelfth (1/12) of the aggregate fees collected by the deceased sheriff and his successor during the year of his death]~~ and all fees and commissions ***paid to*** the sheriff~~[earned]~~ during the year of his ***or her*** death ***or incapacity*** shall be deducted from the amount ***that the sheriff or*** his ***or her*** personal representative is to receive by this section.

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Agriculture and Small Business: **HB 680, HB 709**

Banking and Insurance: **SB 135**

Counties and Special Districts: **HB 605**

Calendar

HB 189, HB 410, HB 449, HB 468, HB 518, HB 617, HB 328, HB 622, HB 205, HB 207, HB 332, HB 337, HB 350, HB 423, HB 427, HB 439, HB 440, HB 451, HB 453, HB 470, HB 528, HB 549, HB 592, SB 155 and **SCR 2** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Report On Enrolled Bills

The Committee on Enrollment reported that **SB 172** has been examined and found correctly enrolled. Said Bill was read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -2:45 p.m.)

Recess

Representative Stumbo moved to suspend the rules to allow the House to recess for a Committee on Rules meeting in the Speaker's Office. Agreed. At the appointed hour, the Speaker resumed the Chair and called the House to order.

Floor Amendments (Continued)

Floor Amendment No. 11 to the Committee Substitute attached thereto, to **HB 327**, by Representative Riner:

On page 3, between lines 13 and 14, by inserting:

"***(f) A person subject to any of the other penalties under this subsection shall also be sentenced to making a one hundred dollar ($100) contribution to Youth In Action, the youth arm of Mothers Against Drunk Driving, or providing fifty (50) hours of community labor.***"; and

On page 3, line 14, after "(5)", by inserting "***(a)***"; and

On page 3, between lines 21 and 22, by inserting:

"***(b) A person subject to any of the other penalties under this subsection shall also be sentenced to making a one hundred dollar ($100) contribution to Youth In Action, the youth arm of Mothers Against Drunk Driving, or providing fifty (50) hours of community service.***"

Floor Amendment No. 10 to the Committee Substitute attached thereto, to **HB 327**, by Representative Lindsay:

On page 1, line 4, to delete "***0.08***" and to delete the bracketing and strike through of "0.10"; and

On page 1, line 23, to delete "***0.08***" and to delete the bracketing and strike through of "0.10"; and

On page 2, line 12, following "(a)" to insert the following: "***If the alcohol concentration is below 0.15,***"; and

On page 2, line 18, following "both." to insert the following: "***If the alcohol concentration is 0.15 or higher, for the***

first offense within a five (5) year period, the defendant shall be sentenced in the same manner as provided in paragraph (b) of this subsection."; and

On page 2, line 19, following "(b)" to insert the following: "***If the alcohol concentration is below 0.15,***"; and

On page 2, line 24, following "months." to insert the following: "***If the alcohol concentration is 0.15 or higher, for the second offense within a five (5) year period, the defendant shall be sentenced in the same manner as provided in paragraph (c) of this subsection.***"; and

On page 2, line 25, following "(c)" to insert the following: "***If the alcohol concentration is below 0.15,***" and

On page 3, line 3, following "months." to add the following: "***If the alcohol concentration is 0.15 or higher, for the third offense within a five (5) year period, the defendant shall be sentenced in the same manner as provided in paragraph (d) of this subsection.***"; and

On page 3, line 4, following "(d)" to insert the following: "***If the alcohol concentration is below 0.15,***"; and

On page 3, line 5, following "felony." to insert the following: "***If the alcohol concentration is 0.15, or higher, for a fourth or subsequent offense within a five (5) year period, the defendant shall be guilty of a Class C felony.***"; and

On page 3, line 23, to delete "***0.08***" and to remove the bracketing and strike through of "0.10"; and

On page 8, line 1, through page 11, line 10, to remove the entirety of Sections 4, 5, and 6; and

On page 11, line 11, to renumber "SECTION 7." as "SECTION 4."; and

On page 11, line 20, to delete the second usage of the word "***or***"; and

On page 11, line 21, following "***189A.103***" to insert the following:

"***; or***

(c) The person's alcohol concentration level as tested is 0.15 or higher".

Representative Stumbo moved that the rules be suspended for a Committee on Rules Report. Agreed.

Report of Committees (Continued)

The Committee on Rules reported that **HB 246, HB 189, HB 205, HB 207, HB 328, HB 332, HB 337, HB 350, HB 410, HB 423, HB 427, HB 439, HB 440, HB 451, HB 453, HB 470, HB 528, HB 549, HB 622, SB 155** and **SCR 2** have been posted for passage in the Orders of the Day for February 26, 1998.

The Committee on Rules reported that the following Bill has been recommitted:

Appropriations and Revenue: **HB 327**

Floor Amendments (Continued)

Floor Amendment No. 4 to the Committee Substitute to **HB 254**, by Representative Maricle:

On page 1, between lines 20 and 21, by inserting the following:

"***(3) A person under the age of fourteen (14) shall not ride on a skateboard unless the person is wearing a helmet that meets or exceeds the standards of the American National Standards Institute, the standards of the Snell Memorial Foundation, or the standards of the American Society of Testing and Measurements for Protective Headgear.***"; and

On page 1, line 21 through page 6, line 23, by deleting Section 2 in its entirety.

Floor Amendment No. 5 to the Committee Substitute to **HB 254**, by Representative Maricle:

On page 1, line 3, after the word "***wearing***" by inserting the following:

"***a mouthpiece and***"; and

On page 1, line 21 through page 6, line 23, by deleting Section 2 in its entirety.

Floor Amendment No. 6 to the Committee Substitute to **HB 254**, by Representative Maricle:

On page 1, by deleting lines 2 through 6 in their entirety and inserting the following in lieu thereof:

"***(1) A city or county may enact ordinances to require children under fourteen (14) years of age to wear protective***

headgear while operating a bicycle."; and

On page 1, line 21 through page 6, line 23, by deleting Section 2 in its entirety.

Floor Amendment No. 7 to the Committee Substitute to **HB 254**, by Representative Maricle:

On page 1, line 3, after the word "***wearing***" by inserting the following:

"***knee pads, elbow pads, shoulder pads, and***"; and

On page 1, line 21 through page 6, line 23, by deleting Section 2 in its entirety.

Floor Amendment No. 8 to the Committee Substitute to **HB 254**, by Representative Maricle:

On page 1, line 21 through page 6, line 23, by deleting Section 2 in its entirety, and inserting in lieu thereof:

SECTION 2. A NEW SECTION OF KRS CHAPTER 235 IS CREATED TO READ AS FOLLOWS:

"***A person under the age of fourteen (14) shall not swim in any body of water or swimming pool unless the person is wearing a helmet that meets or exceeds the standards of the American National Standards Institute, the standards of the Snell Memorial Foundation, or the standards of the American Society of Testing and Measurements for Protective Headgear.***".

Floor Amendment No. 9 Title to the Committee Substitute to **HB 254**, by Representative Maricle:

By amending the title to read as follows:

"AN ACT relating to safety."

Floor Amendment No. 1 to **HB 649**, by Representative Damron:

On page 8, after line 20, by inserting the following:

"SECTION 5. A NEW SECTION OF KRS CHAPTER 315 IS CREATED TO READ AS FOLLOWS:

(1) A pharmacy shall be allowed to place drugs with a home health agency's authorized employees and with a hospice's authorized employees for the betterment of public health. The pharmacy shall remain the legal owner of the drugs.

(2) A written agreement between the pharmacy and home health agency or hospice shall document the protocol for the handling and storage of the drugs by authorized employees and shall be approved by the pharmacist in charge.

(3) The pharmacist in charge shall review the protocol to assure that safe, secure and accountable handling of controlled legend drugs is maintained under the protocol before giving approval.

(4) The pharmacist in charge or a pharmacist designee shall physically inspect and review the drug storage and handling at the home health agency and the hospice at least quarterly during the year.

(5) The home health agency and the hospice protocol shall include, but not be limited to, the following:

  (a) Safe and secure storage of drugs;

  (b) Access to drugs limited to authorized employees;

  (c) Records of drugs checked out to authorized employees and records of drugs, amounts and to whom and by whom administered;

  (d) Prompt notification of the pharmacy when a drug is used, including the prescriber, patient, drug, dosage form, directions for use and other pertinent information;

  (e) Billing information;

  (f) Procedures for handling drugs beyond their expiration date; and

  (g) Inventory control.

(6) The following legend drugs shall be allowed under these agreements:

  (a) Sterile water for injection or irrigation;

  (b) Sterile saline solution for injection or irrigation;

  (c) Heparin flush solution;

  (d) Diphenhydramine injectable; and

  (e). Epinephrine injectable.

(7) As used in this section:

(a) "Authorized employee" means any employee of a home health agency or hospice who, in the course of the employee's duties, is licensed by the employee's appropriate licensing agency to administer legend drugs;

(b) "Home health agency" means an entity required to be licensed under KRS Chapter 216; and

(c) "Hospice" means an entity authorized to hold itself out to the public as a hospice or as a licensed hospice pursuant to KRS Chapter 216.

(8) The cabinet shall promulgate administrative regulations to implement the provision of this Act to become effective by October 15, 1998.".

Orders of the Day

HB 121, with Committee Substitute and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Barrows moved the adoption of the Committee Substitute to **HB 121**. Agreed.

Representative Barrows moved the adoption of Floor Amendment No. 2 to the Committee Substitute to **HB 121**. Agreed.

Representative Barrows moved that **HB 121**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 78, Nays 12 (See February 25, 1998 roll call on **HB 121** - Appendix.) **HB 121**, by way of Committee Substitute as amended, was passed and the title agreed to. Representative Barrows moved that the vote by which **HB 121**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 1 to the Committee Substitute to **HB 49**, by Representative Crimm:

On page 1, line 15, after the word "*vehicles;*" by deleting the word "*and*"; and

On page 1, line 18, after the word "*properties*" by deleting the period and by inserting in lieu thereof "*; and*"; and

On page 1, after line 18 by adding the following:

"*(e) All commercial property.*".

Floor Amendment No. 1 to the Committee Substitute to **HB 565**, by Representative D. Butler:

On page 31, line 1, by bracketing and striking through "for a fee of $1,000"; and

On page 31, line 10, by bracketing and striking through "for a fee of $100".

Floor Amendment No. 2 to the Committee Substitute to **HB 565**, by Representative D. Butler:

On page 25, lines 19 and 20, by deleting "*6 p.m.*" and removing existing brackets and strike throughs, and

On page 25, line 20, by bracketing and striking through "8" and inserting "*6*" before "8".

Orders of the Day (Continued)

HB 380, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Marzian moved the adoption of the Committee Substitute to **HB 380**. Agreed.

Representative Marzian moved that **HB 380**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 92, Nays 0 (See February 25, 1998 roll call on **HB 380** - Appendix.) **HB 380**, by way of Committee Substitute, was passed and the title agreed to. Representative Marzian moved that the vote by which **HB 380**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

Representative Stumbo moved that **HB 424** be recommitted to Appropriations and Revenue. Agreed.

HB 587, with Committee Substitute and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Zimmerman moved the adoption of the Committee Substitute to **HB 587**. Agreed.

Representative Zimmerman moved that **HB 587**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 92, Nays 1 (See February 25, 1998 roll call on **HB 587** - Appendix.) **HB 587**, by way of Committee Substitute, was passed. Representative Zimmerman moved the adoption of Floor Amendment No. 1 Title to the Committee Substitute to **HB 587**. Agreed; and the title was agreed to. Representative Zimmerman moved that the vote by which **HB 587**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 1 to **HB 414**, by Representative Gooch:

On page 3, line 10 after "***commissioner.***" by adding "***The examination of contracts shall take place simultaneously with the company's approval process. Provided that the viatical settlement provider or viatical settlement broker complies with Sections 1 to 7 of this Act, the provider or broker transacting business in this state prior to the effective date of this Act may continue to transact the business until the commissioner approves or disapproves the provider's or broker's application for license. The application shall be filed on forms provide by the commissioner no later than November 1, 1998.***";

On page 4, line 2 after "***the***" and before "***of***" by inserting "***interest***" and after "***The***" and before "***expenses***" by inserting "***reasonable***";

On page 4, line 27 after "***viator***" and before "***on***" by inserting "***within two (2) business days of notification from the insurer of the effect of the transfer of ownership***"; and by deleting "***on a specific date and from a***";

On page 5, line 1 by deleting "***specific source***";

On page 5, line 23 after "***the***" and before "***viator***" by inserting "***insurer***" and by deleting "***viator***" and after the first "***of***" by inserting "***the***", and by deleting "***documents to***", and after "***effect***" by adding "***of***", and after the last" ***of***" by adding "***ownership of***";

On page 5, line 25 after "***an***" and before "***escrow***" by inserting "***account in a custodian bank that meets the qualifications outlined in 806 KAR 7:090 Section 3. The custodian shall be required to transfer the proceeds that are due to the viator within two (2) business days upon receipt of acknowledgment of the transfer from the insurer.***", and by deleting "***escrow or trust account managed by a trustee or escrow agent in***";

On page 5, lines 26 and 27 by deleting in their entirety;

On page 6, lines 1 and 2 by deleting in their entirety;

On page 6, line 11 after "***contracts***" by adding "***which will include type of illness, life expectancy, insurance company rating, premium payment amount, policy type, market factors and other reasonable factors as deemed appropriate by the commissioner; and***", and after "***contracts***" by deleting "***. The authority includes, but is not limited to, regulation of***";

On page 6, lines 12 and 13 by deleting in their entirely;

On page 6, lines 14 and 15 by deleting "***; and***"; and

On page 6, by deleting line 16 in its entirety except for the period.

Floor Amendment No. 1 to **HB 491**, by Representative Geveden:

On page 1, line 13 after "***county***" by adding "***that has a city of the first or second class, or within a county that has an urban-county government,***";

On page 1, line 15 after "***county***" and before "***in***" by inserting "***that has a city of the first or second class, or continguous to a county that has an urban-county government,***";

On page 1, line 17 by deleting "***four (4)***" and inserting in lieu thereof "***two (2)***", and after "***counties.***" by adding "***If a branch is established in a continguous county under this subparagraph, any corporation engaged in the business of banking located in that contiguous county, upon proper application, shall be granted permission by the commissioner to establish a branch in the continguous county that has the city of the first or second class or that is a county that has an urban-country government.***"

Floor Amendment No. 2 to **HB 491**, by Representative Geveden:

On page 1, line 17 by deleting "***four (4)***" and inserting in lieu thereof "***two 2***".

Orders of the Day (Continued)

SB 20, with House Committee Substitute, Committee Amendment and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Thomas moved the adoption of the House Committee Substitute to **SB 20**. Agreed.

Representative Thomas moved the adoption of Floor Amendment No. 1 to the Committee Substitute to **SB 20**. Agreed.

Representative Thomas moved that **SB 20**, by way of House Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 96, Nays 0 (See February 25, 1998 roll call on **SB 20** - Appendix.) **SB 20**, by way of House Committee Substitute as amended, was passed. Representative Thomas moved the adoption of Floor Amendment No. 3 Title to the House Committee Substitute to **SB 20**. Agreed; and the title was agreed to. Representative Thomas moved that the vote by which **SB 20**, by way of House Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 127, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Brandstetter moved the adoption of the Committee Substitute to **HB 127**. Agreed.

Representative Brandstetter moved that **HB 127**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 90, Nays 1 (See February 25, 1998 roll call on **HB 127** - Appendix.) **HB 127**, by way of Committee Substitute, was passed and the title agreed to. Representative Brandstetter moved that the vote by which **HB 127**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 542, with Committee Amendment and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Rasche moved the adoption of Committee Amendment No. 1 to **HB 542**. Agreed.

Representative Rasche moved that **HB 542**, as amended, be passed.

On the roll call the vote was: Yeas 95, Nays 0 (See February 25, 1998 roll call on **HB 542** - Appendix.) **HB 542**, as amended, was passed and the title agreed to. Representative Rasche moved that the vote by which **HB 542**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

SB 169, with Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative D. Butler moved the adoption of Floor Amendment No. 1 to **SB 169**. Agreed.

Representative D. Butler moved that **SB 169**, as amended, be passed.

On the roll call the vote was: Yeas 56, Nays 30 (See February 25, 1997 roll call on **SB 169** - Appendix.) **SB 169**, as amended, was passed and the title agreed to. Representative D. Butler moved that the vote by which **SB 169**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 10 to the Committee Substitute to **HB 624**, by Representative Heleringer:

On Page 2, after line 8, by inserting and underlining the following new subsection,

"***(5) Upon the effective date of this Act, no annexation shall occur in any city within a county containing a city of the first class which has a cooperative compact in effect unless it is approved by a majority of those residents of the areas which are proposed to be annexed.*** ".

Floor Amendment No. 11 to the Committee Substitute to **HB 624**, by Representative Heleringer:

On Page 2, line 1, after the period by inserting and underlining the following language, "***No compact shall include any provisions relating to annexation within the county.***"

Orders of the Day (Continued)

HB 493, with Committee Substitute and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Vincent moved the adoption of the Committee Substitute to **HB 493**. Agreed.

Representative Vincent moved the adoption of Floor Amendment No. 1 to the Committee Substitute to **HB 493**. Agreed.

Representative Vincent moved that **HB 493**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 94, Nays 0 (See February 25, 1998 roll call on **HB 493** - Appendix.) **HB 493**, by way of Committee Substitute as amended, was passed and the title agreed to. Representative Vincent moved that the vote by which **HB 493**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 414, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 414** be placed back in the Orders of the Day. Agreed.

HB 457, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Zimmerman moved the adoption of the Committee Substitute to **HB 457**. Agreed.

Representative Zimmerman moved that **HB 457**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 92, Nays 1 (See February 25, 1998 roll call on **HB 457** - Appendix.) **HB 457**, by way of Committee Substitute, was passed and the title agreed to. Representative Zimmerman moved that the vote by which **HB 457**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HCR 8 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Rasche moved that **HCR 8** be adopted.

On the roll call the vote was: Yeas 88, Nays 0 (See February 25, 1998 roll call on **HCR 8** - Appendix.) **HCR 8** was adopted.

Representative Rasche moved that the vote by which **HCR 8** was adopted be reconsidered and said motion be placed on the table. Agreed.

HCR 12 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Rasche moved that **HCR 12** be adopted.

On the roll call the vote was: Yeas 91, Nays 0 (See February 25, 1998 roll call on **HCR 12** - Appendix.) **HCR 12** was adopted. Representative Rasche moved that the vote by which **HCR 12** was adopted be reconsidered and said motion be placed on the table. Agreed.

HCR 21 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Rasche moved that **HCR 21** be adopted.

On the roll call the vote was: Yeas 91, Nays 0 (See February 25, 1998 roll call on **HCR 21** - Appendix.) **HCR 21** was adopted. Representative Rasche moved that the vote by which **HCR 21** was adopted be reconsidered and said motion be placed on the table. Agreed.

HCR 22 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Rasche moved that **HCR 22** be adopted.

On the roll call the vote was: Yeas 87, Nays 0 (See February 25, 1998 roll call on **HCR 22** - Appendix.) **HCR 22** was adopted. Representative Rasche moved that the vote by which **HCR 22** was adopted be reconsidered and said motion be placed on the table. Agreed.

HCR 23 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Rasche moved that **HCR 23** be adopted.

On the roll call the vote was: Yeas 84, Nays 0 (See February 25, 1998 roll call on **HCR 23** - Appendix.) **HCR 23** was adopted. Representative Rasche moved that the vote by which **HCR 23** was adopted be reconsidered and said motion be placed on the table. Agreed.

HCR 24 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Rasche moved that **HCR 24** be adopted.

On the roll call the vote was: Yeas 92, Nays 0 (See February 25, 1998 roll call on **HCR 24** - Appendix.) **HCR 24** was adopted. Representative Rasche moved that the vote by which **HCR 24** was adopted be reconsidered and said motion be placed on the table. Agreed.

HCR 25 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Rasche moved that **HCR 25** be adopted.

On the roll call the vote was: Yeas 88, Nays 0 (See February 25, 1998 roll call on **HCR 25** - Appendix.) **HCR 25** was adopted. Representative Rasche moved that the vote by which **HCR 25** was adopted be reconsidered and said motion be placed on the table. Agreed.

HCR 26 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Rasche moved that **HCR 26** be adopted.

On the roll call the vote was: Yeas 88, Nays 0 (See February 25, 1998 roll call on **HCR 26** - Appendix.) **HCR 26** was adopted. Representative Rasche moved that the vote by which **HCR 26** was adopted be reconsidered and said motion be placed on the table. Agreed.

HCR 27 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Rasche moved that **HCR 27** be adopted.

On the roll call the vote was: Yeas 87, Nays 0 (See February 25, 1998 roll call on **HCR 27** - Appendix.) **HCR 27** was adopted. Representative Rasche moved that the vote by which **HCR 27** was adopted be reconsidered and said motion be placed on the table. Agreed.

HCR 28 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Rasche moved that **HCR 28** be adopted.

On the roll call the vote was: Yeas 88, Nays 0 (See February 25, 1998 roll call on **HCR 28** - Appendix.) **HCR 28** was adopted. Representative Rasche moved that the vote by which **HCR 28** was adopted be reconsidered and said motion be placed on the table. Agreed.

HCR 29 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Rasche moved that **HCR 29** be adopted.

On the roll call the vote was: Yeas 90, Nays 0 (See February 25, 1998 roll call on **HCR 29** - Appendix.) **HCR 29** was adopted. Representative Rasche moved that the vote by which **HCR 29** was adopted be reconsidered and said motion be placed on the table. Agreed.

HCR 30 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Rasche moved that **HCR 30** be adopted.

On the roll call the vote was: Yeas 90, Nays 1 (See February 25, 1998 roll call on **HCR 30** - Appendix.) **HCR 30** was adopted. Representative Rasche moved that the vote by which **HCR 30** was adopted be reconsidered and said motion be placed on the table. Agreed.

HCR 41 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Rasche moved that **HCR 41** be adopted.

On the roll call the vote was: Yeas 91, Nays 0 (See February 25, 1998 roll call on **HCR 41** - Appendix.) **HCR 41** was adopted. Representative Rasche moved that the vote by which **HCR 41** was adopted be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Stumbo moved that the three day posting requirement on **HB 709, HB 680, SB 135**, and **SB 207** be waived. Agreed.

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions, Report of Committees and Posting of Bills and Resolutions for Consideration. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 733, by Representatives Crimm, Miller, Hogancamp, R. Adams, Ballard, Vincent, Mason, L. Clark, Haydon, Long, G. Graham, Burch, Geveden, Stumbo, Adkins, Marzian, Johns, Horlander, Cave, Damron, Anderson, Sims, Treesh, Pope, Stewart, Crall, Thomas, Polston, Ratliff, Ford, Allen, and Bratcher: AN ACT relating to school bus safety.

HB 734, by Representatives Bowling and Gray: AN ACT relating to workers' compensation.

HB 735, by Representative Gray: AN ACT relating to workers' compensation.

HJR 95, by Representative L. Clark: A JOINT RESOLUTION directing a study of electric restructuring during the 1998-2000 legislative interim, and making an appropriation therefor.

HCR 96, by Representatives Wayne and Brandstetter: A CONCURRENT RESOLUTION creating a task force on planning and zoning.

HCR 97, by Representative Bowling: A CONCURRENT RESOLUTION in recognition of J. Roy Shoffner and the restoration of the P-38 and in support of an aviator museum.

HJR 98, by Representative Alexander: A JOINT RESOLUTION directing the Transportation Cabinet to name the Hazard By-Pass the "Johnny Cox All-American Drive".

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Banking and Insurance: **HB 684**

Judiciary: **HB 144, HB 147**

Counties and Special Districts: **HB 230**

Licensing and Occupations: **SB 65, SB 126, HB 670, HB 608, HB 686**

Floor Amendments (Continued)

Floor Amendment No. 12 to the Committee Substitute to **HB 327**, by Representative Hoover:

On page 2, line 24, following the word "months." to insert the following:

> "*If the alcohol concentration in the driver's blood is 0.15 or higher on the second offense within a five (5) year period, the driver shall be fined not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000), shall be imprisoned in the county jail for not less than thirty (30) days nor more than twelve (12) months, and may, in addition to fine and imprisonment, be sentenced to community labor for not less than ten (10) days nor more than twelve (12) months.*"; and

On page 3, line 3, following the word "months." to insert the following:

> "*If the alcohol concentration in the driver's blood is 0.15 or higher on the third offense within a five (5) year period, the driver shall be guilty of a Class D felony.*".

Motions, Petitions and Communications (Continued)

Representative Stumbo moved that **HB 13** be reassigned to Health and Welfare. Agreed.

Representative Stumbo moved that **HB 461** be withdrawn. Agreed.

Representative Geveden moved the adoption of the following **Legislative Citation No. 113**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby honors and commends William and Jackie Stermon upon being named the 1997 Outstanding Young Farm Family by the Kentucky Farm Bureau Federation. Judged on operational efficiency, return on investment, increased net worth and personal leadership traits, Mr. and Mrs. Stermon have demonstrated exceptional progress and prosperity in agriculture by their efforts to continue to expand both their crop production and the hog operation they purchased from William's grandfather in 1985. William Stermon is a four-year member of the Carlisle County Farm Bureau, serves on the bureau's state swine committee, is Vice-Chairman of the Carlisle County Farm Service Agency Committee and has served on the state Young Farmer Committee. He has been honored for his accomplishments with a Star Farmer Award from the Future Farmers of America and numerous crop production and conservation awards. William Stermon and his wife, Jackie, a nurse at Baptist Hospital, have made extraordinary efforts to develop an operation which is both efficient and productive. The members of the Kentucky House of Representatives are indeed pleased to join with Representative Charles Geveden in applauding the work of the Stermons and in extending to them sincere wishes for continued prosperity and success. **Legislative Citation No. 113** was adopted without objection.

Representative Ford moved that the rules be suspended to act upon a Legislative Citation. Agreed. Representative Ford moved the adoption of the following **Legislative Citation No. 115**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes and honors Corey Bailey a member of the Governor's Scholar Program, for demonstrating an exemplary interest in the democratic process and in the daily actions of our Kentucky legislature. This outstanding young scholar has endeavored to broaden his understanding of democracy and government and is commended for his effort to do so. The members of the Kentucky House of Representatives are pleased to join with Representative Danny Ford in applauding the initiative of Corey Bailey and in extending a welcoming hand to him as he joins us to witness a day of the 1998 Regular Session of the Kentucky General Assembly. **Legislative Citation No. 115** was adopted without objection.

Representative Riner moved that Floor Amendment No. 2 to the Committee Substitute to **HB 327** be withdrawn. Agreed.

Representative Coleman moved that Floor Amendment No. 5 to the Committee Substitute to **HB 327** be withdrawn. Agreed.

Representative Nesler moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Nesler moved that he be recorded as voting "yea" on **SB 17, HB 293, HB 338, HB 393, HB 396, HB 417, HB 431, HB 448, HB 475, HB 486, HB 505, HB 50, HB 62, HB 84, HB 90, HB 141, HB 160, HB 215, HB 254,** and **HB 280**. Agreed.

Representative P. Clark moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative P. Clark moved that his vote be changed from "yea" to "nay" on **HB 193**. Agreed. Representative P. Clark moved that he be recorded as voting "yea" on **HB 127, HB 542, SB 169,** and **HB 493**. Agreed.

Representative Walton moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Walton moved that his vote be changed from "yea" to "nay" on **HB 193**. Agreed.

Representative Kerr moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Kerr moved that his vote be changed from "yea" to "nay" on **HB 193**. Agreed.

Representative Hoover moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Hoover moved that he be recorded as voting "nay" on **HB 130**. Agreed. Representative Hoover moved that he be recorded as voting "yea" on **HB 418, HB 445, HB 564, HB 14, HB 32, HB 333, HB 342, HB 344, HB 391, HR 88, HR 91,** and **SB 172**.

Agreed.

Representative Riner moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Riner moved that his vote be changed from "yea" to "nay" on **HB 193**. Agreed.

Representative Crimm moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Crimm moved that he be recorded as voting "yea" on **HCR 26**. Agreed.

Representative R. Adams moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative R. Adams moved that his vote be changed from "yea" to "nay" on **SB 169**. Agreed.

Representative Stein moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Stein moved that she be recorded as voting "yea" on **HB 457** and **HCR 26**. Agreed.

Representative Damron moved that **HJR 50** be withdrawn. Agreed.

The following members filed requests to have their names added as co-sponsors of Bills and Resolutions under rules previously suspended: **HB 521**, Representative Riggs; **HB 528**, Representative Palumbo; **HB 563**, Representative P. Clark; **HB 709**, Representatives Baugh, Scott, Gee, D. D. Butler, Crall; **HB 721**, Representative Stein; **HCR 27**, Representative Vincent.

The following members filed requests to have their names withdrawn as co-sponsor of Bills under rules previously suspended: **HB 532**, Representative Collins; **HB 533**, Representative Treesh.

Announcements

The following meetings were announced:

Banking and Insurance, 8:30 a.m., Room 149, February 26, 1998.

Budget Review Subcommittee on Human Resources, upon adjournment.

Health and Welfare, upon adjournment, February 26, 1998.

Labor and Industry, February 26, 1998, Room 125, 9:00 a.m.

Natural Resources and Environment, upon adjournment, Room 125.

Cities, February 26, 1998, 10:00 a.m.

General Government, Room 125, 10:00 a.m., February 26, 1998.

Budget Review Subcommittee on Economic Development, 12 Noon, February 26, 1998.

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., February 26, 1998.

On the roll call the vote was **Yeas 70**--R. Adams, Alexander, A. Arnold, Ballard, Barrows, Brandstetter, Brown, Bruce, D. Butler, D. D. Butler, Callahan, Cave, L. Clark, J. Clarke, Collins, Colter, Cox, Crimm, Damron, DeWeese, Gee, Gooch, D. Graham, G. Graham, Gray, Hatcher, Haydon, Hoffman, Hogancamp, Hoover, Jenkins, Johns, Kerr, Lee, Lindsay, Long, Marcotte, Marzian, Mason, McKee, Miller, Murgatroyd, Napier, Nesler, Newsome, Palumbo, Polston, Pope, Rader, Rasche, Richards, Riggs, Riner, Siler, Simpson, Sims, Stacy, Stein, Stine, Stumbo, Thomas, Treesh, Turner, Vincent, Walton, Wayne, Weaver, Worthington, Yonts, Zimmerman. **Nays 8**--Adkins, Bratcher, Crall, Ford, Heleringer, Maricle, Nunn, Stewart.

The motion to adjourn was adopted.

THURSDAY, FEBRUARY 26, 1998

THIRTY-FOURTH LEGISLATIVE DAY

The House was called to order by Speaker Richards.

Prayer by Deacon Jim Barton, Church of the Good Shepherd, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present Representatives J. Adams, Deskins, and Lovell.

Representative Ballard moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative Ballard moved that the reading of the Journal of February 25, 1998, be dispensed with and the same approved. Agreed.

Representative Ballard moved that the Rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Ballard moved that all properly filed co-sponsor requests be approved. Agreed.

Floor Amendments

Floor Amendment No. 1 to the Committee Substitute to **HB 107**, by Representative L. Clark:

On page 1, line 14, after the words "***fund shall***" by deleting the word "***primarily***"; and

On page 1, line 16, after the words "***per square foot.***" by deleting the rest of the line in its entirety; and

On page 1, line 17, by deleting the words "***grants from public and private sources, and federal funds.***".

Introduction of Bills and Resolutions

HB 736, by Representative Stein: AN ACT relating to parole.

HB 737, by Representative Deskins: AN ACT relating to coal mining.

HB 738, by Representative Jordan: AN ACT relating to estheticians.

HB 739, by Representative Bruce: AN ACT relating to liens.

HB 740, by Representatives R. Adams, Coleman, Anderson, McKee, Haydon, Long, D. Graham, Damron, Palumbo, Stumbo and Adkins: AN ACT relating to license plates.

HB 741, by Representatives Marcotte and Walton: AN ACT relating to unobstructed windshields on motor vehicles.

HB 742, by Representatives Gray, Yonts, Hoffman, Nunn, Jenkins, Horlander, and Jordan: AN ACT relating to workers' compensation.

HB 743, by Representative Yonts: AN ACT relating to the state flag of the Commonwealth.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolutions:

Agriculture and Small Business: **SB 247**

Cities: **HB 722, HB 726**

Counties and Special Districts: **HCR 96, SB 44**

Education: **HB 724, HB 729, HB 730, HB 731, HB 733, HCR 93, SB 277**

Health and Welfare: **HB 721, SB 228**

Judiciary: **HB 725, SB 217**

Labor and Industry: **HB 734, HB 735, SB 136**

Licensing and Occupations: **HB 728**

Natural Resources and Environment: **HB 723**

State Government: **HB 727, HB 732, HCR 94**

Tourism Development and Energy: **HJR 95**

Transportation: **HCR 97, HJR 98, SB 275**

Report of Committees

The Committee on Natural Resources and Environment reported **HB 211, HB 498, HB 510,** with Committee Substitute attached thereto, **HB 593, HB 598, HB 636,** and **HB 654** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 211, AN ACT relating to boating.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 235 IS CREATED TO READ AS FOLLOWS:

(1) No vessel on lake waters of this state shall moor or anchor within one hundred (100) feet of a drinking water intake.

(2) The Division of Water shall identify areas on lake waters of this state where a drinking water intake is located. The Division of Water shall post signs visible to persons operating vessels indicating areas containing a drinking water intake.

HB 498, AN ACT relating to forfeited mining reclamation bonds.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 350.131 is amended to read as follows:

(1) When a bond for an interim or preinterim program permit was forfeited prior to July 15, 1988, by the cabinet, and the entire forfeited amount is not necessary to establish proper drainage and revegetation on the permit area for which it was submitted, the cabinet may use any remaining funds to supplement reclamation of other forfeited or released permit areas, if the other permit areas endanger public health and safety.

(2) When the bond for an interim or permanent program permit is forfeited by the cabinet, and the entire forfeited amount is more than the amount necessary to complete reclamation, the unused funds ***less any interest that has accrued*** shall be returned to the party from whom they were collected, subject to the cabinet's right to attach or set off the proceeds under other state laws.

(3) Notwithstanding any other provisions of this chapter or the provisions of KRS Chapter 45A, when the bond, other than a surety bond or bond secured by a letter of credit, for an interim or permanent program permit is forfeited and collected by the cabinet, and a person subsequently applies for a permit overlapping all or part of the disturbed area of the permit area for which the bond is forfeited, the cabinet may negotiate and enter into a contract with the applicant to reclaim the disturbed area overlapped in exchange for all or part of the forfeited bond funds held by the cabinet, if requested by the applicant. If the applicant proposes to overlap only a part of the disturbed area the cabinet may enter into a contract with the applicant to reclaim the overlapped part of the disturbed area if the cabinet has retained a portion of the forfeited bond that is sufficient for the cabinet to reclaim the part of the disturbed area that is not overlapped. Any applicant under this subsection shall not be eligible for the benefits available under this subsection if the applicant has any ownership or control connection with the permittee or operator with respect to which the bond was forfeited. The amount of forfeited bond funds the cabinet may pay to the applicant shall be determined by the cabinet based upon the estimated cost for the cabinet to reclaim the disturbed area overlapped to the reclamation standards applicable to the original permit, but not to exceed the forfeited bond amount collected and held by the cabinet. Payments under this subsection shall be made only after release of the bond pursuant to KRS 350.093(4)(a) for those areas of the overlapping permit that are covered by the contract. If the applicant obtains a permanent program permit overlapping a forfeited interim permit, any disturbances created in connection with the overlapping permit on areas that were disturbed under the forfeited interim permit may be covered by a contract under this subsection and shall be reclaimed to permanent program standards. Areas where coal is not removed under the overlapping permit and the disturbances are for reclamation of the interim permit only shall be reclaimed to interim program standards. If the applicant obtains a permanent program permit overlapping a forfeited interim permit, any disturbances created in connection with the overlapping permit on areas that were not disturbed under the forfeited interim permit shall not be covered by a contract under this subsection and shall be reclaimed to permanent program standards. Nothing in this subsection shall be construed to exempt a person from the permitting, bonding, and reclamation requirements imposed in this chapter or to infringe upon the right of any surety to reclaim any permit or increment thereof to avoid bond forfeiture.

Section 2. KRS 350.139 is amended to read as follows:

(1) All prior enactments of this General Assembly to the contrary notwithstanding, all funds received by the Natural Resources and Environmental Protection Cabinet through the payment of fees and civil penalties shall be deposited in the State Treasury to the credit of the general fund ***except as provided in subsection (1) of Section 3 of this Act***. All funds from the forfeiture of bonds shall be placed in the State Treasury ***in an interest-bearing account*** and credited to a special agency account. ***The interest shall become a supplemental fund and may be used to supplement forfeited bonds which are inadequate to complete the reclamation plan. Except as provided in subsection (1) of Section 1 of this Act, forfeited bond funds***[~~As far as is practicable, this fund~~] shall be expended upon the lands for which the bond was given. ***The interest may be expended upon lands other than those for which the bond was given. No more than twenty-five percent (25%) of the supplemental fund may be expended upon any single site, unless a larger expenditure is necessary to abate an imminent danger to public health or safety.***

(2) The State Treasurer shall on or before August 1 of each year transfer thirty-three and one-third percent (33-1/3%) of all funds paid during the preceding fiscal year as fees for the issuance of any permit for surface coal mining operations to the fiscal courts of the county in which the permitted operation is located for the general purposes of that fiscal court.

Section 3. KRS 350.990 is amended to read as follows:

(1) Any permittee, person, or operator who violates any of the provisions of this chapter or ***administrative*** regulations ***promulgated***[~~adopted~~] pursuant thereto or who fails to perform the duties imposed by these provisions, except the refusal or failure to obtain a permit or other authorization as provided in this chapter, or who violates any determination or order ***issued***[~~promulgated~~] pursuant to the provisions of this chapter, may be liable to a civil penalty of not more than five thousand dollars ($5,000) for the violation, and an additional civil penalty of not more than five thousand dollars ($5,000) for each day during which the violation continues, and in addition, may be enjoined from continuing the violations provided in this section. Any permittee, operator, or person who fails to abate a violation noted in a notice of noncompliance or an order for immediate compliance and cessation within the time period prescribed for the abatement shall be assessed a civil penalty of not less than seven hundred fifty dollars ($750) for each day during which the violation continues. Any person issued an order pursuant to KRS 350.130(4) shall be assessed a civil penalty of not more than five thousand dollars ($5,000) for each violation cited in the underlying notice of noncompliance issued therewith. No separate civil penalty shall be assessed for the order issued pursuant to KRS 350.130(4). Each day of continuing violation may be deemed a separate violation for purposes of penalty assessment. The cabinet shall develop a method for calculating monetary penalties and shall promulgate it as an administrative regulation. The secretary or a designated representative, upon his or her own initiative or upon written request received within fifteen (15) days after the cabinet mails its proposed penalty assessment, may waive the use of the method for calculating monetary penalties if he or she determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. The basis for every waiver shall be fully explained and documented in the records of the case. If the secretary or his or her designated representative waives the use of the formula, he or she shall determine the appropriate penalty upon consideration of the permittee's history of previous violations at the particular surface coal mining operation, the seriousness of the violation, whether the permittee was negligent, and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation. The penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky by the cabinet's Office of Legal Services. The Franklin Circuit Court shall hold concurrent jurisdiction and venue of all civil and injunctive actions instituted by the cabinet for the enforcement of the provisions of this chapter or the orders and administrative regulations of the cabinet promulgated pursuant thereto. All sums recovered shall be placed in the State Treasury, except those moneys collected in excess of eight hundred thousand dollars ($800,000) in any fiscal year shall be deposited in the bond pool fund for purposes set forth in KRS 350.595 and ***KRS*** 350.700 to 350.755 ***until the fund reaches sixteen million dollars ($16,000,000) or a higher amount as may be established by the most recent actuarial study, after which excess money collected shall be deposited fifty percent (50%) to the bond pool fund and fifty percent (50%) to the supplemental fund established under subsection (1) of Section 2 of this Act, and used for the purposes of that section. If the bond pool fund falls below sixteen million dollars ($16,000,000) or a higher amount as may be established by the most recent actuarial study, all excess moneys shall be deposited in the bond pool fund until that fund reaches sixteen million dollars ($16,000,000) or a higher amount as may be established by the most recent actuarial study***. All moneys previously deposited in the abandoned mine land enhancement fund shall be redeposited in the bond pool fund.

(2) Any person or operator who engages in surface coal mining operations without first securing a permit, as provided in KRS 350.060, or any person who engages in coal exploration operations, exclusive of core drilling, without proper authorization, as required by the cabinet pursuant to KRS 350.057 or administrative regulations promulgated pursuant thereto, or any person or operator who engages in other mining operations, without proper authorization as required by this chapter or administrative regulations promulgated pursuant thereto, shall be liable to a civil penalty for damages to the Commonwealth of not less than five thousand dollars ($5,000) nor more than twenty-five thousand dollars ($25,000) and in addition, may be enjoined from continuing the violations. Each day shall constitute a separate violation. In addition to the foregoing penalties, any permittee, person, or operator who fails to abate a violation of KRS 350.060 or KRS 350.029 or KRS 350.057, as noted in a notice of noncompliance or an order for immediate compliance and

cessation within the time period prescribed for the abatement, shall be assessed an additional civil penalty of not less than seven hundred and fifty dollars ($750) for each day during which the violation continues. However, the penalties provided in subsection (1) of this section shall apply in lieu of the penalties provided in this subsection where an operator or permittee through inadvertence has exceeded the boundaries or expiration date of the permit in effect at that time.

(3) The cabinet's Office of Legal Services shall bring an action for the recovery of penalties and bring an action for a restraining order, temporary or permanent injunction, against any permittee, operator, or person violating or threatening to violate any of the provisions of this chapter or violating or threatening to violate any order or determination ***issued***[~~promulgated~~] pursuant to the provisions of this chapter. The Franklin Circuit Court shall hold concurrent jurisdiction and venue of all civil and injunctive actions instituted by the cabinet for the enforcement of the provisions of this chapter or the orders and administrative regulations of the cabinet promulgated pursuant thereto.

(4) Any permittee, operator, or person who knowingly and willfully violates any of the provisions of this chapter, except as provided in subsection (5) of this section, or any determination or order ***issued***[~~promulgated~~] pursuant to the sections of this chapter which have become final, shall be guilty of a Class A misdemeanor. Each day on which the violation occurs may constitute a separate offense.

(5) (a) Any person or operator who, in violation of KRS 350.060(1)(a) willfully and knowingly engages in surface coal mining operations without first obtaining a permit from the cabinet, or any person or operator who willfully and knowingly engages in coal exploration operations, exclusive of core drilling, without proper authorization, as required by the cabinet pursuant to KRS 350.057 or administrative regulations promulgated pursuant thereto, or any person or operator who willfully and knowingly engages in other mining operations without proper authorization as required by this chapter or administrative regulations promulgated pursuant thereto, with the intent to violate the laws, shall be guilty of a Class D felony.

(b) Any person or operator who in violation of KRS 350.060(1)(b) willfully and knowingly receives, transports, sells, conveys, transfers, trades, exchanges, donates, purchases, delivers, or in any way derives benefit from coal removed from any surface mining operations conducted in violation of KRS 350.060(1)(a) or 350.057 shall be guilty of a Class D felony.

(6) Any person who violates any of the provisions of KRS 350.600 or administrative regulations promulgated pursuant thereto shall be subject to civil penalties of not more than twenty-five thousand dollars ($25,000). Each day of continuing violation shall be deemed a separate violation.

(7) Any permittee, operator, or person who knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained by the cabinet, shall upon conviction be guilty of a Class A misdemeanor.

(8) Except as permitted by law, any permittee, operator, or person who willfully and knowingly resists, prevents, impedes, or interferes with the secretary or other personnel of the cabinet in the performance of duties pursuant to this chapter shall be guilty of a Class A misdemeanor.

(9) When a corporate permittee violates any provision of this chapter or administrative regulation ***promulgated***[~~issued~~] pursuant thereto or fails or refuses to comply with any final order issued by the secretary, any director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment as may be imposed upon a person pursuant to this section.

(10) Upon notice by the secretary that any surety has failed to comply with the provisions of KRS 350.032(3), the commissioner of the Kentucky Department of Insurance shall revoke the surety's certificate of authority to conduct insurance business within the Commonwealth of Kentucky.

(11) The cabinet, upon written request by any permittee, person, or operator subject to any penalty assessment under this section and pursuant to procedures, if any, set forth by administrative regulation and after consultation with the local county fiscal court, may allow as an alternative to the payment of any assessed penalty under this section the performance of in-kind reclamation, environmental rehabilitation, or similar action to correct environmental pollution. The in-kind work shall not substitute for those remedial measures mandated by the cabinet for the correction of any violations. The estimated cost of the in-kind work shall be greater than the penalty assessment. The cabinet's Division of Abandoned Lands shall have the authority to approve proposed in-kind projects and to recommend projects to the cabinet, and shall determine whether the estimated cost of the in-kind work exceeds the penalty assessment. For the purposes of this subsection, the cost of the in-kind work shall include only those expenditures for actual on-site reclamation or rehabilitation work, including direct equipment, personnel, and material cost, but excluding administrative overhead or transportation costs. Failure to perform the in-kind work as agreed upon by the person or operator subject to the penalty assessment shall reinstate the liability of the person, permittee, or operator for the full amount of the assessed penalty. The cabinet may prepare and promulgate administrative regulations as are necessary to implement and administer the provisions of this subsection.

HB 510, AN ACT relating to dangerous wildlife.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 150.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Angling" means the taking or attempting to take fish by hook and line in hand, rod in hand, jugging, setline, or sport fishing trotline;

(2) "Buy" includes offering to buy, acquiring, or possessing through purchase, barter, exchange, or trade;

(3) "Commercial trotline" means a line to which are attached more than fifty (50) single or multibarbed baited hooks, which shall not be placed closer than eighteen (18) inches;

(4) "Commission" means the Department of Fish and Wildlife Resources Commission;

(5) "Commissioner" means the commissioner of the Department of Fish and Wildlife Resources;

(6) "Daylight hours" means the period from one-half (1/2) hour before sunrise to one-half (1/2) hour after sunset;

(7) "Device" means any article, instrument, or equipment of whatever nature or kind which may be used to take wild animals, wild birds, or fishes;

(8) "Department" means the Department of Fish and Wildlife Resources;

(9) "Fishing" means to take or attempt to take in any manner, whether the fisherman has fish in possession or not;

(10) "Gigging" means the taking of fish by spearing or impaling on any pronged or barbed instrument attached to the end of any rigid object;

(11) "Grabbing" means the taking of fish, frogs, or turtles directly by hand or with the aid of a handled hook;

(12) "Hunting" means to take or attempt to take in any manner, whether the hunter has game in possession or not;

(13) "Identification tag" means a marker made of specified material upon which a name and address or number is placed and attached to unattended gear to designate ownership or responsible operator;

(14) "Impounded waters" means any public waters backed up behind a dam and includes all water upstream from the dam to the first riffle or shoal;

(15) "Jugging" means a means of fishing by which a single baited line is attached to any floating object;

(16) "License" means any document issued by the department authorizing its holder to perform acts authorized by the license and includes any other form of authorization in addition to or in lieu of an actual document which may be authorized by the department by administrative regulation;

(17) "Migratory shore or upland game birds" means all species of migratory game birds except waterfowl;

(18) "Minnows" means all fish under six (6) inches in length, except basses, either largemouth, smallmouth or Kentucky; rock bass or goggle-eye; trout; crappie; walleye; sauger; pike; members of the striped bass family; and muskellunge;

(19) "Navigable waters" means any waters within this state under lock and dam;

(20) "Nonresident" means a person who has not established a permanent domicile in this state and has not resided in this state for thirty (30) days immediately prior to his application for a license;

(21) "Permit" means any document issued by the department authorizing its holder to perform acts authorized by the permit and includes tags which shall be affixed to wildlife or devices as evidence of holding a permit and includes any other form of authorization in addition to or in lieu of an actual document authorized by the department by administrative regulation;

(22) "Possess" means the act of having or taking into control;

(23) "Prescribed by the department" means established by an administrative regulation;

(24) "Processed wildlife" means any wildlife specimen or parts thereof that have been rendered into a permanently preserved state;

(25) "Protected wildlife" means ***all wildlife except those species declared unprotected by administrative regulations promulgated by the department***[~~any wildlife for which an open or closed season for taking has been designated~~];

(26) "Public roadway" includes rural roads, highways, bridges, bridge approaches, city streets, viaducts, and bridges which are normally traveled by the general public and are under the jurisdiction of a state, federal, county, or municipal agency.

(27) "Public waters" means all waters within the state flowing in a natural stream channel or impounded on a natural stream;

(28) "Raw fur" means a hide, fur, or pelt of a fur-bearing animal which has not been processed. Skinning, stretching, oiling, or coloring of the pelt of the animal shall not be considered processing;

(29) "Administrative regulation" means a written regulation promulgated, pursuant to KRS Chapter 13A, by the commissioner with the approval of the commission;

(30) "Resident" means any person who has established permanent domicile and legal residence and has resided in this state for thirty (30) days immediately prior to his application for a license. All other persons shall be classed as nonresidents, except students enrolled for at least six (6) months in an educational institution as full-time students and military personnel of the United States who are under permanent assignment, shall be classified as residents while so enrolled or assigned in this state;

(31) "Resist" means to point a gun at, leave the scene, intimidate or attempt to intimidate in any manner, or further interfere in any manner with any officer in the discharge of his duties;

(32) "Rough fish" means all species of fishes other than those species designated by administrative regulation as sport fishes;

(33) "Sell" includes offering to sell, having or possessing for sale, barter, exchange, or trade;

(34) "Setline" means a line to which is attached one (1) single or multibarbed hook. This line may be attached to a tree limb, tree trunk, bank pole, or other stationary object, on the bank of a stream or impoundment;

(35) "Snagging" means the taking of fish or other aquatic animals through the use of a hand-held pole and attached line with single or multiple fish hooks in which the fish is hooked by a rapid drawing motion rather than enticement by bait;

(36) "Sports fishing trotline" means a line to which are attached no more than fifty (50) single or multibarbed baited hooks which shall not be placed closer together than eighteen (18) inches.

(37) "Take" includes pursue, shoot, hunt, wound, catch, kill, trap, snare, or capture wildlife in any way and any lesser act designed to lure, attract, or entice for these purposes; and to place, set, aim, or use any device, animal, substance, or agency which may reasonably be expected to accomplish these acts; or to attempt to do these acts or to assist any other person in the doing of or the attempt to do these acts;

(38) "Tenant" means any resident sharecropper, lessee, or any other person actually engaged in work upon a farm or lands and residing in a dwelling on the farms or lands including noncontiguous lands, but shall not include any other employee or tenant unless actually residing on the property and engaged or employed as above mentioned;

(39) "Transport" means to carry, move, or ship wildlife from one place to another;

(40) "Waterfowl" means all species of wild ducks, geese, swans, mergansers, and coots; and

(41) "Wildlife" means any normally undomesticated animal, alive or dead, including without limitations any wild mammal, bird, fish, reptile, amphibian, or other terrestrial or aquatic life, whether or not possessed in controlled environment, bred, hatched, or born in captivity and including any part, product, egg, or offspring thereof, protected or unprotected by this chapter.

Section 2. KRS 150.280 is amended to read as follows:

Except as provided by administrative regulation, a[~~No~~] person shall ***not*** propagate or hold protected wildlife without obtaining a permit to do so from the department[~~ within ten (10) days after the wildlife is acquired~~]. The ***department shall promulgate administrative***[~~commissioner shall make and publish~~] regulations governing all such activity ***and prescribing permit fees***.[~~ The application for a permit shall be in writing, addressed to the commissioner, signed by the applicant, and shall describe the land or waters owned or leased to be used and shall contain such other facts as may be required by the commissioner. The commissioner may issue a permit, which shall continue in force for a term fixed by the commissioner, unless sooner revoked by the commissioner for cause, upon payment of a permit fee and fees for tagging which shall be fixed by the commissioner. A fish and game club which enters into an agreement with the department to operate such a farm, in cooperation with the department, for the purpose of carrying out the department's program may, with the approval of the commissioner, be issued a permit without the payment of any fee.~~] Any permit issued pursuant to this section may be revoked[~~ by the commissioner at any time~~] for a violation by the holder thereof of any of the laws of Kentucky or of any ***administrative*** regulation of the department.

(2) The department shall by administrative regulation identify species of wildlife inherently dangerous to human health and safety and shall establish procedures for denying or issuing a transportation permit for said wildlife.

(3) The department shall by administrative regulation identify species of wildlife potentially damaging to native ecosystems and shall prohibit the transporting or holding of these wildlife.

SECTION 3. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

A county, city, urban-county, or charter county government may regulate or prohibit the holding of wildlife that have been identified by the Department of Fish and Wildlife Resources through administrative regulation as inherently dangerous to human health and safety according to Section 2 of this Act.

The Committee Substitute to **HB 510** is as follows:

AN ACT relating to dangerous wildlife.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 150.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Angling" means the taking or attempting to take fish by hook and line in hand, rod in hand, jugging, setline, or sport fishing trotline;

(2) "Buy" includes offering to buy, acquiring, or possessing through purchase, barter, exchange, or trade;

(3) "Commercial trotline" means a line to which are attached more than fifty (50) single or multibarbed baited hooks, which shall not be placed closer than eighteen (18) inches;

(4) "Commission" means the Department of Fish and Wildlife Resources Commission;

(5) "Commissioner" means the commissioner of the Department of Fish and Wildlife Resources;

(6) "Daylight hours" means the period from one-half (1/2) hour before sunrise to one-half (1/2) hour after sunset;

(7) "Device" means any article, instrument, or equipment of whatever nature or kind which may be used to take wild animals, wild birds, or fishes;

(8) "Department" means the Department of Fish and Wildlife Resources;

(9) "Fishing" means to take or attempt to take in any manner, whether the fisherman has fish in possession or not;

(10) "Gigging" means the taking of fish by spearing or impaling on any pronged or barbed instrument attached to the end of any rigid object;

(11) "Grabbing" means the taking of fish, frogs, or turtles directly by hand or with the aid of a handled hook;

(12) "Hunting" means to take or attempt to take in any manner, whether the hunter has game in possession or not;

(13) "Identification tag" means a marker made of specified material upon which a name and address or number is placed and attached to unattended gear to designate ownership or responsible operator;

(14) "Impounded waters" means any public waters backed up behind a dam and includes all water upstream from the dam to the first riffle or shoal;

(15) "Jugging" means a means of fishing by which a single baited line is attached to any floating object;

(16) "License" means any document issued by the department authorizing its holder to perform acts authorized by the license and includes any other form of authorization in addition to or in lieu of an actual document which may be authorized by the department by administrative regulation;

(17) "Migratory shore or upland game birds" means all species of migratory game birds except waterfowl;

(18) "Minnows" means all fish under six (6) inches in length, except basses, either largemouth, smallmouth or Kentucky; rock bass or goggle-eye; trout; crappie; walleye; sauger; pike; members of the striped bass family; and muskellunge;

(19) "Navigable waters" means any waters within this state under lock and dam;

(20) "Nonresident" means a person who has not established a permanent domicile in this state and has not resided in this state for thirty (30) days immediately prior to his application for a license;

(21) "Permit" means any document issued by the department authorizing its holder to perform acts authorized by the permit and includes tags which shall be affixed to wildlife or devices as evidence of holding a permit and includes any other form of authorization in addition to or in lieu of an actual document authorized by the department by administrative regulation;

(22) "Possess" means the act of having or taking into control;

(23) "Prescribed by the department" means established by an administrative regulation;

(24) "Processed wildlife" means any wildlife specimen or parts thereof that have been rendered into a permanently preserved state;

(25) "Protected wildlife" means ***all wildlife except those species declared unprotected by administrative regulations promulgated by the department***[~~any wildlife for which an open or closed season for taking has been designated~~];

(26) "Public roadway" includes rural roads, highways, bridges, bridge approaches, city streets, viaducts, and bridges which are normally traveled by the general public and are under the jurisdiction of a state, federal, county, or municipal agency.

(27) "Public waters" means all waters within the state flowing in a natural stream channel or impounded on a natural stream;

(28) "Raw fur" means a hide, fur, or pelt of a fur-bearing animal which has not been processed. Skinning, stretching, oiling, or coloring of the pelt of the animal shall not be considered processing;

(29) "Administrative regulation" means a written regulation promulgated, pursuant to KRS Chapter 13A, by the commissioner with the approval of the commission;

(30) "Resident" means any person who has established permanent domicile and legal residence and has resided in this state for thirty (30) days immediately prior to his application for a license. All other persons shall be classed as nonresidents, except students enrolled for at least six (6) months in an educational institution as full-time students and military personnel of the United States who are under permanent assignment, shall be classified as residents while so enrolled or

assigned in this state;

(31) "Resist" means to point a gun at, leave the scene, intimidate or attempt to intimidate in any manner, or further interfere in any manner with any officer in the discharge of his duties;

(32) "Rough fish" means all species of fishes other than those species designated by administrative regulation as sport fishes;

(33) "Sell" includes offering to sell, having or possessing for sale, barter, exchange, or trade;

(34) "Setline" means a line to which is attached one (1) single or multibarbed hook. This line may be attached to a tree limb, tree trunk, bank pole, or other stationary object, on the bank of a stream or impoundment;

(35) "Snagging" means the taking of fish or other aquatic animals through the use of a hand-held pole and attached line with single or multiple fish hooks in which the fish is hooked by a rapid drawing motion rather than enticement by bait;

(36) "Sports fishing trotline" means a line to which are attached no more than fifty (50) single or multibarbed baited hooks which shall not be placed closer together than eighteen (18) inches.

(37) "Take" includes pursue, shoot, hunt, wound, catch, kill, trap, snare, or capture wildlife in any way and any lesser act designed to lure, attract, or entice for these purposes; and to place, set, aim, or use any device, animal, substance, or agency which may reasonably be expected to accomplish these acts; or to attempt to do these acts or to assist any other person in the doing of or the attempt to do these acts;

(38) "Tenant" means any resident sharecropper, lessee, or any other person actually engaged in work upon a farm or lands and residing in a dwelling on the farms or lands including noncontiguous lands, but shall not include any other employee or tenant unless actually residing on the property and engaged or employed as above mentioned;

(39) "Transport" means to carry, move, or ship wildlife from one place to another;

(40) "Waterfowl" means all species of wild ducks, geese, swans, mergansers, and coots; and

(41) "Wildlife" means any normally undomesticated animal, alive or dead, including without limitations any wild mammal, bird, fish, reptile, amphibian, or other terrestrial or aquatic life, whether or not possessed in controlled environment, bred, hatched, or born in captivity and including any part, product, egg, or offspring thereof, protected or unprotected by this chapter.

Section 2. KRS 150.280 is amended to read as follows:

(1) Except as provided by administrative regulation, a[~~No~~] person shall ***not*** propagate or hold protected wildlife without obtaining a permit to do so from the department[~~ within ten (10) days after the wildlife is acquired~~]. The ***department shall promulgate administrative***[~~commissioner shall make and publish~~] regulations governing all such activity ***and prescribing permit fees***.[~~ The application for a permit shall be in writing, addressed to the commissioner, signed by the applicant, and shall describe the land or waters owned or leased to be used and shall contain such other facts as may be required by the commissioner. The commissioner may issue a permit, which shall continue in force for a term fixed by the commissioner, unless sooner revoked by the commissioner for cause, upon payment of a permit fee and fees for tagging which shall be fixed by the commissioner. A fish and game club which enters into an agreement with the department to operate such a farm, in cooperation with the department, for the purpose of carrying out the department's program may, with the approval of the commissioner, be issued a permit without the payment of any fee.~~] Any permit issued pursuant to this section may be revoked[~~ by the commissioner at any time~~] for a violation by the holder thereof of any of the laws of Kentucky or of any ***administrative*** regulation of the department.

(2) The department shall by administrative regulation identify species of wildlife potentially damaging to native ecosystems and shall prohibit the transporting or holding of these wildlife.

SECTION 3. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) A county, city, urban-county, or charter county government may regulate or prohibit the holding of wildlife that have been identified by the Department of Fish and Wildlife Resources as inherently dangerous to human health and safety.

(2) The department has declared the following species of wildlife to be inherently dangerous to human health and safety and shall establish procedures for denying or issuing a transportation permit for said wildlife:

(a) African buffalo (Syncerus caffer);

(b) Hippopotamus (Hippopotamus amphibius);

(c) Hyenas (family Hyaenidae), all species except aardwolves (Proteles Cristatus);

(d) Honey badger or ratel (Mellivora campensis);

(e) Old world badger (Meles meles);

(f) Lions, jaguars, leopards, or tigers (Genus Panthera);

(g) Clouded leopard (Neofelis nebulosa);

(h) Cheetah (Acinonyx jubatus);

(i) Elephants (family Elephantidae);
(j) Rhinoceroses (family Rhinocerotidae);
(k) Gibbons or siamangs (family Hylobatidae);
(l) Orangutans, chimpanzees, or gorillas (Family Pongidae);
(m) Baboons, drills, or mandrills (Genus Papio);
(n) Macaques (Genus Macaca);
(o) Gelada baboon (Theropithecus gelada);
(p) Gavials (Family Gavialidae);
(q) Crocodiles (Family Crocodylidae);
(r) Alligators or caimans (Family Alligatoridae);
(s) Sea snakes (Family Hydrophidae);
(t) Cobras or coral snakes (Family Elapidae);
(u) Adders or vipers (Family Viperae);
(v) Venomous rear-fanged species (Family Colubridae);
(w) Gila monsters or beaded lizards (Family Helodermatidae);
(x) Komodo dragon (Varanus komodoensis);
(y) The following constricting snakes over eight (8) feet in length:
  1. Boa constrictor (Boa constrictor) all subspecies;
  2. Anaconda (eunectues murinus);
  3. Indian python (Python molurus);
  4. Reticulated python (Python reticulatus); or
  5. Rock Python (Python sebae);
(z) Bears (Family Ursidae);
(aa) Wolf or wolf hybrids of over twenty-five percent (25%) wolf; or
(bb) Cougar or mountain lion (Felis concolor).

HB 593, AN ACT relating to surface mining permit renewal.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 350.060 is amended to read as follows:

(1) (a) No person shall engage in surface coal mining and reclamation operations without having first obtained from the cabinet a permit designating the area of land affected by the operation. Permits shall authorize the permittee to engage in surface coal mining and reclamation operations upon the area of land described in his application for a period not to exceed five (5) years. However, if an applicant demonstrates that a specified longer term is reasonably needed to obtain necessary financing for equipment and the opening of the operation and if the application is full and complete for the specified longer term, the cabinet may grant a permit for the longer term. No mining shall be permitted beyond the time period obligations of the initial or extended bond coverage.

(b) Subject to the provisions of KRS 350.010(1) and (2), no person shall knowingly and willfully receive, transport, sell, convey, transfer, trade, exchange, donate, purchase, deliver, or in any way derive benefit from coal removed from any surface mining operation which does not have a permit as required under this section.

(2) No permit or revision application shall be approved unless the application affirmatively demonstrates, and the cabinet finds in writing on the basis of the information set forth in the application or from information otherwise available, that the permit application is accurate and complete and that all the requirements of this chapter have been complied with.

(3) A person desiring a permit to engage in surface coal mining operations shall file an application which shall state:

(a) The location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) The owner or owners of the surface of the area of land to be affected by the permit and the owner or owners of all surface area adjacent to any part of the affected area;

(c) The owner or owners of the coal to be mined;

(d) The source of the applicant's legal right to mine the coal on the land affected by the permit;

(e) The permanent and temporary post office addresses of the applicant, which shall be updated immediately if changed at any point prior to final bond release;

(f) Whether the applicant or any person, partnership, or corporation associated with the applicant holds or has held any other permits under this chapter, and an identification of the permits;

(g) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the applicant, together with the names and addresses of any individual owning of record ten percent (10%) or more of any class of voting stock of the applicant, and whether the applicant or any person is subject to any of the provisions of subsection (3) of KRS 350.130 and he shall so certify. The permittee shall submit updates of this information as changes occur or as otherwise provided by administrative regulation; however, failure to submit updated information shall constitute a violation of this chapter only upon the permittee's refusal or failure to timely submit the information to the cabinet upon request. Upon receipt of updated information satisfactory to the cabinet, the cabinet shall promptly update its computer system containing the information;

(h) A listing of any violations of this chapter, Public Law 95-87, and any law, rule, or regulation in effect for the protection of air or water resources incurred by the applicant in connection with any surface coal mining and reclamation operation during the three (3) year period prior to the date of an application. The list shall indicate the final resolution of the violations; and

(i) Whether the area of land to be affected by the operation has been previously mined and is in compliance with current reclamation standards, and, if not, identify the needed reclamation work.

(4) The application for a permit shall be accompanied by an official document, and an affidavit attesting to the document's authenticity, which will evidence what particular business entity the applicant is, whether a foreign or domestic corporation, a partnership, an entity doing business as another, or, if sole proprietorship, an affidavit so stating.

(5) The application for a permit shall be accompanied by copies, in numbers satisfactory to the cabinet, of a United States Geological Survey topographic map or other map acceptable to the cabinet on which the applicant has indicated the location of the operation, the course which would be taken by drainage from the operation to the stream or streams to which the drainage would normally flow, the name of the applicant and date, and the name of the person who located the operation on the map.

(6) The application for a permit shall be accompanied by copies, in numbers satisfactory to the cabinet, of an enlarged United States Geological Survey topographic map or other map acceptable to the cabinet meeting the requirements of paragraphs (a) to (i) of this subsection. The map shall:

(a) Be prepared and certified by a professional engineer registered under the provisions of KRS Chapter 322. The certification shall be in the form as provided in subsection (8) of this section, except that the engineer shall not be required to certify the true ownership of property under paragraph (d) of this subsection;

(b) Identify the area to correspond with the application;

(c) Show adjacent deep mining;

(d) Show the boundaries of surface properties and names of owners of the affected area and adjacent to any part of the affected area;

(e) Be of a scale of 1:24,000 or larger;

(f) Show the names and locations of all streams, creeks, or other bodies of public water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within five hundred (500) feet of the area;

(g) Show by appropriate markings the boundaries of the area of land affected, the cropline of the seam or deposit of coal to be mined, and the total number of acres involved in the area of land affected;

(h) Show the date on which the map was prepared, the north point, and the quadrangle name; and

(i) Show the drainage plan on and away from the area of land affected. The plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(7) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions, and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the cabinet of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability. This determination shall not be required until the time hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit shall not be approved until the information is available and is incorporated into the application.

(8) All certifications required by this chapter to be made by professional engineers shall be done in the form prescribed by the cabinet and shall be reasonably specific as to the work being certified. The cabinet may reject any document or map

as incomplete if it is not properly certified.

(9) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation; the manner, time, and distance for backfilling; grading work; and a reclamation plan for the affected area, which proposals shall meet the requirements of this chapter and administrative regulations adopted pursuant thereto.

(10) The application for a permit shall be accompanied by proof that the applicant has public liability insurance coverage satisfactory to the cabinet for the surface mining and reclamation operations for which the permit is sought, or proof that the applicant has satisfied self-insurance requirements as provided by administrative regulations of the cabinet. The coverage shall be maintained in full force and effect during the terms of the permit and any permit renewal, and until reclamation operations are completed.

(11) A basic fee set by administrative regulation, and bearing a reasonable relationship to the cost of processing the permit application but not to exceed three hundred seventy-five dollars ($375), plus a fee set by administrative regulation but not to exceed seventy-five dollars ($75), for each acre or fraction thereof of the area of land to be affected by the operation, shall be paid before the permit required in this section shall be issued; provided that if the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid in increments and at times corresponding to the approved plan. The applicant shall file with the cabinet a bond payable to the Commonwealth of Kentucky with surety satisfactory to the cabinet in the sum to be determined by the cabinet for each acre or fraction thereof of the area of land affected, with a minimum bond of ten thousand dollars ($10,000), conditioned upon the faithful performance of the requirements set forth in this chapter and of the administrative regulations of the cabinet. The cabinet shall forfeit the entire amount of the bond for the permit area or increment in the event of forfeiture. In determining the amount of the bond, the cabinet shall take into consideration the character and nature of the overburden; the future suitable use of the land involved; the cost of backfilling, grading, and reclamation to be required; and the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology, and revegetation potential. The bond amount shall initially be computed to be sufficient to assure completion of reclamation if the work had to be performed by the cabinet in the event of forfeiture. The cabinet shall promulgate administrative regulations setting forth bonding requirements including, but not limited to, requirements for the amount, duration, release, and forfeiture of bonds.

(12) Surface coal mining and reclamation operations which affected two (2) acres or less, as defined by administrative regulations of the cabinet, which were conducted pursuant to two (2)-acre-or-less permits issued by the cabinet, which were commenced on or before June 5, 1987, and on which mining ceased on or before November 7, 1987, shall be exempt from the requirements of this chapter, except as follows. Reclamation of the operations shall be accomplished in accordance with administrative regulations promulgated by the cabinet for operations of two (2) acres or less. The cabinet shall not require that the highwalls left by the operations be eliminated. Bond shall be maintained until reclamation is successfully completed. All procedural provisions and the penalty provisions of KRS 350.990 shall apply to operations conducted pursuant to this subsection. The cabinet shall enforce this subsection consistent with this chapter, except that the cabinet shall not issue orders requiring cessation of operations for mere failure to abate a violation.

(13) The cabinet shall promulgate administrative regulations for the permitting of operations with surface effects of underground mining and other surface coal mining and reclamation operations consistent with this section. The cabinet shall recognize the distinct differences between the surface effects of underground mining and strip mining, as also provided in KRS 350.151, in promulgating permitting requirements for these operations; provided, that the cabinet shall require that all the areas overlying underground workings be permitted but that the areas overlying underground workings not affected by operations and facilities occurring on the surface shall not be subject to the payment of acreage fees or bond requirements of subsection (11) of this section, KRS 350.070, or KRS 350.151.

(14) Any valid permit issued pursuant to this chapter shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. An applicant for renewal of a permit shall pay a basic fee set by regulation, not to exceed three hundred seventy-five dollars ($375). The holders of the permit may apply for renewal and the renewal shall be issued, provided that on application for renewal the burden shall be on the opponents of renewal, subsequent to the fulfillment of the public notice requirements of this chapter, unless it is established and written findings by the cabinet are made that:

(a) The terms and conditions of the existing permit are not being satisfactorily met;

(b) The present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this chapter;

(c) The renewal requested substantially jeopardizes the applicant's continuing responsibility on existing permit areas;

(d) The applicant has not provided evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested in the application as well as any additional bond the cabinet might require; or

(e) Any additional revised or updated information required by the cabinet has not been provided.

Prior to the approval of any renewal of permit, the cabinet shall provide notice to the appropriate public authorities.

(15) If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit which addresses any new areas of surface disturbance shall be subject to the full standards applicable to new applications under this chapter.

(16) Any permit renewal shall be for a term not to exceed the period of the original permit. Application for permit renewal shall be made at least one hundred twenty (120) days prior to the expiration of the valid permit. *However, if a permit has expired or if a permit renewal application has not been timely filed, and the operator or permittee desires to continue the surface coal mining operation, the cabinet shall forthwith cause a notice of noncompliance to be issued. The notice of noncompliance shall be deemed to have been complied with, and the permit may be renewed, if the cabinet receives a permit renewal application within thirty (30) days of the receipt of the notice of noncompliance. Upon the submittal of a permit renewal application, the operator or permittee shall be deemed to have timely filed the permit renewal application and shall be entitled to continue, under the terms of the expired permit, the surface coal mining operation, pending the issuance of the permit renewal. Failure to comply with the remedial measures of the notice of noncompliance shall result in the cessation of the surface coal mining operation.*

(17) Notwithstanding any of the provisions of this section, a permit shall terminate if the permittee has not commenced the surface coal mining operations covered by the permit within three (3) years of the issuance of the permit. However, the cabinet may grant reasonable extensions of time upon a showing that the extensions are necessary by reason of litigation precluding commencement of operations, or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time the construction of the synthetic fuel or generating facility is initiated.

(18) Each application for a permit or revision for auger mining on a previously mined area shall contain information to describe the area to be affected, to show that the proposed method of operation will result in stable post-mining conditions, and reduce or eliminate adverse environmental conditions created by previous mining activities. If the cabinet determines that the affected area cannot be stabilized and reclaimed subsequent to augering or that the operation will result in an adverse impact to the proposed or adjacent area, the permit or revision shall not be issued. The cabinet shall, consistent with all applicable requirements of this chapter, issue a permit or revision if the applicant demonstrates that the proposed coal mining operations will provide for reduction or elimination of the highwall, or reduction or abatement of adverse impacts resulting from past mining activities, or stabilization or enhancement of a previously mined area. The cabinet shall insure that all reasonably available spoil material will be used to backfill the highwall to the extent practical and feasible; provided, however, that in all cases the holes be properly sealed and backfilled to a minimum of four (4) feet above the coal seam being mined.

(19) All operations involving the loading of coal which do not separate the coal from its impurities, and which are not located at or near the mine site, shall be exempt from the requirements of this chapter.

HB 598, AN ACT relating to public water systems.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds that the federal Safe Drinking Water Act, as amended by Public Law 104-182, creates an opportunity for Kentucky to improve public drinking water supplies. Therefore, the cabinet shall administer a system capacity program for public water systems consistent with the federal law. For purposes of Sections 1 to 4 of this Act, "system capacity" means the technical, financial, and managerial capacity to operate a public water system in compliance with the federal Safe Drinking Water Act, as amended by Public Law 104-182. The cabinet may promulgate administrative regulations as necessary to administer Sections 1 to 4 of this Act.

SECTION 2. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

(1) Not later than August 6, 2000, the cabinet shall develop and begin implementing, a strategy to assist public water systems in acquiring and maintaining technical, financial, and managerial system capacity.

(2) In preparing the system capacity development strategy, the cabinet shall solicit and consider public comment on, and incorporate into the strategy as appropriate:

(a) The methods or criteria that the cabinet will use to identify and prioritize public water systems most in need of improving technical, financial, and managerial capacity;

(b) A description of the institutional, regulatory, financial, tax, or legal factors at the federal, state, or local level that encourage or impair system capacity development;

(c) A description of how the cabinet will use the authorities and resources of the Safe Drinking Water Act as

amended by PL 104-182, or other means, to assist public water systems in complying with national primary drinking water regulations, to encourage the development of partnerships between public water systems to enhance the system capacity of public water systems, and to assist public water systems in the training and certification of operators;

(d) A description of how the cabinet will establish a baseline against which to measure improvements in system capacity with respect to national primary drinking water regulations, this chapter, KRS 224.10-110, and administrative regulations promulgated thereunder; and

(e) An identification of the persons that have an interest in and are involved in the development and implementation of the system capacity development strategy, including all appropriate agencies of federal, state, and local governments, private and nonprofit public water systems, and public water system customers.

(3) If the cabinet determines that an existing public water system does not have system capacity, it may assist the public water system in submitting a system capacity development plan as part of the long range water supply plan required by KRS 151.114. The plan shall contain timetables, goals, and funding sources necessary for the public water system to achieve system capacity.

SECTION 3. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

After October 1, 1999, new community or nontransient noncommunity public water systems, as defined by federal law, shall not be created unless they have system capacity. For new community or nontransient noncommunity public water systems that intend to begin operating after October 1, 1999, the cabinet shall not approve plans pursuant to KRS 224.10-110 and the administrative regulations promulgated pursuant thereto, unless the systems demonstrate to the cabinet that they have system capacity.

SECTION 4. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

The cabinet shall conduct a source water assessment and delineation program as described in the 1996 amendments to the federal Safe Drinking Water Act, Public Law 104-182.

HB 636, AN ACT relating to waste tires.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds that waste tires are a threat to human health, safety, and the environment when they are not properly managed. The General Assembly further finds that waste tires can be used in civil engineering applications, as tire-derived fuel, and may be recycled, but that markets for these uses have not been adequately developed. Therefore a waste tire program should be established to manage waste tires in a way that protects human health, safety, and the environment, and which encourages the development of markets for waste tires.

SECTION 2. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

(1) A waste tire program is created to manage waste tires which for the purposes of Sections 1 to 16 of this Act shall include:

(a) Tires not used for their original, intended purpose due to wear or damage;

(b) Used tires stored for resale; and

(c) Processed waste tire material.

(2) The cabinet may promulgate administrative regulations to implement the waste tire program.

SECTION 3. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

The waste tire program shall not apply to:

(1) A person who accumulates waste tires for an agricultural purpose;

(2) A person who stores waste tires for resale, if the storage of the waste tires complies with environmental performance standards established by the cabinet for waste sites or facilities and follows common business practices of storing new motor vehicle tires on racks and moving the waste tires indoors at the close of the business day;

(3) A person who accumulated up to seven hundred and fifty (750) waste tires before January 16, 1991, and who meets the following conditions:

(a) The waste tires are used as an integral part of a business, including safety barriers but excluding storage or disposal;

(b) The number of waste tires has not increased since January 16, 1991; and

(c) The person certifies to the cabinet within thirty (30) days of the effective date of this Act that actions have been taken to prevent fires and the spread of illness through disease vectors.

SECTION 4. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

(1) No person shall engage in disposal of waste tires in Kentucky except by transfer to a permitted solid waste disposal facility and except as follows:

(a) If transferred to a contained landfill, the waste tires shall be processed to prevent the entrapment of air or water;

(b) If transferred to a residual landfill, the waste tires shall be rendered suitable for disposal in a landfill and the landfill shall accept only waste tires for disposal; or

(c) If transferred to an incinerator, the incinerator shall be permitted to allow the burning of waste tires and shall have received a local determination related to the waste tires in accordance with KRS 224.40-315 (1).

(2) No person shall accumulate more than twenty-five (25) waste tires in Kentucky at a time for processing, by baling, chopping, recycling, shredding, or other means of changing their shape, size, or chemical content without meeting the requirements of the waste tire program. For processing which had been approved by the cabinet before the effective date of this Act, the person who had received the approval shall register within forty-five (45) days of the effective date of this Act.

(3) No person shall transport more than fifty (50) waste tires in Kentucky at a time, either in one (1) vehicle or more than one (1) vehicle managed by or operated under contract with that person, without meeting the requirements of the waste tire program, unless transported in accordance with subsection (5) of this section.

(4) No person shall accumulate more than one hundred (100) waste tires in Kentucky at a time without meeting the requirements of the waste tire program, unless exempted by Section 3 of this Act or accumulated in accordance with subsection (5) or (6) of this section. For accumulations of more than one hundred (100) tires not accumulated in accordance with subsection (5) or (6) of this section and existing on the effective date of this Act, the person who has accumulated the tires shall register within forty-five (45) days of the effective date of this Act.

(5) A person making retail sales of new motor vehicle tires in Kentucky may accumulate up to one thousand (1,000) waste tires at the place where retail sales are made without registering as an accumulator as required by Section 5 of this Act, if the waste tires are stored in accordance with the requirements of subsections (3), (5), (6), (7), and (8) of Section 6 of this Act, and stored on-site in a building, in an adjacent covered area, or closed container where public access is prohibited after business hours. The retailer may transport the waste tires it accumulates at the place where retail sales are made without registering as a transporter as required by Section 5 of this Act if the waste tires will remain in the retailer's possession until they reach their destination.

(6) An automotive recycling dealer in Kentucky who is licensed by the Transportation Cabinet pursuant to KRS 190.010 to 190.080 may accumulate up to one thousand (1,000) waste tires at the place where automotive recycling is done without registering as an accumulator as required by Section 5 of this Act if the waste tires are stored in accordance with subsections (2) to (11) of Section 6 of this Act and stored on-site in a building, in an adjacent covered area, or closed container where public access is prohibited after business hours.

SECTION 5. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

(1) Unless exempted by Section 3 or as authorized by subsections (4) and (5) of Section 4 of this Act, no person shall accumulate more than twenty-five (25) waste tires at a time for processing, transport more than fifty (50) waste tires at a time, or accumulate more than one hundred (100) waste tires at a time without first registering and receiving a letter of approval from the cabinet.

(2) To register, the following shall be submitted:

(a) The person's name and address;

(b) The address where the waste tires are to be accumulated or transferred;

(c) A statement of the purpose for accumulating, transporting, or processing the waste tires;

(d) A statement of the maximum number of waste tires to be accumulated, transported, or processed, and their passenger tire equivalents, as calculated under Section 7 of this Act;

(e) The rate at which waste tires are to be accumulated, transported, or processed;

(f) A certification stating that the person has read and understood the requirements of the waste tire program and will comply with those requirements;

(g) Financial assurance to pay for closure and corrective action as required by Sections 8 and 9 of this Act; and

(h) A disclosure statement required by KRS 224.40-330(2):

(3) The cabinet shall approve the registration when the registration requirements have been met.

SECTION 6. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

A person required to register as an accumulator, transporter, or processor of waste tires shall:

(1) Manage the waste tires in accordance with the registration approved by the cabinet;

(2) Manage the waste tires in accordance with environmental performance standards established by the cabinet for waste sites or facilities;

(3) Store waste tires in a manner that allows fire fighting equipment access to the waste tires;

(4) Establish fire breaks to prevent the spread of fire;

(5) Prevent mosquito infestations and entrapment of water in the waste tires;

(6) Store waste tires stored outdoors in closed containers, in adjacent covered areas, or in windrows no greater than twenty-five (25) feet wide, ten (10) feet high, and seventy-five (75) feet long, with at least fifty (50) feet of open, unoccupied ground between windrows;

(7) Unless the waste tires are stored in buildings, in adjacent covered areas, or closed containers, store them no closer than:

(a) Thirty (30) feet from a utility easement, property line, or highway right-of-way;

(b) Two hundred fifty (250) feet from a residence; or

(c) Two hundred fifty (250) feet from a karst feature, surface water of the Commonwealth, or unplugged water well;

(8) Store waste tires on a surface with a grade of five percent (5%) or less which is free of vegetation and other flammable materials;

(9) Display a permanent sign legible at one hundred (100) feet which identifies the name, address, and emergency telephone number of the person with the registration, the hours of operation, and the cabinet's emergency telephone number;

(10) Comply with the recordkeeping system established by Section 13 of this Act; and

(11) Transfer waste tires only to a person who presents a letter from the cabinet approving a registration issued under Section 5 of this Act or a copy of a solid waste disposal facility permit issued by the cabinet.

SECTION 7. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

(1) A person required to register as an accumulator, transporter, or processor of waste tires shall provide the cabinet with financial assurance to pay for closure and corrective action as required by Sections 8 and 9 of this Act.

(2) The amount of the financial assurance shall be based on the maximum quantity of waste tires, calculated as passenger tire equivalents, that are accumulated, processed, or transported. Passenger tire equivalents shall be determined by using the most appropriate following calculation:

(a) One (1) whole waste tire with an inside bead diameter less than nineteen (19) inches shall equal one (1) passenger tire equivalent;

(b) One (1) whole waste tire with an inside bead diameter equal to or greater than nineteen (19) inches shall equal five (5) passenger tire equivalents;

(c) Twenty (20) pounds of waste tires shall equal one (1) passenger tire equivalent;

(d) One (1) cubic yard of loose, whole waste tires shall equal ten (10) passenger tire equivalents;

(e) One (1) cubic yard of laced or stacked whole waste tires shall equal fifteen (15) passenger tire equivalents; or

(f) One (1) cubic yard of processed waste tire material shall equal fifty (50) passenger tire equivalents.

(3) The amount of financial assurance to be provided shall be one dollar ($1) per passenger tire equivalent, with a minimum amount of ten thousand dollars ($10,000).

(4) The cabinet may approve an alternative method of determining the number of passenger tire equivalents if the alternative method ensures that adequate funds are available to meet closure and corrective action requirements.

(5) The financial assurance shall be issued in favor of the cabinet and may consist of one (1) or more of the following mechanisms; surety bonds, corporate guarantees, irrevocable letters of credit, insurance, or trust funds. The financial assurance shall be submitted to the cabinet on a form or in a format approved by the cabinet. In approving

a financial assurance mechanism, the cabinet shall follow the administrative regulations promulgated by the U. S. Environmental Protection Agency under Subtitle D of the Solid Waste Disposal Act, 42 U.S.C. § 6901, et seq., for solid waste disposal facilities, unless the cabinet promulgates administrative regulations setting different standards.

(6) The cabinet shall forfeit the financial assurance when necessary to pay for closure or corrective action. Any money remaining after completion of closure and corrective action shall be returned to the person who posted the financial assurance.

SECTION 8. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

(1) A person required to register as an accumulator, transporter, or processor of waste tires shall conduct closure by:

- *(a) Notifying its customers and the cabinet with a schedule of when waste tires will no longer be accepted and closure will begin;*
- *(b) Removing all waste tires in accordance with the schedule;*
- *(c) Conducting any corrective action required by Section 9 of this Act; and*
- *(d) Certifying to the cabinet that all waste tires have been removed, that no additional waste tires will be accepted, and that any necessary corrective action has been completed.*

(2) The cabinet shall determine that closure has been completed before releasing the financial assurance.

SECTION 9. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

A person required to register as an accumulator, transporter, or processor of waste tires shall conduct corrective action as necessary to protect human health, safety, and the environment. For a release or a threatened release of a hazardous substance, a pollutant or contaminant, or a petroleum or petroleum product, corrective action shall be conducted in accordance with KRS 224.01-400 and KRS 224.01-405. The person registered shall certify to the cabinet that corrective action has been completed in accordance with this section. The cabinet shall determine that corrective action has been completed before releasing the financial assurance.

SECTION 10. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

(1) Until July 31, 2002, a person purchasing a new motor vehicle tire in Kentucky shall pay to the retailer a one dollar ($1) fee at the time of the purchase of that tire. A new tire is a tire that has never been placed on a motor vehicle wheel rim, but it is not a tire placed on a motor vehicle prior to its original retail sale or a recapped tire. The term "motor vehicle" as used in this section shall mean "motor vehicle" as defined in KRS 138.450. The fee shall not be subject to the Kentucky sales tax.

(2) When a person purchases a new motor vehicle tire in Kentucky to replace another tire, the tire that is replaced becomes a waste tire subject to the waste tire program. The person purchasing the new motor vehicle tire shall either offer the retailer that waste tire or meet the following requirements:

- *(a) Dispose of the waste tire in accordance with subsection (1) of Section 4 of this Act;*
- *(b) Deliver the waste tire to a person registered in accordance with the waste tire program; or*
- *(c) Reuse the waste tire for its original intended purpose or an agricultural purpose.*

(3) A retailer shall report to the Revenue Cabinet on or before the twentieth day of each month the number of new motor vehicle tires sold during the preceding month and the number of waste tires received from customers that month. The report shall be filed on forms and contain information as the Revenue Cabinet may require. The retailer shall remit with the report ninety-five percent (95%) of the fees collected for the preceding month and may retain a five percent (5%) handling fee.

(4) A retailer shall:

- *(a) Accept from the purchaser of a new tire, if offered, for each new motor vehicle tire sold, a waste tire of similar size and type; and*
- *(b) Post notice at the place where retail sales are made that state law requires the retailer to accept, if offered, a waste tire for each new motor vehicle tire sold and that a person purchasing a new motor vehicle tire to replace another tire shall comply with subsection (2) of this section. The notice shall also include the following wording: "State law requires a new tire buyer to pay one dollar ($1) for each new tire purchased. The money is collected and used by the state to oversee the management of waste tires, including cleaning up abandoned waste tire piles and preventing illegal dumping of waste tires."*

(5) A retailer shall comply with the requirements of the recordkeeping system for waste tires established by Section 13 of this Act.

(6) A retailer shall transfer waste tires only to a person who presents a letter from the cabinet approving the registration issued under Section 5 of this Act or a copy of a solid waste disposal facility permit issued by the cabinet, unless the retailer is delivering the waste tires to a destination outside Kentucky and the waste tires will remain in the retailer's possession until they reach that destination.

SECTION 11. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

The Revenue Cabinet shall transfer monthly fees collected pursuant to Section 10 of this Act to the state treasury, for deposit into the waste tire trust fund established by Section 16 of this Act. All assessment and collection powers conveyed to the Revenue Cabinet for the assessment and collection of taxes shall apply to the assessment and collection of the fees. The Revenue Cabinet shall be reimbursed from the waste tire trust fund for its costs incurred in assessing and collecting the fees, with the reimbursement not to exceed fifty thousand dollars ($50,000) per year.

SECTION 12. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

The cabinet shall report to the General Assembly no later than January 15, 2002, on the effectiveness of the waste tire program in developing markets for waste tires, the effectiveness of the fee established in Section 10 of this Act in funding the cabinet's implementation of the waste tire program, and whether the fee should be extended beyond July 31, 2002.

SECTION 13. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

(1) A recordkeeping system shall be implemented for a waste tire from the time it becomes a waste tire to the time it is disposed, recycled, or used as tire-derived fuel.

(2) A retailer, an automotive recycling dealer, and a person required to register as an accumulator, transporter, or processor who transfers waste tires to another person shall obtain a receipt for the waste tires.

(3) A person filling out a receipt shall provide the following information:

(a) That person's name, address, company and signature;

(b) The number of waste tires or their passenger tire equivalents accepted;

(c) The date the waste tires were transferred; and

(d) The name and address of the person transferring the waste tires.

(4) A person who fills out a receipt shall keep a copy for three (3) years.

SECTION 14. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

(1) The cabinet may enter into an agreement with a person to collect, transport, process, recycle, make tire-derived fuel, dispose of waste tires, or develop markets for waste tires. A person awarded a contract shall comply with the requirements of the waste tire program.

(2) The cabinet may enter into a memorandum of agreement with a federal, state, or local agency to aid in implementing the waste tire program. The cabinet may reimburse the federal, state, or local agency for their expenses incurred to aid the implementation of the waste tire program if money is available in the waste tire trust fund established by Section 16 of this Act.

(3) The cabinet may enter into an agreement with a local government for the removal of waste tires, including waste tires collected by the local government through a local community-sponsored program. If income is derived from the disposal of the waste tires collected through the local community-sponsored program, the income may be used to reimburse the local government for the cost of sponsoring the program.

SECTION 15. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

(1) If money in the waste tire trust fund established by Section 16 of this Act is not otherwise obligated, the cabinet may award a grant to a person for a project that will manage waste tires in accordance with the purposes of the waste tire program as appropriate to protect human health, safety, and the environment, or to develop markets for waste tires.

(2) An applicant for a grant shall meet the following criteria:

(a) Have the legal authority to construct and operate the project;

(b) Have the ability to construct and operate the project in compliance with this chapter and the grant conditions; and

(c) The applicant and the persons who will be managing the project shall not have received a final judgment or conviction of a state or federal environmental statute or regulation in the five (5) years before submitting the application and shall not have any outstanding violations of state or federal environmental statutes or

regulations.

(3) The cabinet shall prioritize the applications based on the following factors:

- ***(a) The project's consistency with the purposes of the waste tire program;***
- ***(b) The project's costs and forecasted benefits;***
- ***(c) The applicant's credit history; and***
- ***(d) The applicant's and key personnel's environmental compliance record.***

(4) A person awarded a grant shall:

- ***(a) Construct and operate the project in compliance with this chapter and the grant conditions;***
- ***(b) Remain responsible for complying with this chapter and the grant conditions, even if the project is managed by someone else;***
- ***(c) Retain ownership of all real and personal property purchased with grant funds unless the cabinet approves their transfer;***
- ***(d) Submit to the cabinet monthly an itemized list of expenditures, with copies of invoices or similar documentation;***
- ***(e) Submit to the cabinet periodic progress reports; and***
- ***(f) Not change the project without the cabinet's approval.***

(5) The cabinet may revoke a grant and seek recovery of any grant funds dispersed if the person awarded the grant does not comply with this chapter or the grant conditions.

SECTION 16. A NEW SECTION OF SUBCHAPTER 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

(1) A waste tire trust fund is established in the state treasury. The fund shall be used by the cabinet for the following purposes:

- ***(a) Properly managing waste tires;***
- ***(b) Paying the cabinet's costs in implementing the waste tire program;***
- ***(c) Paying the Revenue Cabinet's costs of assessing and collecting the fee established by Section 10 of this Act;***
- ***(d) Entering into the agreements described in Section 14 of this Act; and***
- ***(e) Awarding the grants described in Section 15 of this Act.***

(2) All interest earned on money in the fund shall be credited to the fund.

(3) Money unexpended at the end of a fiscal year shall not lapse to the general fund.

(4) Any money remaining in the waste tire trust fund established by KRS 224.50-820 shall be transferred to the fund established by this section.

Section 17. The following KRS sections are repealed:

224.50-820 Waste tire trust fund.
224.50-822 Fee to be paid on each new motor vehicle tire sold -- Monthly payment and report -- Deposit of money in trust fund.
224.50-823 Monthly report on number of new motor vehicle tires sold.
224.50-824 Waste Tire Removal and Control Program -- Purpose of program.
224.50-826 Requirements applicable to existing waste tire piles.
224.50-828 Agreements with private parties and local governments to clean up waste tire piles.
224.50-829 Requirement of financial assurances from waste tire processors and recyclers.
224.50-830 Prohibitions.
224.50-832 Registration of accumulations -- Information required -- Standards for controlling accumulations.
224.50-834 Loan program.
224.50-836 Agreement with Cabinet for Human Resources for enforcement purposes.
224.50-838 Exemptions.
224.50-840 Conditions under which accumulations of waste tires presently in use as an integral part of a business allowed.
224.50-842 Accumulations for agricultural purposes.
224.50-844 Exemption for contractor for lawful disposal of waste tires.

224.50-846 Effective date.

HB 654, AN ACT relating to hunting and fishing licenses.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 150.170 is amended to read as follows:

(1) Except as provided in the following subsections of this section, and subject to administrative regulations promulgated under this chapter, no person, resident or nonresident, shall do any act authorized by any kind of license or permit, or assist in any way any person in doing any act provided for in this chapter with respect to wildlife unless he holds the kind of license or permit, resident or nonresident, that authorizes the act. It shall be the specific purpose of this chapter to prohibit the taking or pursuing of any wildlife, protected or unprotected, or the fishing in any stream or body of water whether public or private, without first procuring the license provided for in KRS 150.175, except to the extent as may be otherwise provided in this section.

(2) A person under sixteen (16) years of age may, without a sport fishing license, take fish by angling, or take minnows by the use of a minnow seine, minnow trap, or dip net.

(3) The resident owner of farmlands, his spouse, or dependent children, shall, without procuring any sport hunting or sport fishing licenses, have the right to take fish or hunt during the open season, except trapping, on the farmlands of which they are bona fide owners. Tenants or their dependent children residing upon these farmlands shall have the same privilege.

(4) Residents or nonresidents observing and participating in any field trial as authorized by the department may observe and participate without obtaining a hunting license so long as game is not taken.

(5)[~~Any resident who is sixty-five (65) years of age or older may, without any sport hunting or sport fishing licenses, do any act authorized by the licenses, but while so doing he shall carry upon his person an affidavit stating the year of his birth and place of residence.~~

~~(6)~~] Any resident serviceman on furlough of more than three (3) days in this state may, without any Kentucky sport hunting or sport fishing licenses, do any act authorized by the licenses, but while so doing he shall carry on his person proper identification and papers showing his furlough status.

[~~(7) Any disabled American veteran who is at least fifty percent (50%) disabled as a result of a service-connected disability who is residing in Kentucky may, without any sport hunting or sport fishing licenses, do any act authorized by the licenses, but while doing so shall carry the card provided for by this subsection in order to be exempt from hunting or fishing license requirements. A disabled veteran shall obtain a copy of his disability rating from the Veterans Administration. He shall forward the copy to the director of the Division of Law Enforcement of the Department of Fish and Wildlife Resources. The division shall mail a card certifying his disability and exemption from license requirements, and shall retain a copy of the certification.~~

~~(8) Any resident who is declared totally and permanently disabled by:~~

~~(a) The Federal Social Security Administration;~~

~~(b) The State Department of Workers' Claims; or~~

~~(c) The United States Railroad Retirement Board~~

~~may, without any sport hunting or sport fishing licenses, do any act authorized by the licenses.~~]

(6)[~~(9)~~] Resident landowners, their spouses, or dependent children who kill or trap on their lands any wildlife causing damage to the lands or any personal property situated thereon shall not be required to have a hunting or trapping license. Tenants or their dependent children residing upon the lands shall also have the same privilege. Upon destruction of any wildlife by the above-specified individuals, the act shall be reported to the department or the resident conservation officer for the proper disposition of the carcass.

(7)[~~(10)~~] If a reciprocal agreement is entered into by the commissioner, with the approval of the commission, and promulgated as an administrative regulation by the department and similar action is taken by the appropriate authority in Missouri, Tennessee, Virginia, West Virginia, Indiana, Ohio, or Illinois, persons holding a resident or nonresident fishing or a resident or nonresident hunting license issued in these states shall be permitted to perform the acts authorized by the license upon certain contiguous waters and land areas adjacent to the common boundaries of the above-mentioned states and the State of Kentucky. A resident of the State of Kentucky shall purchase a proper Kentucky license to conform with the reciprocal agreement.

Section 2. KRS 150.175 is amended to read as follows:

(1) The kinds of licenses and tags authorized by this chapter, and the acts authorized to be performed under the licenses and tags, subject to the other provisions of this chapter and subject to administrative regulations promulgated under this chapter, shall be as follows:

(a) Statewide resident sport fishing license, which authorizes the holder to take fishes by angling, or take crayfish by a minnow seine, or by hand, to take minnows by the use of a minnow seine, minnow trap, or dip net, or to take fishes by grabbing, gigging, snagging, snaring, jugging, and bow and arrow, and to take frogs and turtles from any waters in any county of this state open for such purposes and subject to the limitations in this chapter and additional limitations that the department may from time to time prescribe. This license shall not authorize the holder to sell fish;

(b) A short-term sport fishing license, which may be issued only to a nonresident and which authorizes the holder to perform all acts authorized by a statewide sport fishing license and subject to the same limitations or prescribed administrative regulations. This license shall not authorize the holder to sell fish;

(c) A resident commercial fishing license and a nonresident commercial fishing license, which authorize a holder to perform any act authorized by a sport fishing license and to take rough fishes from the waters of the state by the use of commercial fishing gear as prescribed by administrative regulation. The license shall also authorize the holder to sell rough fishes, other than those protected by administrative regulation;

(d) A commercial fishing gear tag, which shall be attached to each piece of commercial fishing gear including hoop nets, slat traps, trotline, wing nets, and to each one hundred (100) feet of linear gear or portion thereof in use, including commercial seines, gill nets, or trammel nets. Commercial gear tags may be issued only to a person holding a resident or nonresident commercial fishing license;

(e) Live fish and bait dealer's licenses, resident and nonresident, which authorize the holder to sell bait and live fish as may be prescribed by administrative regulation;

(f) Musseling licenses, resident and nonresident, which authorize the holder to take mussels for commercial purposes as may be prescribed by administrative regulation;

(g) A statewide resident hunting license, which authorizes the holder to take or pursue wild animals, wild birds, frogs, and turtles with gun, bow and arrow, dog, or falcon, or to participate in a fox-hunting party engaged in the hunting or pursuing of foxes with dogs for sport, according to the provisions of the laws and administrative regulations of the department;

(h) A junior statewide hunting license, which may be issued to a person before he has reached his sixteenth birthday, and which authorizes the holder to exercise all the privileges authorized by a statewide hunting license. No junior hunting license shall be issued without the written permission of parent, guardian, or person having custody of the person under sixteen (16) years of age;

(i) Trapping licenses, resident and nonresident, which authorize the holder to take wild animals by trapping upon his own lands or upon the lands of another person, if the holder of the license shall have first obtained a written consent as provided in KRS 150.092;

(j) Taxidermist licenses, commercial and noncommercial, which authorize the holder to engage in the act of preparing, stuffing, and mounting the skins of wildlife;

(k) A commercial guide's license, which authorizes the holder to guide hunting and fishing parties according to the provisions of the laws and administrative regulations of the department;

(l) Fur buyer's licenses, resident and nonresident, which authorize the holder to buy raw furs from licensed trappers and hunters and to sell raw furs so purchased. Applicants for the license shall state the number of premises to be used and shall display at each a copy of the license as furnished by the department, except that the commissioner may limit the number of copies furnished and may revoke the license for violation;

(m) A fur processor's license, which may be issued only to a resident, a partnership, firm, or corporation of this state and which authorizes the holder to buy raw furs when in legal possession for processing, manufacture, or retention in cold storage or for resale;

(n) A nonresident sport fishing license, which authorizes the holder to perform any act authorized by a resident statewide sport fishing license. This license shall not authorize the holder to sell fish;

(o) A nonresident annual hunting license, which authorizes the holder to perform any act authorized by a resident statewide hunting license;

(p) Shoot-to-retrieve field trial permits, four (4) day and single day, which authorize a permit holder to conduct a shoot-to-retrieve field trial on private or government-owned lands. With a four (4) day permit, all participants, whether residents or nonresidents, shall not be required to possess any other license to participate in the permitted field trial, and the permit shall expire four (4) days after the date on which the field trial began. With the single day permit, the permit is valid for one (1) day and all participants shall have a valid resident or nonresident annual Kentucky hunting license. A permit is not required to conduct a shoot-to-retrieve field trial on a licensed shooting preserve; however, all participants that take or attempt to take game shall have in their possession a resident or nonresident annual Kentucky hunting license or a nonresident shooting preserve license;

(q) A special license to nonresidents for the purpose of hunting on licensed hunting preserves. This license shall be good only for the preserve for which it was issued and shall remain in effect only for one (1) year. These licenses shall be issued in ink by the preserve manager, and he shall ensure that each hunter is properly licensed before going into the field. When the hunter owns either a nonresident or resident statewide hunting license for the current year, the special license shall not be required. The commissioner, with the approval of the commission, may establish and regulate hunting preserves, either private or commercial;

(r) A big game permit and a junior big game permit, which, in combination with a valid statewide hunting license or a valid junior statewide hunting license, authorize the holder to take or pursue deer, bear, or wild turkey, in any designated open area of this state, during the open season and according to the provisions of the laws and administrative regulations governing the hunting;

(s) A combination hunting and fishing license, which authorizes only resident holders to perform all acts valid under either a sport fishing or hunting license;

(t) A trout permit, which in combination with a valid statewide fishing license, authorizes the holder to take trout by angling or as may be prescribed by administrative regulation;

(u) A commercial waterfowl permit, which authorizes the holder to establish and operate a commercial waterfowl hunting preserve;

(v) A short-term hunting license, which may be issued only to a nonresident and which authorizes the holder to perform all acts authorized by a statewide hunting license, except for hunting big game species for which an annual nonresident hunting license shall be required, and according to the provisions of the laws and administrative regulations of the department;

(w) A joint statewide resident sport fishing license issued to a husband and wife which authorizes them to take fish as provided in subsection (1) of this section. The license fee for this joint license shall be ten percent (10%) less than the license fee set by the commission for two (2) statewide resident sport fishing licenses;

(x) A Kentucky waterfowl permit, which in combination with a valid statewide hunting license and compliance with applicable federal law, authorizes the holder to take or pursue waterfowl and migratory shore or upland game birds;

(y) A pay lake license which authorizes the holder to operate privately owned impounded waters for fishing purposes for which a fee is charged; and

(z) A migratory game bird permit, which, in combination with a statewide hunting license and compliance with applicable federal law, allows the holder to take migratory shore or upland game birds.

(aa) A senior/disabled combination hunting and fishing license, which authorizes the holder to perform all acts valid under a sport fishing license, a sport hunting license, or a state permit to take deer, turkey, trout, waterfowl or migratory shore or upland game birds, and which shall be available to a Kentucky resident who is:

1. Sixty-five (65) years of age or older;

2. An American veteran at least fifty percent (50%) disabled as a result of a service-connected disability; or

3. Declared permanently and totally disabled by the Federal Social Security Administration, the Department of Workers' Claim, or its equivalent from another state, or the United States Railroad Retirement Board.

The senior/disabled combination license shall not be valid unless the holder carries proof of residency and proof of age or disability, as the department may require by administrative regulation, on his or her person while performing an act authorized by the license.

Section 3. Sections 1 and 2 of this Act take effect March 1, 1999.

The Committee on Labor and Industry reported **SB 177** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

SB 177, AN ACT relating to reorganization.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:
    1. The Governor.
    2. Lieutenant Governor.
    3. Department of State.
        (a) Secretary of State.
        (b) Board of Elections.
        (c) Registry of Election Finance.
    4. Department of Law.
        (a) Attorney General.
    5. Department of the Treasury.
        (a) Treasurer.
    6. Department of Agriculture.
        (a) Commissioner of Agriculture.
        (b) Kentucky Council on Agriculture.
    7. Superintendent of Public Instruction.
    8. Auditor of Public Accounts.
    9. Railroad Commission.

II. Program cabinets headed by appointed officers:
    1. Justice Cabinet:
        (a) Department of State Police.
        (b) Department of Criminal Justice Training.
        (c) Department of Corrections.
        (d) Department of Juvenile Justice.
        (e) Office of the Secretary.
        (f) Offices of the Deputy Secretaries.
        (g) Office of General Counsel.
        (h) Medical Examiner Program.
        (i) Parole Board.
        (j) Kentucky State Corrections Commission.
        (k) Commission on Correction and Community Service.
    2. Education, Arts, and Humanities Cabinet:
        (a) Department of Education.
            (1) Kentucky Board of Education.
            (2) Education Professional Standards Board.
        (b) Department for Libraries and Archives.
        (c) Kentucky Arts Council.
        (d) Kentucky Educational Television.
        (e) Kentucky Historical Society.
        (f) Kentucky Teachers' Retirement System Board of Trustees.
        (g) Kentucky Center for the Arts.
        (h) Kentucky Craft Marketing Program.
        (i) Kentucky Commission on the Deaf and Hard of Hearing.
        (j) Governor's Scholars Program.
        (k) Governor's School for the Arts.
        (l) Office of Development.

   - (m) Kentucky Heritage Council.
   - (n) Kentucky African-American Heritage Commission.
3. Natural Resources and Environmental Protection Cabinet:
   - (a) Environmental Quality Commission.
   - (b) Kentucky Nature Preserves Commission.
   - (c) Department for Environmental Protection.
   - (d) Department for Natural Resources.
   - (e) Department for Surface Mining Reclamation and Enforcement.
   - (f) Office of Legal Services.
   - (g) Office of Communications and Community Affairs.
4. Transportation Cabinet:
   - (a) Department of Highways.
   - (b) Department of Vehicle Regulation.
   - (c) Department of Administrative Services.
   - (d) Department of Fiscal Management.
   - (e) Department of Rural and Municipal Aid.
   - (f) Office of Aeronautics.
   - (g) Office of General Counsel.
   - (h) Office of Public Relations.
   - (i) Office of Personnel Management.
   - (j) Office of Minority Affairs.
   - (k) Office of Environmental Affairs.
5. Cabinet for Economic Development:
   - (a) Department of Administration and Support.
   - (b) Department of Job Development.
   - (c) Department of Financial Incentives.
   - (d) Department of Community Development.
   - (e) Tobacco Research Board.
   - (f) Kentucky Economic Development Finance Authority.
6. Public Protection and Regulation Cabinet:
   - (a) Public Service Commission.
   - (b) Department of Insurance.
   - (c) Department of Housing, Buildings and Construction.
   - (d) Department of Financial Institutions.
   - (e) Department of Mines and Minerals.
   - (f) Department of Public Advocacy.
   - (g) Department of Alcoholic Beverage Control.
   - (h) Kentucky Racing Commission.
   - (i) Board of Claims.
   - (j) Crime Victims Compensation Board.
   - (k) Kentucky Board of Tax Appeals.
   - (l) Backside Improvement Commission.
7. Cabinet for Human Resources:
   - (a) Department for Health Services.
   - (b) Department for Social Insurance.
   - (c) Department for Social Services.
   - (d) Department for Medicaid Services.

(e) Department for Mental Health and Mental Retardation Services.
(f) Commission for Children with Special Health Care Needs.
(g) Public Assistance Appeals Board.
(h) Office of Administrative Services.
(i) Office of Communications.
(j) Office of General Counsel.
(k) Office of Inspector General.
(l) Office of Policy and Budget.
(m) Office of the Ombudsman.

8. Finance and Administration Cabinet:
(a) Office of Legal and Legislative Services.
(b) Office of Management and Budget.
(c) Office of Financial Management and Economic Analysis.
(d) Office of the Controller.
(e) Department for Administration.
(f) Department of Facilities Management.
(g) Department of Information Systems.
(h) State Property and Buildings Commission.
(i) Kentucky Pollution Abatement Authority.
(j) Kentucky Savings Bond Authority.
(k) Deferred Compensation Systems.
(l) Office of Equal Employment Opportunity Contract Compliance.
(m) Capital Plaza Authority.
(n) County Officials Compensation Board.
(o) Kentucky Employees Retirement Systems.
(p) Commonwealth Credit Union.
(q) State Investment Commission.
(r) Kentucky Housing Corporation.
(s) Governmental Services Center.
(t) Kentucky Local Correctional Facilities Construction Authority.
(u) Kentucky Turnpike Authority.
(v) Historic Properties Advisory Commission.

9. Labor Cabinet:
(a) Department of Workplace Standards.
(b) Department of Workers' Claims.
(c) Kentucky Labor-Management Advisory Council.
(d) Occupational Safety and Health Standards Board.
(e) Prevailing Wage Review Board.
(f) Workers' Compensation Board.
(g) Kentucky Employees Insurance Association.
(h) Apprenticeship and Training Council.
(i) State Labor Relations Board.
(j) Kentucky Occupational Safety and Health Review Commission.
(k) Office of Administrative Services.
(l) Office of Labor-Management Relations ***and Mediation***.
(m) Office of General Counsel.
(n) Workers' Compensation Funding Commission.

  - (o) Employers Mutual Insurance Authority.
- 10. Revenue Cabinet:
  - (a) Department of Property Taxation.
  - (b) Department of Compliance and Taxpayer Assistance.
  - (c) Department of Administrative Services.
  - (d) Office of General Counsel.
- 11. Tourism Cabinet:
  - (a) Department of Travel Development.
  - (b) Department of Parks.
  - (c) Department of Fish and Wildlife Resources.
  - (d) Kentucky Horse Park Commission.
  - (e) State Fair Board.
  - (f) Office of Administrative Services.
  - (g) Office of Film Promotion.
  - (h) Office of General Counsel.
- 12. Cabinet for Workforce Development:
  - (a) Department for Adult Education and Literacy.
  - (b) Department for Technical Education.
  - (c) Department of Vocational Rehabilitation.
  - (d) Department for the Blind.
  - (e) Department for Employment Services.
  - (f) State Board for Adult and Technical Education.
  - (g) Governor's Council on Vocational Education.
  - (h) The State Board for Proprietary Education.
  - (i) The Foundation for Adult Education.
  - (j) The Kentucky Job Training Coordinating Council.
  - (k) Office of General Counsel.
  - (l) Office of Communication Services.
  - (m) Office of Development and Industry Relations.
  - (n) Office of Workforce Analysis and Research.
  - (o) Office for Administrative Services.
  - (p) Office for Policy, Budget, and Personnel.
  - (q) Unemployment Insurance Commission.

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. Department of Personnel.
- 3. Council on Postsecondary Education.
  - (a) Kentucky Community Service Commission.
- 4. Department of Local Government.
- 5. Kentucky Commission on Human Rights.
- 6. Kentucky Commission on Women.
- 7. Department of Veterans' Affairs.
- 8. Kentucky Commission on Military Affairs.

Section 2. KRS 198B.658 is amended to read as follows:

(1) The board shall issue a master heating, ventilation, and air conditioning contractor's license to any person who:

(a) Is at least eighteen (18) years of age;

(b) Has been regularly and principally employed or engaged in the heating, ventilation, and air conditioning trades as a journeyman heating, ventilation, and air conditioning mechanic for not less than two (2) years, under the direction and supervision of a master heating, ventilation, and air conditioning contractor; and

(c) Has passed an examination prescribed by the board to determine competency to practice heating, ventilation, and air conditioning contracting.

(2) The board shall issue a journeyman heating, ventilation, and air conditioning mechanic's license to any person who:

(a) Is at least eighteen (18) years of age;

(b) Has been regularly and principally employed or engaged in the heating, ventilation, and air conditioning trades for not less than two (2) years, under the direction and supervision of a master heating, ventilation, and air conditioning contractor, or who prior to July 1, 1995, under the direction and supervision of a person who qualifies under KRS 198B.662; and

(c) Has passed an examination prescribed by the board to determine competency to install, maintain, and repair heating and cooling systems, heating and cooling service, burner service, and hydronic systems.

(3) The board shall issue an apprentice heating, ventilation, and air conditioning mechanic's certificate to any person who is registered with the board.

(a) The board shall establish by administrative regulation the minimum number of hours of experience required by apprentices and shall maintain an apprentice register to credit an apprentice for hours worked under the supervision of a master heating, ventilation, and air conditioning contractor and journeyman heating, ventilation, and air conditioning mechanic. Experience gained under the supervision of a Kentucky licensed master heating, ventilation, and air conditioning contractor while registered as an apprentice with the Kentucky Labor Cabinet, Division of Employment Standards,~~[and]~~ Apprenticeship and Training in cooperation with the U.S. Department of Labor, Bureau of Apprenticeship and Training, shall be accepted toward the two (2) year experience requirement for a journeyman heating, ventilation, and air conditioning mechanic license.

(b) The apprentice register shall include the name, address, Social Security number, employer, and dates of employment of the apprentice.

(c) The apprentice shall notify the board in writing of any change in address or employer.

(d) Apprentices and pre-apprentices shall not be required to pay fees for a certificate of registration or a registration renewal fee.

(4) The satisfactory completion of one (1) academic year of a board-approved curriculum or one (1) year of professional training in heating, ventilation, and air conditioning work may be considered as equivalent to one (1) year of employment required by subsection (2)(b) of this section, not to exceed one (1) year.

(5) The satisfactory completion of one (1) academic year of teaching experience in a board-approved or state-approved technical education program in heating, ventilation, and air conditioning shall be considered as equivalent to one (1) year of employment, as required by subsection (1)(b) or (2)(b) of this section. No more than one (1) year of approved teaching experience may be used in meeting the requirements of subsection (1)(b) or (2)(b) of this section.

Section 3. KRS 336.015 is amended to read as follows:

(1) The secretary of labor shall have the duties, responsibilities, power, and authority relating to labor, wages and hours, occupational safety and health of employees, child labor, apprenticeship, workers' compensation, and all other matters previously under the jurisdiction of the commissioner and Department of Labor.

(2) The Labor Cabinet shall consist of the Offices of the Secretary, General Counsel, Administrative Services, Labor-Management Relations ***and Mediation***; the Kentucky Workers' Compensation Funding Commission; the Workers' Compensation Board; the Occupational Safety and Health Review Commission; and the Departments of Workplace Standards, and Workers' Claims. The commissioner of the Department of Workplace Standards and the Department of Workers' Claims within the Labor Cabinet shall be under the direction and control of the secretary of the Labor Cabinet.

Section 4. KRS 336.020 is amended to read as follows:

(1) The Department of Workplace Standards shall be headed by a commissioner, and shall be divided for administrative purposes into the Divisions of Employment Standards***, Apprenticeship and Training***~~[and Mediations]~~; ***Special Fund;*** Occupational Safety and Health Compliance; and Education and Training for Occupational Safety and Health.

(2) The Department of Workers' Claims shall be administered by a commissioner and shall be divided for administrative purposes into the Divisions of Claims Processing and Appeals, ***Information and Research, Security and Compliance,*** Administrative Law Judges, ***and*** Insurance~~[, and Special Fund]~~.

Section 5. KRS 336.164 is amended to read as follows:

(1) The council shall function as an advisory agent of state government and provide leadership and assistance for labor and management in this state, and shall serve to effect improved labor-management relations within the state, and to thereby attract and encourage new and existing industry in this state.

(2) The council shall not infringe upon or assume the responsibilities, duties or functions of the Labor Cabinet or Cabinet for Economic Development. The council may make recommendations to the Governor and the Legislature on matters relating to labor-management problems in this state and any other matter it deems necessary.

(3) Meetings of the council may be held at any location in this state; however the principal office of the council will be located in Frankfort, Kentucky.

(4) The secretary of labor shall supply necessary staff and supplies to the council as well as funds for reimbursing each member for reasonable and necessary expenses incurred as a result of attending council meetings, and he shall act as the executive secretary of the council. The executive director of the Office of Labor-Management Relations ***and Mediation*** shall be responsible for the coordination of such staff and supplies.

Section 6. KRS 336.165 is amended to read as follows:

The Office of Labor-Management Relations ***and Mediation*** shall, subject to appropriation from the General Assembly or funds made available to the office from any other public or private source, provide grants-in-aid to labor-management relations organizations that include both labor and management representatives. An organization shall use a grant-in-aid for the purpose of improving labor-management relations or improving communications with respect to subjects of mutual interest or concern to labor and management. The office shall not provide a grant-in-aid to any organization which interferes with collective bargaining in any plant or industry. The Office of Labor-Management Relations ***and Mediation*** shall promulgate administrative regulations necessary to carry out this section.

Section 7. KRS 342.122 is amended to read as follows:

(1) (a) For calendar year 1997 and for each calendar year thereafter, for the purpose of funding and prefunding the liabilities of the special fund, financing the administration and operation of the Kentucky Workers' Compensation Funding Commission, and financing the expenditures for all programs in the Labor Cabinet, except the Division of Employment Standards***, Apprenticeship and Training***[~~ and Mediation~~] and the Office of Labor-Management Relations ***and Mediation***, as reflected in the enacted budget of the Commonwealth and enacted by the General Assembly, the funding commission shall impose a special fund assessment rate of nine percent (9%) upon the amount of workers' compensation premiums received on and after January 1, 1997, through December 31, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provisions of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his or her own risk.

(b) The funding commission shall, for calendar year 1998 and thereafter, establish for the special fund an assessment rate to be assessed against all premium received during that calendar year which, when added to the coal severance tax appropriated to the special fund in accordance with paragraph (c) of this section, shall produce enough revenue to amortize on a level basis the unfunded liability of the special fund as of September 1 preceding January 1 of each year, for the period remaining until December 31, 2018. The interest rate to be used in this calculation shall reflect the funding commission's investment experience to date and the current investment policies of the commission. This assessment shall be imposed upon the amount of workers' compensation premiums received by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provisions of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.

(c) In addition to the assessment imposed in paragraph (a) or (b) of this subsection, and notwithstanding and prior to the transfer of funds to the Local Government Economic Assistance Program under KRS 42.450 to 42.495, the Kentucky Revenue Cabinet shall credit nineteen million dollars ($19,000,000) in coal severance tax revenues levied under KRS 143.020 to the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission each year beginning with fiscal year 1998 and all fiscal years thereafter. The annual transfer of nineteen million dollars ($19,000,000) shall occur in four (4) equal quarterly payments. These transfers shall occur not later than the last day of each quarter of each calendar year and shall consist of four (4) equal payments of four million, seven hundred fifty thousand dollars ($4,750,000).

(d) All assessments imposed by this section shall be paid to the Kentucky Workers' Compensation Funding Commission and shall be credited to the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission.

(e) The assessments imposed in this chapter shall be in lieu of all other assessments or taxes on workers' compensation premiums.

(2) These assessments shall be paid quarterly not later than the thirtieth day of the month following the end of the quarter in which the premium is received. Receipt shall be considered timely through actual physical receipt or by postmark of the United States Postal Service. Employers carrying their own risk and employers defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal quarterly installments.

(3) The assessments imposed by this section may be collected by the insurance carrier from his insured. However, the insurance carrier shall not collect from the employer any amount exceeding the assessments imposed pursuant to this

section. If the insurance carrier collects the assessment from an insured, the assessment shall be collected at the same time and in the same proportion as the premium is collected. The assessment for an insurance policy or other evidence of coverage providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible. Each statement from an insurance carrier presented to an insured reflecting premium and assessment amounts shall clearly identify and distinguish the amount to be paid for premium and the amount to be paid for assessments. No insurance carrier shall collect from an insured an amount in excess of the assessment percentages imposed by this chapter. The assessment for an insurance policy or other evidence of coverage providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible. The percentages imposed by this chapter for an insurance policy issued by an insurance company shall be those percentages in effect on the annual effective date of the policy, regardless of the date that the premium is actually received by the insurance company.

(4) A group self-insurance association may elect to report its premiums and to have its assessments computed in the same manner as insurance companies. This election may not be rescinded for at least ten (10) years, nor may this election be made a second time for at least another ten (10) years.

(5) The funding commission, as part of the collection and auditing of the special fund assessments required by this section, shall annually require each insurance carrier and each group self-insurer to provide a list of employers which it has insured or which are members and the amount collected from each employer. Additionally, the funding commission shall require each entity paying a special fund assessment to report the SIC code for each employer and the amount of premium collected from each SIC code. An insurance carrier or group self-insurer may require its insureds or members to furnish the SIC code for each of their employees. However, the failure of any employer to furnish said codes shall not relieve the insurance carrier or group self-insurer from the obligation to furnish same to the funding commission. The Department for Employment Services, Cabinet for Workforce Development is hereby directed to make available the SIC codes assigned in its records to specific employers to aid in the reporting and recording of the special fund assessment data.

(6) Each self-insured employer, group self-insurer, or insurance carrier shall provide any information and submit any reports the Revenue Cabinet or the funding commission may require to effectuate the provisions of this section. In addition, the funding commission may enter reciprocal agreements with other governmental agencies for the exchange of information necessary to effectuate the provisions of this section.

(7) The special fund shall be required to maintain a central claim registry of all claims to which it is named a party, giving each such claim a unique claim number and thereafter recording the status of each claim on a current basis. The registry shall be established by January 26, 1988, for all claims on which payments were made since July 1, 1986, or which were pending adjudication since July 1, 1986, by audit of all claim files in the possession of the special fund.

(8) The fund heretofore designated as the subsequent claim fund is abolished, and there is substituted therefor the special fund as set out by this section, and all moneys and properties owned by the subsequent claim fund are transferred to the special fund.

(9) Notwithstanding any other provisions of this section or this chapter to the contrary, the total amount of funds collected pursuant to the assessment rates adopted by the funding commission shall not be limited to the provisions of this section.

(10) All assessment rates imposed for periods prior to January 1, 1997, under KRS 342.122 shall forever remain applicable to premiums received on policies with effective dates prior to January 1, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provision of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.

Section 8. KRS 336.140 is amended to read as follows:

The ***secretary***[~~commissioner~~] may inquire into the causes of strikes, lockouts, and other disputes between employers and employees, and endeavor to effect an amicable settlement. He may create[~~ within the department~~] boards to which disputes between employers and employees may be submitted on request of both the employer and the employees for mediation. Where a joint wage agreement, existing between an employer and any labor organization, provides for the settlement of disputes, any disputes that arise shall be settled by the terms of the contract, and when so settled shall be binding and final upon the ***secretary***[~~commissioner~~].

Section 9. KRS 336.151 is amended to read as follows:

(1) It shall be the duty of the ***secretary***[~~commissioner~~], in order to prevent or minimize interruptions growing out of labor disputes, to assist parties to labor disputes to settle such disputes through conciliation and mediation.

(2) The ***secretary***[~~commissioner~~] may proffer his services in any labor dispute either upon his own motion or upon the request of one or more of the parties to the dispute. Whenever the ***secretary***[~~commissioner~~] proffers his services in any dispute and the services of the ***secretary***[~~commissioner~~] have been accepted, it shall be the duty of the ***secretary***[~~commissioner~~] to put himself in communication with the parties and to use his best efforts, by mediation and conciliation, to bring them to agreement.

(3) If the ***secretary***[~~commissioner~~] is not able to bring the parties to agreement by mediation within a reasonable time, he

shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lockout, or other coercion. The failure or refusal of either party to agree to any procedure suggested by the ***secretary***[~~commissioner~~] shall not be deemed a violation of any duty or obligation imposed by KRS 336.151 and 336.152.

Section 10. KRS 336.152 is amended to read as follows:

In order to prevent or minimize interruptions growing out of labor disputes, employees and employers and their representatives, shall:

(1) Exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provision for adequate notice of any proposed change in the terms of such agreements;

(2) Whenever a dispute arises over the terms or application of a collective-bargaining agreement and a conference is requested by a party or prospective party thereto, arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously;

(3) In case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the ***secretary***[~~commissioner~~] under KRS 336.151 and 336.152 for the purpose of aiding in a settlement of the dispute.

Section 11. KRS 336.160 is amended to read as follows:

The ***secretary***[~~commissioner~~] shall present biennial reports to the General Assembly giving statistical data relating to employment and unemployment in the state such as the hours and wages of employees, cost of living, the amount of labor required, the estimated number and classification of persons unemployed, the estimated number of persons depending on daily labor for support, the probable chances of increased employment, the number of unemployed depending on public relief, facts relating to industrial accidents, the workers' compensation for industrial injuries, labor disputes, and facts relating to acts of the department in the enforcement of the law and its work generally.

Section 12. KRS 345.010 is amended to read as follows:

When used in this chapter:

(1) "Public employer" means a city of the first class or any city that petitions the[~~ commissioner of the Department of Workplace Standards, under the direction of the~~] secretary of the Labor Cabinet to be included by this chapter;

(2) "Firefighter" means an employee of the public employer engaged in serving the public by providing fire protection, including those covered by KRS Chapter 95;

(3) "Labor organization" means any chartered labor organization of any kind in which firefighters participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rate of pay, hours of employment, or conditions of employment;

(4) "Exclusive representative" means the labor organization which has been designated by the State Labor Relations Board as the representative of the majority of firefighters in appropriate units or has been so recognized by the public employer;

(5) "Board" means the State Labor Relations Board;

(6) "Person" includes one (1) or more individuals, labor organizations, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers;

(7) "***Secretary***[~~Commissioner~~]" means the[~~ commissioner of the Department of Workplace Standards, under the direction and supervision of the~~] secretary of the Labor Cabinet of the Commonwealth of Kentucky.

Section 13. KRS 345.080 is amended to read as follows:

(1) If after a reasonable period, but in no event less than thirty (30) days, of negotiations over the terms of a new collective bargaining agreement or modifications in an existing agreement the parties to the negotiations are deadlocked, either party or the parties jointly may petition the board, by certified mail, return receipt requested, or by registered mail, to initiate fact finding.

(2) Upon receipt of a petition to initiate fact finding, the ***secretary***[~~commissioner~~] shall cause an investigation to determine whether or not the parties are deadlocked in their negotiations. During the course of this investigation, the ***secretary***[~~commissioner~~] is empowered to utilize his office in an effort to effectuate a settlement between the parties through mediation and conciliation.

(3) Upon completion of the ***secretary's***[~~commissioner's~~] investigation, and if a settlement between the parties has still not been reached, the ***secretary***[~~commissioner~~] shall within five (5) days appoint a qualified and disinterested person as the impartial chairman of a three (3) man panel to function as the fact finders. In addition to the impartial chairman, the other two (2) members of the panel shall be one (1) member named by the labor organization and one (1) by the employer, parties to the deadlocked negotiations.

(4) Upon consultation with the other members of the panel, the impartial chairman shall establish dates and places for public hearings. Whenever feasible, public hearings shall be held within the jurisdiction in which the employer is located. The panel may subpoena witnesses, and a written transcript of the hearing shall be made. Upon completion of the hearings the panel shall, by majority decision, make written findings of fact and recommendations for solution of the dispute. The

panel shall cause all of its written findings, recommendations, and opinions to be served on the employer and labor organization (parties) and same shall be released to the public. Expenses incurred by the three (3) man panel in this section shall be paid by the parties involved in the labor dispute.

(5) The ***secretary***[~~commissioner~~] may adopt, promulgate, amend, and rescind such rules and regulations as he deems necessary and administratively feasible not inconsistent with the provisions of this chapter to carry out his responsibilities over the fact-finding procedures set forth in this section. However, unless the parties agree to extend the time for the hearings, they must be completed with recommendations from the fact-finding panel, within one hundred twenty (120) days from the date the petition to initiate the fact-finding procedure was received by the ***secretary***[~~commissioner~~].

Section 14. The General Assembly confirms Executive Order 96-885, dated on July 9, 1996, relating to reorganization of the Labor Cabinet, to the extent it is not otherwise confirmed by this Act, and except for the creation of the Office of the Fraud Prevention, which was superseded by Executive Order 97-69.

The Committee on Banking and Insurance reported **HB 614, SB 63,** with Committee Substitute attached thereto, **SB 105,** and **SB 135** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 614, AN ACT relating to insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.9-295 is amended to read as follows:

(1) This section shall apply to resident[~~ natural~~] persons licensed as agents or solicitors for the following kinds of insurance: life, health, property,[~~ or~~] casualty***, or surety***.

(2) This section shall not apply to:

(a) Persons holding licenses for which no examination is required by KRS 304.9-170 except that persons exempted from examination by KRS 304.9-170(1) and (2) shall be subject to this section;

(b) Persons holding limited or restricted licenses, as exempted by the commissioner;[~~ or~~]

(c) Persons not licensed for one (1) full year prior to the end of a continuing education biennium as described in subsection (3) of this section***;***

(d) Persons holding nonresident licenses who have met the continuing education requirements of their state of domicile and whose state of domicile has a current continuing education reciprocal agreement with the commissioner; or

(e) Persons maintaining their licenses for the sole purpose of receiving renewals or deferred commissions and providing the department with a supporting affidavit.

(3) The licensees specified in subsection (1) of this section and not exempt under subsection (2) of this section who hold ***a license***[~~licenses issued on or after July 1, 1988~~], shall satisfactorily complete a minimum of twenty-four (24)[~~ classroom~~] hours of continuing education courses***, of which twelve (12) must be classroom hours,*** during each continuing education biennium. A continuing education biennium shall begin on July 1 and end on June 30 two (2) years later.

(4) Only continuing education courses approved by the commissioner may be used to satisfy the continuing education requirement of subsection (3) of this section.

(a) The continuing education courses which meet the commissioner's standards for continuing education requirements are:

1. Any part of the Life Underwriter Training Council life course curriculum;
2. Any part of the Life Underwriter Training Council health course curriculum;
3. Any part of the American College Chartered Life Underwriter diploma curriculum;
4. Any part of the American Institute for Property and Liability Underwriters' chartered property and casualty underwriter profession designation program;
5. Any part of the Insurance Institute of America's programs;
6. Any part of the certified insurance counselor program;
7. Any insurance related course taught at an accredited college or university, if such course is approved by the commissioner;
8. Any course of instruction or seminar developed or sponsored by any authorized insurer, recognized agent association, recognized insurance trade association, or any independent program of instruction, if approved by the commissioner;

9. Any correspondence course approved by the commissioner.

(b) The commissioner shall prescribe the number of hours of continuing education credit for each continuing education course approved pursuant to this subsection.

(c) If a continuing education course requires successful completion of a written examination, no continuing education credit shall be given to persons who do not successfully complete such written examination.

(d) The fee for filing continuing education courses for approval by the commissioner shall be as specified in Subtitle 4 of KRS Chapter 304.

(5) A person teaching any approved continuing education course shall qualify for the same number of hours of continuing education credit as would be granted to a person taking and satisfactorily completing such course.

(6) Excess credit hours accumulated during any continuing education biennium may be carried forward. The commissioner may, by regulation, limit the number of hours carried forward.

(7) For good cause shown, the commissioner may grant an extension of time during which the continuing education requirement of subsection (3) of this section may be completed, but such extension of time shall not exceed two (2) years. What constitutes good cause for such extension of time rests within the discretion of the commissioner.

(8) Every person subject to this section shall furnish to the commissioner written certification as to the continuing education courses satisfactorily completed by such person. Such certification shall be signed by or on behalf of the organization sponsoring the continuing education course. Such certification shall be on a form prescribed by the commissioner.

(9) The license of any person failing to comply with the continuing education requirement of subsection (3) of this section and who has not been granted an extension of time to comply pursuant to subsection (7) of this section shall be canceled and promptly surrendered to the commissioner without demand.

(10) The license of any person subject to the continuing education requirement shall be suspended or revoked, a civil penalty imposed in lieu thereof, or both, pursuant to KRS 304.9-440 if such person submits to the commissioner a false or fraudulent certificate of compliance with the continuing education requirement.

Section 2. KRS 304.29-331 is amended to read as follows:

(1) Agents of societies shall be licensed in accordance with the provisions of Subtitle 9 of this chapter regulating the licensing, revocation, suspension, or termination of license of resident and nonresident agents. No examination shall be required of any person licensed as an agent for a society prior to January 1, 1987. ***Agents of societies shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, of which twelve (12) must be classroom hours, during each continuing education biennium, as provided in Section 1 of this Act and any administrative regulations promulgated thereunder.***

(2) No examination or license shall be required of any regular salaried officer, employee, or member of a licensed society who devotes substantially all of his services to activities other than the solicitation of fraternal insurance contracts from the public, and who receives for the solicitation of the contracts no commission or other compensation directly dependent upon the amount of business obtained.

(3) Any agent, representative, or member of a society who devotes, or intends to devote, less than fifty percent (50%) of the person's time to the solicitation and procurement of insurance contracts for the society shall be exempt from the requirements of subsection (1) of this section. Any person who in the preceding calendar year has solicited and procured life insurance contracts on behalf of any society in an amount of insurance in excess of fifty thousand dollars ($50,000), or in the case of any other kind or kinds of insurance which the society might write, on the persons of more than twenty-five (25) individuals and who has received or will receive a commission or other compensation therefor, shall be presumed to be devoting, or intending to devote, fifty percent (50%) of time to the solicitation or procurement of insurance contracts for such society.

Section 3. KRS 304.32-180 is amended to read as follows:

(1) "Agent" means any person authorized by a corporation subject to the provisions of this subtitle and on its behalf to solicit applications for subscription or membership, or offers or assumes to act in the negotiation thereof. To qualify for an agent's license an applicant shall:

(a) Be above the age of eighteen (18) years;

(b) Be a bona fide resident of and actually reside in this state;

(c) Be a trustworthy person;

(d) Be appointed as an agent by one (1) or more corporations subject to the provisions of this subtitle;

(e) Make application to the commissioner in the manner and form prescribed by him. As a part or in connection with any application, the applicant shall furnish information concerning his identity, personal history, experience, business record, purposes, and any other information the commissioner may reasonably require;

(f) Pay the fee provided in Subtitle 4 of this chapter; and

(g) Take an examination given by the commissioner as a test of his qualifications and competence.

(2) Agents' licenses shall expire at midnight on March 31 unless the licensee prior thereto has filed with the commissioner, on forms prescribed and furnished by him, a request for continuation of license accompanied by payment of the renewal fee as provided in Subtitle 4 of this chapter, except that any request for continuation filed with the commissioner after such March 31 and prior to the next following June 30 may be accepted and effectuated by the commissioner, in his discretion, if accompanied by a penalty as prescribed in Subtitle 99 of this chapter.

(3) Agents shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, of which twelve (12) must be classroom hours, during each continuing education biennium, as provided by Section 1 of this Act and any administrative regulations promulgated thereunder.

Section 4. KRS 304.38-110 is amended to read as follows:

(1) The commissioner shall promulgate such reasonable rules and regulations as are necessary to provide for the licensing of agents, and the termination or revocation of such license. An "agent" means any person directly or indirectly associated with such organization who engages in solicitation or enrollment of persons for profit or pecuniary gain in a health maintenance organization.

(2) Agents shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, of which twelve (12) must be classroom hours, during each continuing education biennium, as provided in Section 1 of this Act and any administrative regulations promulgated thereunder.

Section 5. KRS 304.43-080 is amended to read as follows:

(1) A prepaid dental plan shall register the names of all persons acting as its agents with the commissioner within thirty (30) days after July 15, 1982.

(2) The commissioner shall, within one (1) year from July 15, 1982, promulgate such reasonable rules and regulations as are necessary to provide for the licensing of agents, and the termination or revocation of such licenses.

(3) Agents shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, of which twelve (12) must be classroom hours, during each continuing education biennium, as provided by Section 1 of this Act and any administrative regulations promulgated thereunder.

SB 63, AN ACT relating to health insurance coverage for autism.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF SUBTITLE 17 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) All insurers issuing individual health insurance policies in this Commonwealth providing coverage on an expense-incurred basis shall provide coverage, including respite and rehabilitative care, for the treatment of autism of a child covered under the policy.

(2) Coverage for autism shall be subject to a five hundred dollar ($500) maximum benefit per month, per covered child. This limit shall not apply to other health conditions of the child and services for the child not related to the treatment of autism.

(3) As used in this section:

(a) "Autism" means a developmental disability significantly affecting verbal and non-verbal communication and social interaction, generally evident before age three (3), that adversely affects educational performance and which includes any of the following characteristics:

1. Irregularity and impairment in communication;

2. Engagement in repetitive activity and stereotyped movement;

3. Resistance to changes in environment or daily routine; or

4. Unusual responses to sensory experience.

This term does not include persons with characteristics of an emotional-behavioral disability as defined in KRS 157.200; and

(b) "Child" means a person two (2) through twenty-one (21) years of age.

SECTION 2. A NEW SECTION OF KRS 304.17A-100 TO 304.17A.160 IS CREATED TO READ AS FOLLOWS:

(1) All health benefit plans shall provide coverage, including respite and rehabilitative care, for the treatment of autism of a child covered under the policy.

(2) Coverage for autism shall be subject to a five hundred dollar ($500) maximum benefit per month, per covered child. This limit shall not apply to other health conditions of the child and services for the child not related to the treatment of autism.

(3) As used in this section:

(a) "Autism" means a developmental disability significantly affecting verbal and non-verbal communication and social interaction, generally evident before age three (3), that adversely affects educational performance and which includes any of the following characteristics:

1. Irregularity and impairment in communication;

2. Engagement in repetitive activity and stereotyped movement;

3. Resistance to changes in environment or daily routine; or

4. Unusual responses to sensory experience.

This term does not include persons with characteristics of an emotional-behavioral disability as defined in KRS 157.200; and

(b) "Child" means a person two (2) through twenty-one (21) years of age.

SECTION 3. A NEW SECTION OF SUBTITLE 18 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) All insurers issuing group or blanket health insurance policies and certificates in this Commonwealth shall provide coverage, including respite and rehabilitative care, for the treatment of autism of a child covered under the policy.

(2) Coverage for autism shall be subject to a five hundred dollar ($500) maximum benefit per month, per covered child. This limit shall not apply to other health conditions of the child and services for the child not related to the treatment of autism.

(3) As used in this section:

(a) "Autism" means a developmental disability significantly affecting verbal and non-verbal communication and social interaction, generally evident before age three (3), that adversely affects educational performance and which includes any of the following characteristics:

1. Irregularity and impairment in communication;

2. Engagement in repetitive activity and stereotyped movement;

3. Resistance to changes in environment or daily routine; or

4. Unusual responses to sensory experience.

This term does not include persons with characteristics of an emotional-behavioral disability as defined in KRS 157.200; and

(b) "Child" means a person two (2) through twenty-one (21) years of age.

SECTION 4. A NEW SECTION OF SUBTITLE 32 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) All nonprofit hospital, medical-surgical, dental, and health service corporations issuing contracts in this Commonwealth which provide hospital, medical, or surgical expense benefits shall provide coverage, including respite and rehabilitative care, for the treatment of autism of a child covered under the policy.

(2) Coverage for autism shall be subject to a five hundred dollar ($500) maximum benefit per month, per covered child. This limit shall not apply to other health conditions of the child and services for the child not related to the treatment of autism.

(3) As used in this section:

(a) "Autism" means a developmental disability significantly affecting verbal and non-verbal communication and social interaction, generally evident before age three (3), that adversely affects educational performance and which includes any of the following characteristics:

1. Irregularity and impairment in communication;

2. Engagement in repetitive activity and stereotyped movement;

3. Resistance to changes in environment or daily routine; or

4. Unusual responses to sensory experience.

This term does not include persons with characteristics of an emotional-behavioral disability as defined in KRS 157.200; and

(b) "Child" means a person two (2) through twenty-one (21) years of age.

SECTION 5. A NEW SECTION OF SUBTITLE 38 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) All health maintenance organizations issuing contracts in this Commonwealth shall provide coverage, including respite and rehabilitative care, for the treatment of autism of a child covered under the policy.

(2) Coverage for autism shall be subject to a five hundred dollar ($500) maximum benefit per month, per covered child.

This limit shall not apply to other health conditions of the child and services for the child not related to the treatment of autism.

(3) As used in this section:

(a) "Autism" means a developmental disability significantly affecting verbal and non-verbal communication and social interaction, generally evident before age three (3), that adversely affects educational performance and which includes any of the following characteristics:

1. Irregularity and impairment in communication;

2. Engagement in repetitive activity and stereotyped movement;

3. Resistance to changes in environment or daily routine; or

4. Unusual responses to sensory experience.

This term does not include persons with characteristics of an emotional-behavioral disability as defined in KRS 157.200; and

(b) "Child" means a person two (2) through twenty-one (21) years of age.

The House Committee Substitute to **SB 63** is as follows:

AN ACT relating to health insurance coverage for autism.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF SUBTITLE 17 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) All insurers issuing individual health insurance policies in this Commonwealth providing coverage on an expense-incurred basis shall provide coverage, including therapeutic respite and rehabilitative care, for the treatment of autism of a child covered under the policy.

(2) Coverage for autism shall be subject to a five hundred dollar ($500) maximum benefit per month, per covered child. This limit shall not apply to other health conditions of the child and services for the child not related to the treatment of autism.

(3) As used in this section:

(a) "Autism" means a developmental disability significantly affecting verbal and non-verbal communication and social interaction, generally evident before age three (3), that adversely affects educational performance and which includes any of the following characteristics:

1. Irregularity and impairment in communication;

2. Engagement in repetitive activity and stereotyped movement;

3. Resistance to changes in environment or daily routine; or

4. Unusual responses to sensory experience.

This term does not include persons with characteristics of an emotional-behavioral disability as defined in KRS 157.200; and

(b) "Child" means a person two (2) through twenty-one (21) years of age.

SECTION 2. A NEW SECTION OF KRS 304.17A-100 TO 304.17A.160 IS CREATED TO READ AS FOLLOWS:

(1) All health benefit plans shall provide coverage, including therapeutic respite and rehabilitative care, for the treatment of autism of a child covered under the policy.

(2) Coverage for autism shall be subject to a five hundred dollar ($500) maximum benefit per month, per covered child. This limit shall not apply to other health conditions of the child and services for the child not related to the treatment of autism.

(3) As used in this section:

(a) "Autism" means a developmental disability significantly affecting verbal and non-verbal communication and social interaction, generally evident before age three (3), that adversely affects educational performance and which includes any of the following characteristics:

1. Irregularity and impairment in communication;

2. Engagement in repetitive activity and stereotyped movement;

3. Resistance to changes in environment or daily routine; or

4. Unusual responses to sensory experience.

This term does not include persons with characteristics of an emotional-behavioral disability as defined in

KRS 157.200; and

(b) "Child" means a person two (2) through twenty-one (21) years of age.

SECTION 3. A NEW SECTION OF SUBTITLE 18 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) All insurers issuing group or blanket health insurance policies and certificates in this Commonwealth shall provide coverage, including therapeutic respite and rehabilitative care, for the treatment of autism of a child covered under the policy.

(2) Coverage for autism shall be subject to a five hundred dollar ($500) maximum benefit per month, per covered child. This limit shall not apply to other health conditions of the child and services for the child not related to the treatment of autism.

(3) As used in this section:

(a) "Autism" means a developmental disability significantly affecting verbal and non-verbal communication and social interaction, generally evident before age three (3), that adversely affects educational performance and which includes any of the following characteristics:

1. Irregularity and impairment in communication;

2. Engagement in repetitive activity and stereotyped movement;

3. Resistance to changes in environment or daily routine; or

4. Unusual responses to sensory experience.

This term does not include persons with characteristics of an emotional-behavioral disability as defined in KRS 157.200; and

(b) "Child" means a person two (2) through twenty-one (21) years of age.

SECTION 4. A NEW SECTION OF SUBTITLE 32 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) All nonprofit hospital, medical-surgical, dental, and health service corporations issuing contracts in this Commonwealth which provide hospital, medical, or surgical expense benefits shall provide coverage, including therapeutic respite and rehabilitative care, for the treatment of autism of a child covered under the policy.

(2) Coverage for autism shall be subject to a five hundred dollar ($500) maximum benefit per month, per covered child. This limit shall not apply to other health conditions of the child and services for the child not related to the treatment of autism.

(3) As used in this section:

(a) "Autism" means a developmental disability significantly affecting verbal and non-verbal communication and social interaction, generally evident before age three (3), that adversely affects educational performance and which includes any of the following characteristics:

1. Irregularity and impairment in communication;

2. Engagement in repetitive activity and stereotyped movement;

3. Resistance to changes in environment or daily routine; or

4. Unusual responses to sensory experience.

This term does not include persons with characteristics of an emotional-behavioral disability as defined in KRS 157.200; and

(b) "Child" means a person two (2) through twenty-one (21) years of age.

SECTION 5. A NEW SECTION OF SUBTITLE 38 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) All health maintenance organizations issuing contracts in this Commonwealth shall provide coverage, including therapeutic respite and rehabilitative care, for the treatment of autism of a child covered under the policy.

(2) Coverage for autism shall be subject to a five hundred dollar ($500) maximum benefit per month, per covered child. This limit shall not apply to other health conditions of the child and services for the child not related to the treatment of autism.

(3) As used in this section:

(a) "Autism" means a developmental disability significantly affecting verbal and non-verbal communication and social interaction, generally evident before age three (3), that adversely affects educational performance and which includes any of the following characteristics:

1. Irregularity and impairment in communication;

2. Engagement in repetitive activity and stereotyped movement;

3. Resistance to changes in environment or daily routine; or

4. Unusual responses to sensory experience.

This term does not include persons with characteristics of an emotional-behavioral disability as defined in KRS 157.200; and

(b) "Child" means a person two (2) through twenty-one (21) years of age.

SB 105, AN ACT relating to insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.47-080 is amended to read as follows:

(1) Every insurer admitted to do business in the Commonwealth shall maintain a unit to investigate possible fraudulent claims by insureds or by persons making claims for services or repairs against policies held by insureds. ***For the purpose of this section, "insurer" does not include reinsurers or reinsurance as defined in KRS 304.5-130.***

(2) Insurers may maintain the unit required by subsection (1) of this section, using its employees or by contracting with others for that purpose.

(3) Insurers shall establish the unit required by this section no later than July 15, 1995.

(4) The unit may include the assignment of fraud investigation to employees whose principal responsibilities are the investigation and disposition of claims. If an insurer creates a distinct unit, hires additional employees, or contracts with another entity to fulfill the requirements of this article, the additional cost incurred shall be included as an administrative expense.

Section 2. KRS 304.47-030 is amended to read as follows:

(1) All applications shall contain a statement in a form approved by the Department of Insurance that clearly states in substance the following: "Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime."

(2) All claim forms shall contain a statement in a form approved by the Department of Insurance that clearly states in substance the following: "Any person who knowingly and with intent to defraud any insurance company or other person files a statement of claim containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime."

(3) Fraud warning statements shall not be required on applications or claim forms used by reinsurers.

SB 135, AN ACT relating to health insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) An insurer that offers a managed care plan shall disclose to an enrollee, in writing, in a manner consistent with KRS 304.14-420 to 304.14-450, and any risk-bearing managed care plan shall disclose to an enrollee, in writing, at the time of enrollment and thereafter upon request, and as new providers are contracted with by the plans, or as the directory may change, a current participating provider directory providing information on a covered person's access to primary care physicians and specialists, optometrists, chiropractors, and hospitals, including available participating physicians, optometrists, chiropractors, and hospitals, by provider category or specialty and by county. The directory shall include the following:

(a) Professional office addresses and telephone numbers for all participating:

1. Primary care physicians;

2. Optometrists;

3. Chiropractors;

4. Hospitals; and

5. Other health care providers as defined under KRS 304.17A-010(11);

(b) Information about drug formularies and their restrictions, limitations, and procedures for authorization outside the formularies;

(c) The benefits for each provider type;

(d) Information concerning physician incentives; and

(e) Grievance procedures available under the plans for complaint resolutions.

(2) The provisions of this section shall be implemented prior to any open enrollment period for which the effective date of coverage will be January 1, 1999, or for which the effective date shall commence after an open enrollment period, and shall continue for each open enrollment period thereafter.

The Committee on Cities reported **HB 48**, with Committee Substitute attached thereto, **HB 107**, with Committee Substitute attached thereto, **HB 425**, **HB 610**, **HB 651**, with Committee Substitute attached thereto, and **HB 671** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 48, AN ACT relating to public parks.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 97.590 is amended to read as follows:

(1) For the purpose of purchasing and maintaining public parks within the city limits, cities of ***any class***[~~the fourth class~~] may levy taxes not exceeding five cents ($0.05) on each one hundred dollars ($100) of all taxable property within the corporate limits.

(2) The funds derived from the levy shall be held by the treasurer of the city in a separate and distinct fund designated the "Park Fund," and shall be paid out by the treasurer only upon order issued by the park board signed by the secretary and countersigned by the president after the bill for the withdrawal has been approved by the board. The treasurer shall not honor in any one (1) year orders for a greater sum than the amount apportioned and levied for that year for park and playground purposes.

The Committee Substitute to **HB 48** is as follows:

AN ACT relating to public parks.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 97.590 is amended to read as follows:

(1) For the purpose of purchasing and maintaining public parks within the ***jurisdictional***[~~city~~] limits, cities of ***any class, counties, charter counties, and urban-county governments***[~~the fourth class~~] may levy taxes not exceeding five cents ($0.05) on each one hundred dollars ($100) of all taxable property within the corporate limits***. No city, county, charter county, or urban-county government shall levy the tax until a public referendum has been conducted in accordance with the provisions of KRS 83A.120 and has been adopted by the city's, county's, charter county's, or urban-county government's voters***.

(2) The funds derived from the levy shall be held by the treasurer of the city ***or the treasurer of the county*** in a separate and distinct fund designated the "Park Fund," and shall be paid out by the treasurer only upon order issued by the park board signed by the secretary and countersigned by the president after the bill for the withdrawal has been approved by the board. The treasurer shall not honor in any one (1) year orders for a greater sum than the amount apportioned and levied for that year for park and playground purposes.

Section 2. KRS 97.550 is amended to read as follows:

(1) Cities of ***any***[~~the fourth~~] class***, counties, charter counties, and urban-county governments*** may acquire, by purchase or donation, property for the purpose of maintaining public parks or playgrounds within the ***jurisdictional***[~~city~~] limits.

(2) The city legislative body ***or the fiscal court*** may appoint a park board of not more than five (5) persons, whose qualifications shall be prescribed by the ***city*** legislative body ***or fiscal court***, and whose terms of office shall be for two (2) years and until their successors are appointed and qualified, except that three (3) members of the first board appointed shall be appointed for terms of only one (1) year. The members of the board shall not receive any salary for their services. The board shall be a corporation with perpetual succession, and may, in its corporate name, contract and be contracted with, sue and be sued, have and use a corporate seal and alter or renew it at pleasure.

Section 3. KRS 147A.028 is amended to read as follows:

(1) In enacting a parks establishment aid law, it is the intention of the General Assembly to supplement local efforts to establish park and recreational facilities. The inadequacy of present facilities and the high cost of acquisition and establishment of park recreational facilities are hereby declared to be matters of public interest and concern and vital to the promotion of the health, welfare and industrial development of the inhabitants of the Commonwealth.

(2) The commissioner of the Department of Local Government shall cause to be established in the Treasury a special fund to be known as the local government parks and recreational facilities fund, to be administered by the commissioner. The fund shall be comprised of grants, contributions, appropriations and intergovernmental transfers. Moneys in the fund shall not lapse at the end of the fiscal year.

(3) The commissioner may, when he determines that a proposed local government plan for a park or other recreational

facility would serve the public interest, use moneys from the local government parks and recreational facilities fund to aid local governmental units in their acquisition and establishment of local parks and recreational facilities, provided that local governmental units must provide matching funds for the project. The Department of Local Government may grant an amount up to ***five hundred thousand dollars ($500,000)***[~~one hundred thousand dollars ($100,000)~~] for any one (1) project, which amount shall not exceed fifty percent (50%) of the cost of the entire project. For the purposes of this section, local governmental units shall mean county governments, urban-county government, and governments of cities of any class. Title to parks and recreational facilities acquired by the use of funds authorized by this section shall vest in the local governmental unit which proposed the project and provided the matching funds.

(4) In September of each year the commissioner shall determine the amount of funds available for distribution by December 31 of that same year. The commissioner may prescribe standards for determining the amounts to be granted for local projects and such regulations as may be necessary to implement the provisions of this section. Funds granted by the department shall be spent by the local governing authorities only for the acquisition and establishment of parks and recreational facilities or major improvements or additions to existing parks and shall not be used for operating or maintenance expenses.

SECTION 4. A NEW SECTION OF KRS CHAPTER 97 IS CREATED TO READ AS FOLLOWS:

(1) For the purpose of acquiring, building, operating, and maintaining parks and green space, two (2) or more counties may form a regional park authority.

(2) (a) The regional park authority may be established by a vote of the fiscal courts of the participating counties or by a vote of the majority of the voters in each participating county voting in an election. The issue shall be placed upon the ballot if supported by a petition signed by a number of people from the participating counties equal to one percent (1%) of the voters in the last regular election.

(b) A county may join an existing regional park authority by a vote of the fiscal court of each participating county and of the fiscal court of the joining county, or by a vote of the majority of voters from each participating county and the joining county voting in an election. The issue shall be placed upon the ballot if supported by a petition signed by a number of people from the participating and joining counties equal to one per cent (1%) of the voters from each participating county, and one percent (1%) of the voters from the joining county, voting in the last regular election.

(3) A regional park authority is authorized to:

(a) Levy taxes and issue bonds;

(b) Accept donations, land, and equipment;

(c) Reject unusable or unmanageable land donations;

(d) Hire employees and contract for services; and

(e) Enter into agreements with public and private entities under the provisions of the Interlocal Cooperation Act, KRS 65.210 to 65.300, and contracts authorizing the use of private facilities for public recreation.

(4) A regional park authority may levy taxes not exceeding five cents ($0.05) on each one hundred dollars ($100) of all taxable property within the regional park authority's boundaries. The tax shall not be levied until a public referendum has been conducted in accordance with the provisions of KRS 83A.120 and has been adopted by the majority of the voters voting in an election in each county involved.

(5) A regional park authority shall be governed by a board made up of three (3) citizens from each participating county. Board members shall be appointed by the fiscal court from a list of candidates provided by the cities within the county and by the county planning commission if there is one in that county.

HB 107, AN ACT relating to building inspections.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

The Department of Housing, Buildings and Construction shall establish a program, through the promulgation of administrative regulations in accordance with KRS Chapter 13A, to allow selected building inspectors to attend the annual meetings of the Building Officials and Code Administrators International Association. The criteria for selection shall be at the department's discretion, except preference shall be given to building inspectors with insufficient, or minimal, financial means to attend the meetings.

SECTION 2. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

The Department of Housing, Buildings and Construction shall create a section within itself, through the promulgation of administrative regulations in accordance with KRS Chapter 13A, to provide support services to building inspectors inspecting one (1) and two (2) family dwellings. The department shall provide personnel to staff the section during normal

business hours.

Section 3. KRS 198B.040 is amended to read as follows:

The Kentucky Board of Housing, Buildings and Construction shall have the following general powers and duties:

(1) To conduct or cause to be conducted studies to determine the needs of the building industry of Kentucky;

(2) To conduct or cause to be conducted or participate in studies of the costs of the various factors of building construction and use of buildings, and to recommend programs and procedures which will minimize the cost of buildings, including the use of energy, while maintaining safety, durability and comfort;

(3) To administer regulatory legislation relating to buildings and construction;

(4) To assume administrative coordination of the various state construction review programs and to cooperate with various federal, state and local agencies in the programs as they relate to buildings and construction;

(5) To assume administration and coordination of various state housing programs to include:

- (a) Devising and implementing procedures, in conjunction with the Department of Local Government, for attaining and maintaining an accurate count of the housing inventory in Kentucky, including information on the age, physical condition, size, facilities and amenities of such housing, and housing constructed and demolished each year;
- (b) Designing programs coordinating the elements of housing finance, production, maintenance and rehabilitation for the purpose of assuring the availability of safe, adequate housing in a healthful environment for all Kentucky citizens;
- (c) Establishing or causing to be established public information and educational programs relating to housing, to include informing Kentucky citizens about housing and housing related programs that are available on all levels of government;
- (d) Designing and administering, or participating in the design and administration of educational programs to prepare low income families for home ownership, and counseling them during their early years as homeowners;
- (e) Promoting educational programs to assist sponsors in the development and management of low and moderate income housing for sale or rental;
- (f) Cooperating with various federal, state and local agencies in their programs as they relate to housing;
- (g) Conducting or causing to be conducted studies to determine the housing preferences of Kentucky citizens and the present and future housing requirements of the state;

(6) To recommend state building industry policies and goals to the Kentucky General Assembly;

(7) To adopt and promulgate a mandatory uniform state building code, and parts thereof, which shall establish standards for the construction of all buildings, as defined in KRS 198B.010, in the state;

(8) To issue regulations providing for the proper construction of public water purification plants, other than the water treatment equipment and systems in such plants, provided, however, that any such regulations must require that applications for permits to build public water purification plants will be submitted by the department to the Natural Resources and Environmental Protection Cabinet for that cabinet's comments. Any such regulations shall require the Natural Resources and Environmental Protection Cabinet's comments to be completed and submitted to the department within sixty (60) days;

(9) To issue regulations providing for the proper construction of sewage treatment plants, other than the sewage treatment equipment and systems in such plants, provided, however, that any such regulations must require that applications for permits to build public sewage treatment plants will be submitted by the department to the Natural Resources and Environmental Protection Cabinet for that cabinet's comments. Any such regulations shall require the Natural Resources and Environmental Protection Cabinet's comments to be completed and submitted to the department within sixty (60) days;[~~and~~]

(10) To issue regulations for the safe installation and operation of plumbing and plumbing fixtures*; and*

(11) To establish training and financial incentive programs, through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A, for the purpose of encouraging counties and municipalities to comply with the provisions of the Kentucky Building Code and to encourage building inspectors to successfully complete all required examinations toward full certification. Funds for these programs may be established by charging a reasonable surcharge on state plan review fees and local building permit fees.

SECTION 4. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

In order to ensure efficiency for local governments and local building inspection departments, building inspectors, plans and specifications inspectors, plumbing inspectors, and electrical inspectors may hold multiple inspection certifications if the standard procedures as prescribed by the department for acquiring and maintaining certification are followed by the person wishing to hold multiple certifications.

The Committee Substitute to **HB 107** is as follows:

AN ACT relating to building inspections.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) The board shall establish the Building Inspectors' Financial Incentive and Training Program, beginning on July 1, 1999, through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A. The program shall be financed through the Building Inspectors' Financial Incentive Training Program fund. The program shall provide financial incentives to building inspectors to encourage building inspectors to successfully complete all required examinations toward full certification. The program shall also provide training and education opportunities for building inspectors.

(2) There is created in the Department for Housing, Buildings and Construction, under the Board of Housing, Buildings and Construction, a trust and agency fund to be known as the "Building Inspectors' Financial Incentive Training Program Fund." The fund shall primarily be funded by increasing the department's plan review fees for each occupancy classification by one cent ($0.01) per square foot. The fund may also receive state appropriations, gifts, grants from public and private sources, and federal funds. Any unalloted or unencumbered balances in this fund shall be invested as provided for in KRS 42.500(9). Income earned from the investments shall be credited to the fund. Any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year, and moneys in the fund shall be continuously appropriated only for the purposes specified in this section. A general statement that all continuing appropriations are repealed, discontinued, or suspended shall not operate to repeal, discontinue, or suspend this fund or to repeal this section.

HB 425, AN ACT relating to zoning map amendments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 100.211 is amended to read as follows:

(1) A proposal for a zoning map amendment may originate with the planning commission of the unit, with any fiscal court or legislative body which is a member of the unit, or with an owner of the property in question. Regardless of the origin of the proposed amendment, it shall be referred to the planning commission before adoption. The planning commission shall then hold at least one (1) public hearing after notice as required by this chapter and make findings of fact and a recommendation of approval or disapproval of the proposed map amendment to the various legislative bodies or fiscal courts involved. The findings of fact and recommendation shall include a summary of the evidence and testimony presented by the proponents and opponents of the proposed amendment. A tie vote shall be subject to further consideration by the planning commission for a period not to exceed thirty (30) days, at the end of which if the tie has not been broken, the application shall be forwarded to the fiscal court or legislative body without a recommendation of approval or disapproval. It shall take a majority of the entire legislative body or fiscal court to override the recommendation of the planning commission and it shall take a majority of the entire legislative body or fiscal court to adopt a zoning map amendment whenever the planning commission forwards the application to the fiscal court or legislative body without a recommendation of approval or disapproval due to a tie vote. Unless a majority of the entire legislative body or fiscal court votes to override the planning commission's recommendation, such recommendation shall become final and effective and if a recommendation of approval was made by the planning commission, the ordinance of the fiscal court or legislative body adopting the zoning map amendment shall be deemed to have passed by operation of law.

(2) A proposal to amend the text of any zoning regulation which must be voted upon by the legislative body or fiscal court may originate with the planning commission of the unit or with any fiscal court or legislative body which is a member of the unit. Regardless of the origin of the proposed amendment, it shall be referred to the planning commission before adoption. The planning commission shall hold at least one (1) public hearing after notice as required by KRS Chapter 424 and make a recommendation as to the text of the amendment and whether the amendment shall be approved or disapproved and shall state the reasons for its recommendation. In the case of a proposed amendment originating with a legislative body or fiscal court, the planning commission shall make its recommendation within sixty (60) days of the date of its receipt of the proposed amendment. It shall take an affirmative vote of a majority of the fiscal court or legislative body to adopt the proposed amendment.

(3) Procedures prescribed in KRS 100.207 applicable to the publication of notice also shall apply to any proposed amendment to a zoning regulation text or map; provided that:

(a) Any published notice shall include the street address of the property in question, or if one is not available or practicable due to the number of addresses involved, a geographic description sufficient to locate and identify the property, and the names of two (2) streets on either side of the property which intersect the street on which the property is located; and

(b) When the property in question is located at the intersection of two (2) streets, the notice shall designate the intersection by name of both streets rather than name the two (2) streets on either side of the property.

(4) When a property owner proposes to amend the zoning map of any planning unit other than a planning unit containing a city of the first class, the provisions of KRS 100.212 shall apply in addition to the requirements and procedures prescribed in subsection (3) of this section.

(5) When a property owner proposes to amend the zoning map of any planning unit comprising any portion of a county containing a city of the first class, the provisions of KRS 100.214 shall apply in addition to the requirements and procedures prescribed in subsection (3) of this section.

(6) In addition to the public notice requirements prescribed in subsection (3) of this section, when the planning commission, fiscal court, or legislative body of any planning unit originates a proposal to amend the zoning map of that unit, notice of the public hearing before the planning commission, fiscal court, or legislative body shall be given at least thirty (30) days in advance of the hearing by first class mail to an owner of every parcel of property the classification of which is proposed to be changed. Records by the property valuation administrator may be relied upon to determine the identity and address of said owner.

(7) The fiscal court or legislative body shall take final action upon a proposed zoning map amendment within ***one hundred (100)***[~~ninety (90)~~] days of the date upon which the planning commission takes its final action upon such proposal. ***Failure of the fiscal court or legislative body to take final action within that time shall entitle any aggrieved person to seek an order of mandamus, and may result in a penalty against the fiscal court or legislative body pursuant to KRS 100.991, but this failure shall not result in a deemed approval nor shall it deprive the fiscal court or legislative body of jurisdiction to take final action after that time.***

HB 610, AN ACT relating to cities of the third, fourth, fifth, and sixth classes.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 81A IS CREATED TO READ AS FOLLOWS:

(1) When a city of the third, fourth, or fifth class and a city of the sixth class have a common boundary, and it is determined by the legislative body of the city of the sixth class and of the adjoining city of the third, fourth, or fifth class that the entire area of the city of the sixth class can be better served by the adjoining city, the entire area of the city of the sixth class may be annexed to the adjoining city and the city of the sixth class dissolved after the enactment of identical ordinances by each legislative body according to the provisions of this section.

(2) The ordinances declaring the annexation of the city of the sixth class by the adjoining city shall include, but not be limited to, the following:

(a) A statement of the financial consideration, if any, between the two (2) cities regarding the area of the city of the sixth class and the terms of any financial arrangements;

(b) The resolution of any taxes or revenues from the area of the city of the sixth class;

(c) A statement of the land use or the zoning regulations that would be applicable to the area of the city of the sixth class if planning and zoning is in effect pursuant to KRS Chapter 100 in either city; and

(d) The date that the annexation of the city of the sixth class by the adjoining city would be effective, which shall not be more than one (1) year after the date on which the last of the identical ordinances is adopted.

(3) In order for the annexation to be completed, either of the following procedures shall be followed and concluded:

(a) Prior to the effective date of the annexation of the area of the city of the sixth class into the adjoining city, a petition in support of the annexation, containing a number of signatures of residents in the area of the city of the sixth class that is not less than fifty-one percent (51%) of the number of registered voters in the area of the city of the sixth class, shall be submitted to the county clerk of the county in which the city of the sixth class is located. The county clerk shall within ten (10) working days of receipt of the petition notify each city of the validity of each signature and address on the petition; or

(b) An election shall be held to determine the desire of the voters in the city of the sixth class. An election shall be held at a regular election, or an election may be held at a primary election if an ordinance or municipal order of the legislative body of the city of the sixth class desiring annexation has been filed with the county clerk not later than the second Tuesday in August preceding the primary election. The qualifications of voters and all other matters in regard to the election shall be governed by the general election laws. The question shall be submitted in substantially the following form: "Are you in favor of annexing the city of .... into the city of.......... and dissolving the city of..........? Yes.......... No..........".

(4) If the requisite number of signatures is verified by the county clerk as provided in subsection (3)(a) of this section, or if a majority of the legal votes cast at the election in the city of the sixth class proposing to be annexed favors the

annexation, the annexation shall proceed and become effective, and the city of the sixth class shall be dissolved at the date provided in the identical ordinances adopted by the legislative bodies of the city of the sixth class and of the adjoining city upon the enactment by the legislative body of the adjoining city of an ordinance accepting the annexation of the city of the sixth class.

(5) All assets of the city of the sixth class existing on the date of annexation shall become the property of the annexing city. Any indebtedness for which the city of the sixth class is liable on the date of annexation shall be assumed by the annexing city, so that after annexation the burden of taxation shall be uniform throughout the area of the two (2) cities.

(6) The enactment of ordinances by each city shall be pursuant to KRS 83A.060.

(7) The authority for the annexation of the city of the sixth class shall be exclusive of the provisions of KRS 81A.440.

(8) In addition to other public notice requirements, the annexing city shall comply with the provisions of KRS 81A.470, but shall not be required to comply with the provisions of KRS 81A.475. The city clerk of the city of the sixth class shall, within sixty (60) days after the effective date of the dissolution of the city of the sixth class, give written notice of the dissolution and the date of the dissolution to the Secretary of State who shall properly index and file the notice and date as a permanent record in the secretary's office.

(9) The area of the city of the sixth class being annexed shall assume the local option status of the city by which it is being annexed.

HB 651, AN ACT relating to sanitation districts.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 220 IS CREATED TO READ AS FOLLOWS:

The district may establish a surcharge or other rate, fee, or charge to be made applicable to users in areas where facilities are to be acquired, constructed or established, and to amortize part or all of the costs thereof, in addition to the charge authorized by KRS 220.510. The surcharges, rates, fees, or charges shall be determined on the basis of one or more of the factors stated in KRS 220.510, and may include, at the discretion of the district, a finance charge not to exceed ten percent (10%). In carrying out any rate, fee, or charge classification, the district shall follow the procedures set forth in KRS 220.593(2).

SECTION 2. A NEW SECTION OF KRS CHAPTER 220 IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding any other provision of KRS Chapter 220, the board of directors of the district may adopt rules requiring owners of property within the district whose property is served by a connection of sewers maintained and operated by the district or whose sewers are connected to interceptor sewers maintained and operated by the district to:

(a) Disconnect storm water inflows to sanitary sewers maintained and operated by the district and not operated as a combined sewer, or to connections with these sewers;

(b) Disconnect nonstorm water inflows to storm water sewers to the extent the sewers are maintained and operated by the district and not operated as a combined sewer, or to connections with these sewers;

(c) Reconnect or relocate any disconnected inflows in compliance with rules and regulations of the district and applicable building codes, health codes or other relevant law or administrative regulation.

(2) Any inflow required to be disconnected under a rule adopted pursuant to KRS Chapter 220 shall constitute a nuisance subject to injunctive relief and abatement pursuant to KRS Chapter 220, or as otherwise permitted by law.

(3) The board of directors of a district may expend district funds, and other moneys from state or federal sources to the extent permitted by their terms, loans, or grants, for either of the following:

(a) The cost of disconnections, reconnections, or relocations required by rules adopted pursuant to KRS Chapter 220, performed by district personnel or persons under contract with the district;

(b) Payments to the property owner or a contractor hired by the property owner pursuant to a competitive process for the cost of disconnections, reconnections, or relocations required by rules adopted pursuant to KRS Chapter 220 after the board of directors has approved the work to be performed and after the district has received from the property owner a statement releasing the district from all liability in connection with the disconnections, reconnections, or relocations.

(4) Except as provided in subsection (6) of this section, the board of directors of the district shall require in its rules regarding disconnections, reconnections, or relocations of sewers the reimbursement of moneys expended pursuant to subsection (3) of this section. This shall be done by the district assessing a charge to the property owner in the amount of the payment made pursuant to subsection (3) of this section for immediate payment or payments in

installment with interest as determined by the board of directors not to exceed ten percent (10%). The payments may be billed as a separate item and in addition to any other fees charged to that owner for the usage of the sewers as may be required by the district. The board of directors may approve installment payments for a period of not more than fifteen (15) years. Charges not paid when due may cause the board of directors to compel payment in the manner authorized in KRS Chapter 220 and the rules and regulations of the district.

(5) The district may specify the maximum amount of the cost of any disconnection, reconnection, or relocation required pursuant to subsection (1) of this section that may be paid by the district for each affected parcel of property without requiring reimbursement. The board of directors shall determine the maximum amount for each qualifying parcel that does not need to be reimbursed.

(6) Disconnections, reconnections, or relocations required under this section performed by a contractor under contract with the property owner shall not be subject to competitive bidding laws of the Commonwealth of Kentucky.

(7) Property owners shall be responsible for maintaining any improvements made to private property to reconnect or relocate disconnected inflows pursuant to this section unless a recorded public easement, dated prior to January 1, 1994, exists requiring maintenance by a city, county or sanitation district.

Section 3. KRS 220.030 is amended to read as follows:

Sanitation districts may be established for any of the following purposes:

(1) To prevent and correct the pollution of streams.

(2) To regulate the flow of streams for sanitary purposes.

(3) To clean and improve stream channels for sanitary purposes.

(4) To provide for the collection and disposal of sewage and other liquid wastes produced within the district; and incident to *those*[~~such~~] purposes and to enable their accomplishment, to construct, with all appurtenances[~~ thereto~~], laterals, trunk sewers, intercepting sewers, siphons, pumping stations, treatment and disposal works, to maintain, operate, and repair *these*[~~same~~], and do all other things necessary for the fulfillment of the purposes of KRS 220.010 to 220.520.

(5) To provide for the management of onsite sewage disposal systems.

(6) To develop and implement plans for the collection and disposal of storm drainage[~~ to the extent that collection and disposal of storm drainage is required by applicable federal and state regulations~~].

The Committee Substitute to **HB 651** is as follows:

AN ACT relating to sanitation districts.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 220 IS CREATED TO READ AS FOLLOWS:

The district may establish a surcharge or other rate, fee, or charge to be made applicable to users in areas where facilities are to be acquired, constructed or established, and to amortize part or all of the costs thereof, in addition to the charge authorized by KRS 220.510. The surcharges, rates, fees, or charges shall be determined on the basis of one or more of the factors stated in KRS 220.510, and may include, at the discretion of the district, a finance charge not to exceed ten percent (10%). In carrying out any rate, fee, or charge classification, the district shall follow the procedures set forth in KRS 220.593(2).

SECTION 2. A NEW SECTION OF KRS CHAPTER 220 IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding any other provision of KRS Chapter 220, the board of directors of the district may adopt rules requiring owners of property within the district whose property is served by a connection of sewers maintained and operated by the district or whose sewers are connected to interceptor sewers maintained and operated by the district to:

(a) Disconnect storm water inflows to sanitary sewers maintained and operated by the district and not operated as a combined sewer, or to connections with these sewers;

(b) Disconnect nonstorm water inflows to storm water sewers to the extent the sewers are maintained and operated by the district and not operated as a combined sewer, or to connections with these sewers;

(c) Reconnect or relocate any disconnected inflows in compliance with rules and regulations of the district and applicable building codes, health codes or other relevant law or administrative regulation.

(2) Any inflow required to be disconnected under a rule adopted pursuant to KRS Chapter 220 shall constitute a nuisance subject to injunctive relief and abatement pursuant to KRS Chapter 220, or as otherwise permitted by law.

(3) The board of directors of a district may expend district funds, and other moneys from state or federal sources to the extent permitted by their terms, loans, or grants, for either of the following:

(a) The cost of disconnections, reconnections, or relocations required by rules adopted pursuant to KRS Chapter 220, performed by district personnel or persons under contract with the district;

(b) Payments to the property owner or a contractor hired by the property owner pursuant to a competitive process for the cost of disconnections, reconnections, or relocations required by rules adopted pursuant to KRS Chapter 220 after the board of directors has approved the work to be performed and after the district has received from the property owner a statement releasing the district from all liability in connection with the disconnections, reconnections, or relocations.

(4) Except as provided in subsection (6) of this section, the board of directors of the district shall require in its rules regarding disconnections, reconnections, or relocations of sewers the reimbursement of moneys expended pursuant to subsection (3) of this section. This shall be done by the district assessing a charge to the property owner in the amount of the payment made pursuant to subsection (3) of this section for immediate payment or payments in installment with interest as determined by the board of directors not to exceed ten percent (10%). The payments may be billed as a separate item and in addition to any other fees charged to that owner for the usage of the sewers as may be required by the district. The board of directors may approve installment payments for a period of not more than fifteen (15) years. Charges not paid when due may cause the board of directors to compel payment in the manner authorized in KRS Chapter 220 and the rules and regulations of the district.

(5) The district may specify the maximum amount of the cost of any disconnection, reconnection, or relocation required pursuant to subsection (1) of this section that may be paid by the district for each affected parcel of property without requiring reimbursement. The board of directors shall determine the maximum amount for each qualifying parcel that does not need to be reimbursed.

(6) Disconnections, reconnections, or relocations required under this section performed by a contractor under contract with the property owner shall not be subject to competitive bidding laws of the Commonwealth of Kentucky.

(7) Property owners shall be responsible for maintaining any improvements made to private property to reconnect or relocate disconnected inflows pursuant to this section unless a recorded public easement, dated prior to January 1, 1994, exists requiring maintenance by a city, county or sanitation district.

(8) No provisions of this section shall apply to any municipal customer of the district which as of January 1, 1998, owns, operates, and maintains a separate storm sewer utility, provided the utility is adequately funded and performs at a level that is equal to or greater than the storm water facilities of the district capitalized. All these municipal customers shall only be responsible for the cost of that municipal facility.

Section 3. KRS 220.030 is amended to read as follows:

Sanitation districts may be established for any of the following purposes:

(1) To prevent and correct the pollution of streams.

(2) To regulate the flow of streams for sanitary purposes.

(3) To clean and improve stream channels for sanitary purposes.

(4) To provide for the collection and disposal of sewage and other liquid wastes produced within the district; and incident to ***those***[~~such~~] purposes and to enable their accomplishment, to construct, with all appurtenances[~~ thereto~~], laterals, trunk sewers, intercepting sewers, siphons, pumping stations, treatment and disposal works, to maintain, operate, and repair ***these***[~~same~~], and do all other things necessary for the fulfillment of the purposes of KRS 220.010 to 220.520.

(5) To provide for the management of onsite sewage disposal systems.

(6) To develop and implement plans for the collection and disposal of storm drainage[~~ to the extent that collection and disposal of storm drainage is required by applicable federal and state regulations~~].

Section 4. KRS 220.035 is amended to read as follows:

(1) A fiscal court may:

(a) Review and approve, amend, or disapprove proposed district land acquisitions;

(b) Review and approve, amend, or disapprove proposed district construction of capital improvements;

(c) Review and approve, amend, or disapprove proposed service charges or user fees; and

(d) Review and approve, amend, or disapprove the district's proposed budget.

(2) In order to exercise any or all the powers enumerated in subsection (1) of this section, the fiscal court shall adopt a county ordinance explicitly stating which of the powers the fiscal court intends to exercise and setting forth the procedures by which the sanitation district shall submit plans and documentation for review and approval, amendment or disapproval. The exercise of such powers shall become effective thirty (30) days following the effective date of the ordinance. In the case of districts lying in two (2) or more counties, no fiscal court shall exercise the powers enumerated in subsection (1) of this section until each fiscal court has adopted conforming ordinances stating the powers to be exercised.

(3) In the case of districts lying in two (2) or more counties, the votes of the respective fiscal courts shall be weighted in the same manner as appointments to the district board are apportioned pursuant to KRS 220.140.

(4) In the case of districts governed by the provisions of KRS 220.135, the county judges/executive shall exercise the powers listed in subsection (1) of this section. They shall meet jointly at least once each fiscal year to exercise these powers. Their votes shall be ***equally*** weighted[~~ in the same manner as appointments to the district board are apportioned pursuant to KRS 220.140~~]. In the case of review and approval of proposed service charges or user fees, a majority of the[~~ weighted~~] votes of the county judges/executive shall be required to override the recommendation of the district board of directors.

HB 671, AN ACT relating to planning commissions in counties with populations over three hundred thousand.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 100.137 is amended to read as follows:

(1) Counties with a population of 300,000 or more inhabitants shall be a planning unit and shall have a planning commission which commission shall be composed of three (3) members, who are nonresidents of the largest city of the county, appointed by the county judge/executive of such county; three (3) members who are residents of the largest city of the county appointed by the mayor of that city; and the mayor of the largest city, or his designee; the county judge/executive, or his designee; the director of works of the largest city in the county, and the county road engineer. ***The county judge/executive and the mayor together shall ensure that three (3) of the six (6) appointees are citizens who have no commercial interest in the development, construction, or commercial supply of new developments. If the commission appoints a citizen member to fill a vacancy, the commission shall ensure that the balance is maintained. All ten (10) members of the planning commission shall be required to disclose any personal or family commercial interest relevant to land use, new development supply, or new development construction. The disclosure shall be a written, signed statement of the general nature of the member's interest. The disclosure shall be filed with the commission's records under KRS 100.167 and shall be available for public inspection during regular business hours. A member shall not vote on an issue in which the member or member's family has an interest. The willful failure of a member to disclose an interest, or a member's voting on an issue in which the member or member's family has a known interest, shall subject the member to removal proceedings under KRS 100.157.***

(2) In counties containing a city of the first class, all legislation implementing or amending the plan or amended plan which affects cities of the first through fourth classes shall be enacted by such cities and all other legislation implementing the plan or amended plan shall be enacted by the fiscal court.

(3) In all other counties the establishment of a planning unit is optional, but any planning unit established in other counties shall comply with the remaining provisions of this chapter.

The Committee on Transportation reported **HB 74,** with Committee Substitutes and Committee Amendment attached thereto, with the expression of opinion that the same should pass. Ordered referred to the Committee on Rules.

The Committee Substitute No. 2 to **HB 74** is as follows:

AN ACT relating to the taxation of motor vehicles.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 132.485 is amended to read as follows:

(1) ***(a) The registration of a motor vehicle with a county clerk in order to operate it or permit it to be operated upon the highways of the state shall be deemed consent by the registrant for the motor vehicle to be assessed by the property valuation administrator from a standard manual prescribed by the Revenue Cabinet for valuing motor vehicles for assessment unless the registrant appears before the property valuation administrator to assess the vehicle. The standard value of motor vehicles shall be the average trade-in value prescribed by the valuation manual unless information is available that warrants any deviation from the standard value.***

(b) The registration of a[~~ motor vehicle,~~] recreational vehicle[~~, or mobile home~~] with the county clerk in order to operate it or permit it to be operated upon the highways shall be deemed consent by the registrant thereof for the[~~ motor vehicle,~~] recreational vehicle[~~, or mobile home~~] to be assessed by the property valuation administrator at a valuation determined from a standard manual prescribed by the Revenue Cabinet for valuing[~~ motor vehicles,~~] recreational vehicles[~~, or mobile homes~~] for assessment unless the registrant appears in person before the property valuation administrator to assess the vehicle.

(2) The registration of a motor vehicle on or before the date that the registration of ***the***[~~such~~] vehicle is required is prima facie evidence of ownership on January 1.

(3) This section does not apply to motor vehicles ***or***[~~,~~] recreational vehicles[~~, and mobile homes~~] owned and operated by

public service companies, common carriers***,*** or agencies of the state and federal governments.

Section 2. KRS 134.810 is amended to read as follows:

(1) All state, county, city, urban-county government, school, and special taxing district ad valorem taxes shall be due and payable on or before the earlier of the last day of the month in which registration renewal is required by law for a motor vehicle renewed or the last day of the month in which a vehicle is transferred.

(2) All state, county, city, urban-county government, school, and special taxing district ad valorem taxes due on motor vehicles shall become delinquent following the earlier of the end of the month in which registration renewal is required by law or the last day of the second calendar month following the month in which a vehicle was transferred.

(3) Any taxes which are paid within thirty (30) days of becoming delinquent shall be subject to a penalty of three percent (3%) on the taxes due. However, this penalty shall be waived if the tax bill is paid within five (5) days of the tax bill being declared delinquent. Any taxes which are not paid within thirty (30) days of becoming delinquent shall be subject to a penalty of ten percent (10%) on the taxes due. In addition, interest at an annual rate of fifteen percent (15%) shall accrue on said taxes and penalty from the date of delinquency. ***A***[~~No~~] penalty or interest shall ***not*** accrue on a motor vehicle under dealer assignment pursuant to KRS 186A.220.

(4) When a motor vehicle has been transferred before registration renewal or before taxes due have been paid, the owner of record on January 1 of any year shall be liable for the taxes on the motor vehicle, except as hereinafter provided.

(5) If an owner obtains a certificate of registration for a motor vehicle valid through the last day of his second birth month following the month and year in which he applied for a certificate of registration, all state, county, city, urban-county government, school, and special tax district ad valorem tax liabilities arising from the assessment date following initial registration shall be due and payable on or before the last day of the first birth month following the assessment date or date of transfer, whichever is earlier. Any taxes due under the provisions of this subsection and not paid as set forth above shall be considered delinquent and subject to the same interest and penalties found in subsection (3) of this section.

(6) For purposes of the state ad valorem tax only, all motor vehicles held for sale by a licensed Kentucky dealer on January 1 of any year shall not be taxed as a motor vehicle pursuant to KRS 132.485[~~(3)~~] but shall be subject to ad valorem tax as goods held for sale in the regular course of business under the provisions of KRS 132.020(9) and 132.220.

(7) Any provision to the contrary notwithstanding, when any ad valorem tax on a motor vehicle becomes delinquent, the state and each county, city, urban-county government, or other taxing district shall have a lien on all motor vehicles owned or acquired by the person who owned the motor vehicle at the time the tax liability arose. A lien for delinquent ad valorem taxes shall not attach to any motor vehicle transferred while the taxes are due on that vehicle. For the purpose of delinquent ad valorem taxes on leased vehicles only, a lien on a leased vehicle shall not be attached to another vehicle owned by the lessor.

(8) The lien required by subsection (7) of this section shall be filed and released by the automatic entry of appropriate information in the AVIS database. For the filing and release of each lien or set of liens arising from motor vehicle ad valorem property tax delinquency, a fee of one dollar ($1) shall be added to the delinquent tax account. The fee shall be collected and retained by the county clerk who collects the delinquent tax.

(9) The implementation of the automated lien system provided in this section shall not affect the manner in which commercial liens are recorded or released.

Section 3. KRS 138.450 is amended to read as follows:

As used in KRS 138.455 to 138.470, unless the context requires otherwise:

(1) "Current model year" means a motor vehicle of either the model year corresponding to the current calendar year or of the succeeding calendar year***,*** if[~~,~~] the same model and make is being offered for sale by local dealers;

(2) "Dealer" means any person engaged in the sale of motor vehicles at retail;

(3) "Dealer demonstrator" means a new motor vehicle or a previous model year motor vehicle with an odometer reading of least one thousand (1,000) miles that has been used either by representatives of the manufacturer or by a licensed Kentucky dealer, franchised to sell the particular model and make, for demonstration;

(4) ***"Historic motor vehicle" means a motor vehicle registered and licensed pursuant to KRS 186.043;***

(5) "Motor vehicle" means any vehicle that is propelled by other than muscular power and that is used for transportation of persons or property over the public highways of the state, except road rollers, mopeds, vehicles that travel exclusively on rails, and vehicles propelled by electric power obtained from overhead wires;

(6)[~~(5)~~] "Moped" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a motorized bicycle with a step through type frame which may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour;

(7)[~~(6)~~] "New motor vehicle" means a motor vehicle of the current model year which has not previously been registered in any state or country;

(8)[~~(7)~~] "Previous model year motor vehicle" means a motor vehicle not previously registered in any state or country which is neither of the current model year nor a dealer demonstrator;

(9)[~~(8)~~] ***"Total consideration given" means the amount given, valued in money, whether received in money or otherwise, at the time of purchase or at a later date, including consideration given for all equipment and accessories, standard and optional, as attested to in a notarized affidavit signed by both the buyer and the seller. The signatures of the buyer and seller shall be individually notarized. "Total consideration given" shall not include:***

(a) Any amount allowed as a manufacturer or dealer rebate if the rebate is provided at the time of purchase and is applied to the purchase of the motor vehicle;

(b) Any interest payments to be made over the life of a loan for the purchase of a motor vehicle; and

(c) The value of any items that are not equipment or accessories including but not limited to extended warranties, service contracts, and items that are given away as part of a promotional sales campaign;

(10) "Trade-in allowance" means the value assigned by the seller of a motor vehicle to a motor vehicle offered in trade by the purchaser as part of the total consideration given by the purchaser and included in the notarized affidavit attesting to total consideration given;

(11) "Used motor vehicle" means a motor vehicle which has been previously registered in any state or country;

(12)[~~(9)~~] [~~Except as provided in subsection (10) of this section,~~]"Retail price" ***of motor vehicles*** shall be determined as follows:

(a) For new***, dealer demonstrator, previous model year*** motor vehicles ***and U-Drive-It motor vehicles that have been transferred within one hundred eighty (180) days of being registered as a U-Drive-It and that have less than five thousand (5,000) miles***, "retail price" shall be ***the total consideration given at the time of purchase or at a later date, including any trade-in allowance as attested to in a notarized affidavit. If a notarized affidavit signed by both the buyer and seller is not available to establish total consideration given, "retail price" shall be:***

1. Ninety percent (90%) of the manufacturer's suggested retail price of the vehicle with all equipment and accessories, standard and optional, and transportation charges***; or***[~~.~~]

2. Eighty-one percent (81%) of the manufacturer's suggested retail price of the vehicle with all equipment and accessories, standard and optional, and transportation charges in the case of new trucks of gross weight in excess of ten thousand (10,000) pounds; and

3. "Retail price" shall not include that portion of the price of the vehicle attributable to equipment or adaptive devices necessary to facilitate or accommodate an operator or passenger with physical disabilities;

(b) ***For historic motor vehicles, "retail price" shall be one hundred dollars ($100);***

(c) For used motor vehicles ***being registered by a new resident for the first time in Kentucky*** whose values appear in the automotive reference manual prescribed by the Revenue Cabinet, "retail price" shall be the ***average trade-in*** value given in ***the***[~~such~~] reference manual;

(d)[~~(c)~~]For the older used motor vehicles ***being registered by a new resident for the first time in Kentucky*** whose values no longer appear in the automotive reference manual, "retail price" shall be ***one hundred dollars ($100)***[~~ determined as follows:~~

~~Number of Years Removed From Manual~~	~~Retail Price~~
~~1~~	~~75% of value of same make vehicle last appearing in manual~~
~~2~~	~~50% of value of same make vehicle last appearing in manual~~
~~3~~	~~25% of~~

~~value of same make~~
~~vehicle last appearing~~
~~in manual~~
~~All Others 10% of~~
~~value of same make~~
~~vehicle last appearing~~
~~in manual~~];

(e) For used motor vehicles previously registered in another state or country that were purchased out-of-state by a Kentucky resident who is registering the vehicle in Kentucky for the first time, "retail price" shall be the total consideration given at the time of purchase or at a later date, including the average trade-in value given in the automotive reference manual prescribed by the Revenue Cabinet for any vehicle given in trade;

(f)[~~(d)~~] ***For used motor vehicles previously registered in Kentucky that are sold in Kentucky, and U-Drive-It motor vehicles that are not transferred within one hundred eighty (180) days of being registered as a U-Drive-It or that have more than five thousand (5,000) miles, "retail price" means the total consideration given, excluding any amount allowed as a trade-in allowance by the seller. The trade-in allowance shall be disclosed in the notarized affidavit signed by the buyer and the seller attesting to the total consideration given. If a notarized affidavit signed by both the buyer and the seller is not available to establish the total consideration given for a motor vehicle, "retail price" shall be established by the Revenue Cabinet through the use of the automotive reference manual prescribed by the Revenue Cabinet; and***

(g) Except as provided in KRS 138.470(6), if a motor vehicle is received by an individual as a gift and not purchased or leased by the individual, "retail price" shall be the average trade-in value given in the automotive reference manual prescribed by the Revenue Cabinet[~~In the case of used motor vehicles previously registered in this state, which are sold in this state, a trade-in allowance equal to the "retail price" of the vehicle taken in trade shall be deducted in computing the "retail price" of the vehicle sold.~~

~~(e) If a holder of a U-Drive-It permit transfers a vehicle which he has registered as a U-Drive-It within one hundred eighty (180) days of the registration, and if less than five thousand (5,000) miles have been placed on the vehicle during the period of its registration as a U-Drive-It, then the "retail price" of the vehicle shall be the same as the retail price determined in subsection (9)(b) or (c) of this section computed as of the date on which the vehicle is transferred except that the provisions of paragraph (d) of this subsection shall not apply.~~

~~(f) For dealer demonstrator motor vehicles and previous model year vehicles, "retail price" shall be eighty-five percent (85%) of the retail price as determined in paragraph (a) of this subsection or the actual sales price, exclusive of any trade-in allowance, whichever is greater. In no case shall the Retail price determined under this paragraph exceed the retail price determined in paragraph (a) of this subsection or be less than the retail price determined under paragraph (b) of this subsection.~~

~~(10) "Wrecked motor vehicle" means any motor vehicle damaged by any cause except wear and tear or rust, including but not limited to damage caused by collision, fire, flood, wind, or vandalism. The retail price of a wrecked motor vehicle shall be the retail price as determined under subsection (9) of this section minus the average of the repair estimates submitted to the county clerk. The owner of the wrecked motor vehicle shall obtain a minimum of two (2) repair estimates from disinterested persons regularly engaged in the repair of motor vehicles and submit them to the county clerk. The estimates of repair and the wrecked condition of the vehicle shall be physically verified by a certified inspector as provided in KRS 186A.115. The fees imposed by KRS 186A.115 shall apply to verification services provided by a certified inspector~~].

Section 4. KRS 138.460 is amended to read as follows:

(1) [~~On and after July 1, 1990,~~]A tax levied upon its retail price at the rate of six percent (6%) shall be paid on the use in this state of every motor vehicle, except those exempted by KRS 138.470, at the time and in the manner provided in this section.[~~ In the case of trucks of gross weight in excess of ten thousand (10,000) pounds, the tax shall be levied upon ninety percent (90%) of the retail price of the vehicle.~~]

(2) The tax shall be collected by the county clerk or other officer with whom the vehicle is required to be registered:

(a) When he collects the registration fee for registering and licensing a motor vehicle the first time it is offered for registration in this state;

(b) Or upon the transfer of ownership of any motor vehicle previously registered in this state.

(3) The tax collected by the county clerk under this section shall be reported and remitted to the Revenue Cabinet on forms provided by the cabinet and on those forms as the cabinet may prescribe. ***The cabinet shall provide each county clerk affidavit forms which the clerk shall provide to the public free of charge to carry out the provisions of Section 3 of this Act.*** The county clerk shall for his services in collecting the tax be entitled to retain an amount equal to three percent

(3%) of the tax collected and accounted for.

(4) ***A***[~~No~~] county clerk or other officer shall ***not*** register or issue any license tags to the owner of any motor vehicle subject to this tax, when the vehicle is then being offered for registration for the first time, or transfer the ownership of any motor vehicle previously registered in this state, unless the owner or his agent pays the tax levied under this section in addition to the transfer, registration, and license fees.

(5) When a person offers a motor vehicle for registration for the first time in this state which was registered in another state that levied a tax substantially identical to the tax levied under this section, the person shall be entitled to receive a credit against the tax imposed by this section equal to the amount of tax paid to the other state. ***A***[~~No~~] credit shall ***not*** be given under this subsection for taxes paid in another state if that state does not grant similar credit for substantially identical taxes paid in this state.

(6) ***A***[~~No~~] county clerk or other officer shall ***not*** register or issue any license tags to the owner of any motor vehicle subject to this tax, when the vehicle is then being offered for registration for the first time, unless the seller or his agent delivers to the county clerk ***a notarized affidavit, if required, and available under Section 3 of this Act attesting to the total and actual consideration paid or to be paid for the motor vehicle. If a notarized affidavit is not available, the clerk shall follow the procedures under subsection (12)(a) of Section 3 of this Act for new vehicles, and subsection (12)(c) or (d) for used cars.***[~~or other officer a certified or photostat copy of the manufacturer's price label for passenger cars or A certified or photostat copy of the itemized billing to the customer in the case of all other motor vehicles; and~~]

The clerk shall attach the ***notarized affidavit, if available, or other documentation attesting to the retail price of the vehicle as the Revenue Cabinet may prescribe by administrative regulation promulgated under KRS Chapter 13A***[~~certified or photostat copy~~] to the copy of the certificate of registration and ownership mailed to the cabinet.

(7) Notwithstanding the provisions of KRS 138.450[~~(9) and (10)~~],[~~ in no case shall~~] the tax ***shall not*** be less than ***six dollars ($6)***[~~five dollars ($5)~~] upon first registration of or any transfer of ownership of a motor vehicle in this state, except where the vehicle is exempt from tax under KRS 138.470.

(8) Where a motor vehicle is sold by a dealer in this state and the purchaser returns the vehicle for any reason to the same dealer within sixty (60) days for a vehicle replacement or a refund of the purchase price, the purchaser shall be entitled to a refund of the amount of usage tax received by the Revenue Cabinet as a result of the registration of the returned vehicle. In the case of a new motor vehicle, the registration of the returned vehicle shall be canceled and the vehicle shall be considered to have not been previously registered in Kentucky when resold by the dealer.

(9) When a manufacturer refunds the retail purchase price or replaces a new motor vehicle for the original purchaser within ninety (90) days because of malfunction or defect, the purchaser shall be entitled to a refund of the amount of motor vehicle usage tax received by the Revenue Cabinet as a result of the first registration. ***A***[~~No~~] person shall ***not*** be entitled to a refund unless he shall have filed with the Revenue Cabinet a report from the manufacturer identifying the vehicle that was replaced and stating the date of replacement.

(10) Notwithstanding the time limitations of subsections (8) and (9) of this section, when a dealer or manufacturer refunds the retail purchase price or replaces a motor vehicle for the purchaser as a result of formal arbitration or litigation, or, in the case of a manufacturer, because ordered to do so by a dispute resolution system established under KRS 367.865 or 16 C.F.R. 703, the purchaser shall be entitled to a refund of the amount of motor vehicle usage tax received by the Revenue Cabinet as a result of the registration. ***A***[~~No~~] person shall ***not*** be entitled to a refund unless he shall have filed with the Revenue Cabinet a report from the dealer or manufacturer identifying the vehicle that was replaced.

Section 5. KRS 138.990 is amended to read as follows:

(1) Any person who violates any provision of KRS 138.140, 138.146, or 138.195 for which a specific penalty is not provided shall be guilty of a violation for the first offense; for each such subsequent offense, he shall be guilty of a Class A misdemeanor. These penalties shall be in addition to the civil penalties provided by KRS 138.165, 138.185, and 138.205.

(2) Any person who fails to supply the information required by subsection (8) of KRS 138.195 shall be guilty of a violation; for each subsequent offense, he shall be guilty of a Class B misdemeanor. These penalties shall be in addition to any civil penalty provided by KRS 138.165, 138.185, and 138.205.

(3) Any person violating subsection (10) of KRS 138.195 or any regulations adopted thereunder shall be guilty of a Class A misdemeanor. This penalty shall be in addition to any civil penalty provided by KRS 138.165, 138.185, and 138.205.

(4) Any person who makes a false entry upon any invoices or any record relating to the purchase, possession, transportation, or sale of cigarettes, and presents any such false entry to the cabinet or any of its agents with the intent to avoid any tax imposed by KRS 138.130 to 138.205, shall be guilty of a Class D felony.

(5) Any person who shall counterfeit any cigarette tax evidence shall be guilty of a Class D felony.

(6) Any person who sells, offers to sell, or uses counterfeit cigarette tax evidence, affixed or unaffixed, with the intention of evading any tax imposed by KRS 138.130 to 138.205 shall be guilty of a Class D felony.

(7) Any person who fails to remit gasoline or special fuel tax money to the state as provided in KRS 138.280 is guilty of embezzlement of state funds. Embezzlement of state funds, for the first offense, shall be a Class A misdemeanor, and for the second offense, shall be a Class D felony.

(8) Any person who violates any of the provisions of KRS 138.300 shall be guilty of a Class A misdemeanor. This penalty shall be in addition to the penalty provided in subsection (7) of this section.

(9) Any person who violates KRS 138.310 shall be guilty of a Class A misdemeanor. Each day or part of a day of doing business as a dealer without an uncanceled license shall be a separate offense.

(10) ***(a) Any person who willfully and fraudulently gives a false statement as to the total and actual consideration paid for a motor vehicle under Section 3 of this Act shall be guilty of a Class D felony and shall be fined not less than two thousand dollars ($2,000) per offense.***

(b) Any person who violates any of the ***other*** provisions of KRS 138.460 to 138.470 shall be fined not less than twenty-five dollars ($25) nor more than one thousand dollars ($1,000) ***and***~~[,]~~ if the offender is an individual, he shall be guilty of a Class A misdemeanor.

(11) Any person who violates any of the provisions of KRS 138.480 or 138.490 shall be guilty of a Class B misdemeanor.

(12) If any offender under the provisions of subsections (1) to (9), (11) or (16) of this section is a corporation, the principal officer or the officer directly responsible for the violation, or both, may be imprisoned as provided in those subsections.

(13) Any person who violates any provision of subsection (1) of KRS 138.354, whether or not his permit has been revoked, shall be guilty of a Class A misdemeanor.

(14) Any person violating any provision of KRS 138.655 to 138.725 is guilty of a Class A misdemeanor.

(15) In addition to the penalties provided in KRS 138.990(14), the motor vehicle or vehicles of any person violating any provision of KRS 138.720 shall be subject to seizure by any officer duly authorized to enforce the provisions of KRS 138.655 to 138.725.

(16) Any person violating KRS 138.175 shall be guilty of a Class D felony.

(17) Any person who intentionally evades payment of the tax imposed by KRS 138.460 or 138.463 shall be liable for the taxes evaded, with applicable interest and penalties, and in addition shall be guilty of:

(a) A Class B misdemeanor if the amount of tax evaded is two hundred fifty dollars ($250) or less; and

(b) A Class A misdemeanor if the amount of tax evaded is greater than two hundred fifty dollars ($250).

Section 6. KRS 186.190 is amended to read as follows:

(1) When a motor vehicle that has been previously registered changes ownership, the registration plate shall remain upon the motor vehicle as a part of it until the expiration of the registration year.

(2) A person shall not purchase, sell, or trade any motor vehicle without delivering to the county clerk of the county in which the sale or trade is made the ***title, and a notarized affidavit if required and available under Section 3 of this Act attesting to the total and actual consideration paid or to be paid for the motor vehicle***~~[current registration receipt issued on the motor vehicle and the bill of sale]~~. Any unexpired registration shall remain valid upon transfer of the vehicle to the new owner. Except for transactions handled by a motor vehicle dealer licensed pursuant to KRS Chapter 190, the person who is purchasing the vehicle shall present proof of insurance in compliance with KRS 304.39-080 to the county clerk before the clerk transfers the registration on the vehicle. Proof of insurance shall be in the manner prescribed in administrative regulations promulgated by the Department of Insurance pursuant to KRS Chapter 13A.

(3) Upon delivery of the ***title, and a notarized affidavit if required and available under Section 3 of this Act attesting to the total and actual consideration paid or to be paid for the motor vehicle***~~[registration receipt and the bill of sale]~~ to the county clerk of the county in which the sale or trade was made, the seller shall pay to the county clerk a transfer fee of one dollar ($1), which shall be remitted to the Transportation Cabinet. ***If an affidavit is required, and available, the signatures on the affidavit shall be individually notarized before*** the county clerk shall issue to the purchaser a transfer of registration bearing the same data and information as contained on the original registration receipt, except the change in name and address. The seller shall pay to the county clerk a fee of three dollars ($3) for his services.

(4) When a county clerk issues to a purchaser a transfer of registration in a county other than the one (1) in which the motor vehicle was originally registered, the clerk shall immediately mail one (1) copy of the transfer of registration to the clerk of the county of original registration.

(5) If the owner junks or otherwise renders a motor vehicle unfit for future use, he shall deliver the registration plate and registration receipt to the county clerk of the county in which the motor vehicle is junked. The county clerk shall return the plate and receipt to the Transportation Cabinet. The owner shall pay to the county clerk one dollar ($1) for his services.

(6) A licensed motor vehicle dealer shall not be required to pay the transfer fee provided by this section, but shall be required to pay the county clerk's fee provided by this section.

(7) The registration receipt issued by the clerk under this section shall contain information required by the Department of Vehicle Regulation.

Section 7. KRS 186.232 is amended to read as follows:

(1) The county clerk shall not transfer the registration on any motor vehicle or trailer against which a tax lien has been filed until the taxes have been paid and the lien has been released.

(2) The county clerk shall not transfer the registration of any motor vehicle unless the transferee presents proof of insurance in compliance with KRS 304.39-080 and KRS 186.190.

(3) If a notarized affidavit is required and available under Section 3 of this Act, the county clerk shall not transfer the registration of a motor vehicle unless the notarized affidavit attesting to the total and actual consideration paid or to be paid for the motor vehicle is presented to the clerk at the time of the transfer. If a notarized affidavit is required but is not available, the county clerk shall contact the Revenue Cabinet to determine the "retail price" of the vehicle and any taxes due prior to transferring the vehicle.

Section 8. KRS 190.990 is amended to read as follows:

(1) ***Except as provided in subsection (5) of this section,*** any person who violates or causes, aids or abets any violation of any provision of KRS 190.010 to 190.080 or any order, rule or regulation lawfully issued pursuant to authority granted by KRS 190.010 to 190.080 shall be fined not less than twenty-five dollars ($25) nor more than five hundred dollars ($500), or imprisoned for not more than thirty (30) days, or both. Any person who violates paragraphs (l), (m) or (n) of subsection (1) of KRS 190.040 may also be subject to a suspension or revocation sentence of not more than a year effective only in the territory formerly served by the unfairly canceled dealer, except that in a metropolitan area serviced by several dealers handling the same motor vehicle, the suspension or revocation order shall not be applicable to the remaining dealers.

(2) Any person who willfully and intentionally violates any provision of KRS 190.090 to 190.140 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding five hundred dollars ($500).

(3) A willful violation of KRS 190.100 or 190.110 by any person shall bar his recovery of any finance charge, delinquency***,*** or collection charge on the retail installment contract involved.

(4) Any person who willfully violates KRS 190.270 to 190.320 shall be subject to a penalty of five thousand dollars ($5,000) per violation, which may be recovered on behalf of the Commonwealth by the Attorney General.

(5) Any person who willfully and fraudulently gives a false statement as to the total and actual consideration paid for a motor vehicle under Section 3 of this Act shall be guilty of a Class D felony and shall be fined not less than two thousand dollars ($2,000) per offense.

Section 9. KRS 132.200 is amended to read as follows:

All property subject to taxation for state purposes shall also be subject to taxation in the county, city, school, or other taxing district in which it has a taxable situs, except the classes of property described in KRS 132.030 and 132.050, and the following classes of property, which shall be subject to taxation for state purposes only:

(1) Farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operation;

(2) Livestock, ratite birds, and domestic fowl;

(3) Capital stock of savings and loan associations;

(4) Machinery and products in course of manufacture, of individuals or corporations actually engaged in manufacturing, and their raw material actually on hand at their plant for the purpose of manufacture. Individuals or corporations actually engaged in the printing, publication, and distribution of a newspaper or operating a job printing plant shall be deemed to be actually engaged in manufacturing;

(5) Commercial radio, television, and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna; however, radio or television towers not essential to the production of the wave or signal broadcast shall not be included;

(6) Unmanufactured agricultural products. They shall be exempt from taxation for state purposes to the extent of the value, or amount, of any unpaid nonrecourse loans thereon granted by the United States government or any agency thereof, and except that cities and counties may each impose an ad valorem tax of not exceeding one and one-half cents ($0.015) on each one hundred dollars ($100) of the fair cash value of all unmanufactured tobacco and not exceeding four and one-half cents ($0.045) on each one hundred dollars ($100) of the fair cash value of all other unmanufactured agricultural products, subject to taxation within their limits that are not actually on hand at the plants of manufacturing concerns for the purpose of manufacture, nor in the hands of the producer or any agent of the producer to whom the products have been conveyed or assigned for the purpose of sale;

(7) Money in hand, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, and shares of stock. Nothing in this section shall forbid local taxation of franchises of corporations or of

financial institutions, as provided for in KRS 136.575, or domestic life insurance companies;

(8) All privately-owned leasehold interest in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;

(9) Property which has been certified as a pollution control facility as defined in KRS 224.01-300;

(10) Property which has been certified as an alcohol production facility as defined in KRS 247.910;

(11) On and after January 1, 1977, the assessed value of unmined coal shall be included in the formula contained in KRS 132.590(9) in determining the amount of county appropriation to the office of the property valuation administrator;

(12) Tangible personal property located in a foreign trade zone as designated under 19 U.S.C. sec. 81;

(13) Motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043. However, nothing herein shall be construed to exempt historical motor vehicles from the usage tax imposed by KRS 138.460[~~ based on the vehicle's fair market value at the time of sale~~];

(14) Property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;

(15) All motor vehicles held for sale in the inventory of a licensed motor vehicle dealer, which are not currently titled and registered in Kentucky and are held on an assignment pursuant to the provisions of KRS 186A.230;

(16) Machinery or equipment owned by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes as defined in KRS 139.095; and

(17) New farm machinery and other equipment held in the retailer's inventory for sale under a floor plan financing arrangement by a retailer, as defined under KRS 365.800.

Section 10. Whereas in late 1997 the Governor attempted to offer property tax relief on motor vehicle assessments to the citizens of the Commonwealth; and whereas questions of establishing policy by administrative action rather than statutory action threaten the needed tax relief on motor vehicles; and whereas it is important to support the Governor's efforts statutorily, an emergency is declared to exist and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law with the amendments contained in Sections 1 and 2 of this Act to apply retroactively to motor vehicles assessed on or after January 1, 1998.

Section 11. The amendments contained in Sections 3 to 8 of this Act shall apply to motor vehicles sold after July 31, 1998.

The Committee on Transportation reported **HB 155, HB 372,** with Committee Substitute attached thereto, **HB 450,** with Committee Substitute attached thereto, **HB 625,** with Committee Substitute attached thereto, **HB 629, HB 645, HB 655, HB 656,** with Committee Substitute attached thereto, **SB 167,** with House Committee Substitute attached thereto, and **SB 259** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 155, AN ACT relating to motor vehicle license plates.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 186.174 is amended to read as follows:

(1) Any owner or lessee of a motor vehicle that is required to be registered under the provisions of KRS 186.050(1) or (3)(a), except taxicabs, airport limousines, and rental motor vehicles, or any owner of a motorcycle required to be registered under the provisions of KRS 186.050(2) may, in addition to registration under KRS 186.050(1) or (3)(a), obtain a personalized license plate by applying for a personalized license plate in the office of the county clerk and upon payment of a twenty-five dollar ($25) fee. A person applying for a personalized license plate shall submit the initial application and twenty-five dollar ($25) fee for a personalized license plate in person to the county clerk, but may submit the annual application to renew the personalized license plate with the twenty-five ($25) fee by mail to the county clerk. Applications and fees for personalized license plates pursuant to this section must be received by the Transportation Cabinet on or before September 1 preceding the year that the plate or renewal is to be issued. A personalized license plate shall be[~~ issued in the same manner as regular license plates issued pursuant to this chapter and shall not be~~] replaced annually unless the applicant ***chooses to receive a renewal registration decal***[~~changes the letter or number combinations appearing on the plate~~]. Payments required to be made under this section shall be in the form of a certified check, a cashier's check, or a money order. A county clerk shall immediately forward the application and the twenty-five dollar ($25) fee for a personalized license plate to the Transportation Cabinet. Personalized plates issued under this section expire December 31 each year.

(2) A personalized plate shall not be issued that would conflict with or duplicate the alphabetical-numerical system used for regular license plates or any other license plates issued in the Commonwealth, and shall not contain a combination of more than six (6) letters of the alphabet and arabic numerals, including spaces. A personalized plate shall not be issued

if, in the discretion of the cabinet, it carries a letter or number combinations that carry connotations offensive to good taste and decency. The owner or lessee shall submit an application and twenty-five dollar ($25) fee annually to renew a personalized license plate pursuant to the provisions of subsection (1) of this section. Once an applicant obtains a personalized plate, he will have first priority on that plate for each of the following years that he makes timely and proper application.

(3) When registering a vehicle required to be registered under KRS 186.050(1) or (3)(a), the cabinet shall send the personalized plate to the county clerk in the county in which the applicant would be required to register his motor vehicle. The county clerk of the county of residence shall issue the personalized license plate and receive fourteen dollars fifty cents ($14.50), of which three dollars ($3) shall constitute the clerk's fee and eleven dollars fifty cents ($11.50) shall constitute the cabinet's fee.

(4) When registering a motorcycle, the cabinet shall send the personalized plate to the county clerk in the county in which the applicant would be required to register his motorcycle. The clerk shall issue the personalized plate and receive three dollars ($3) and three dollars ($3) for each sidecar attachment.

(5) (a) Upon the sale, transfer, or termination of lease of the motor vehicle bearing the personalized plate, the owner or lessee shall remove it and return it and the certificate of registration to the county clerk. The clerk shall issue a regular license plate and certificate of registration upon payment of an eleven dollar fifty cent ($11.50) state fee and a three dollar ($3) clerk's fee. The vehicle may then be transferred as provided by KRS Chapter 186.

(b) When the personalized plate has been presented to the clerk, he shall reissue it free of charge by the Transportation Cabinet and upon payment of a two dollar ($2) clerk's fee, for use on any other vehicle of the same classification and category owned or leased by the same person purchasing the personalized plate for the current license period. The license plate and decal on this other vehicle shall be turned in to the county clerk, who will forward the license plate to Frankfort.

(6) Any applicant seeking a license plate according to this section for a vehicle provided to him pursuant to an occupation shall conform to the requirements set forth in KRS 186.050(14).

(7) If a personalized plate deteriorates, if he has not transferred a vehicle during the current license period, the applicant may obtain a regular plate free.

(8) The secretary of the Transportation Cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A necessary to further the purposes of this section.

HB 372, AN ACT relating to operator's licenses.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 186.400 TO 186.640 IS CREATED TO READ AS FOLLOWS:

For the purposes of KRS 186.400 to 186.640, a hospital copy of a birth certificate shall be acceptable as certifying the birth date of an applicant for an instruction permit or operator's license.

The Committee Substitute to **HB 372** is as follows:

AN ACT relating to operator's licenses.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS 186.400 TO 186.640 IS CREATED TO READ AS FOLLOWS:

For the purposes of KRS 186.400 to 186.640, an original hospital birth certificate signed by the attending physician shall be acceptable as certifying the birth date of an applicant for an instruction permit or operator's license.

HB 450, AN ACT relating to traffic regulations.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 189.300 is amended to read as follows:

(1) ***Except as provided in subsection (3) of this section,*** the operator of any vehicle when upon a highway shall travel upon the right side of the highway whenever possible, and unless the left side of the highway is clear of all other traffic or obstructions and presents a clear vision for a distance of at least one hundred and fifty (150) feet ahead.

(2) ***Except as provided in subsection (3) of this section,*** the operator of any vehicle moving slowly upon a highway shall keep his vehicle as closely as practicable to the right-hand boundary of the highway, allowing more swiftly moving vehicles reasonably free passage to the left.

(3) On any highway, divided or nondivided, all semi-trailers shall be prohibited from using a third lane designated for

passing, except:

(a) Under emergency conditions;

(b) When ordered to use the lane by a law enforcement officer; or

(c) When use of the lane is required due to construction or maintenance being conducted on the remaining two (2) lanes of traffic.

(4) The Transportation Cabinet shall erect signs on all roads maintained by the cabinet notifying semi-trailers of the third passing lane prohibition established in subsection (3) of this section. All city and county governments shall erect signs on any road under their jurisdiction that they maintain that has a third passing lane notifying semi-trailers of the third passing lane prohibition established in subsection (3) of this section.

Section 2. KRS 189.990 is amended to read as follows:

(1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.290, ***subsections (1) and (2) of Section 1 of this Act, KRS 189.310***~~[189.300]~~ to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456 and 189.960, shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense. ***Any person who violates subsection (3) of Section 1 of this Act shall be fined not less than fifty dollars ($50) and not more than one hundred fifty dollars ($150).*** Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars ($20) nor more than two thousand dollars ($2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars ($11) nor more than thirty dollars ($30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.

(2) (a) Any person who violates the weight provisions of KRS 189.221, 189.222, 189.226, 189.230, 189.270, or 189.271 shall be fined two cents (2¢) per pound for each pound of excess load when the excess is two thousand (2,000) pounds or less, three cents (3¢) per pound when the excess exceeds two thousand (2,000) pounds and is three thousand (3,000) pounds or less, five cents (5¢) per pound when the excess exceeds three thousand (3,000) pounds and is four thousand (4,000) pounds or less, seven cents (7¢) per pound when the excess exceeds four thousand (4,000) pounds and is five thousand (5,000) pounds or less, and nine cents (9¢) per pound when the excess exceeds five thousand (5,000) pounds but in no case shall the fine be less than sixty dollars ($60) nor more than five hundred dollars ($500).

(b) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, or 189.490, for which another penalty is not specifically provided, shall be guilty of a misdemeanor and shall be fined not less than ten dollars ($10) nor more than five hundred dollars ($500).

(c) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.

(3) (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars ($15).

(b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars ($35) nor more than two hundred dollars ($200).

(4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.

(5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars ($100) nor more than two hundred dollars ($200) or imprisoned not less than thirty (30) days nor more than sixty (60) days or both. For each subsequent offense occurring within three (3) years, such person shall be fined not less than three hundred dollars ($300) nor more than five hundred dollars ($500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.

(6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars ($15) in excess of the cost of the repair of the road.

(7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars ($20) nor more than fifty dollars ($50).

(8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100).

(9) Any person who violates KRS 189.530 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.

(10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.

(11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars ($30) nor more than one hundred dollars ($100) for each offense.

(12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and in case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.

(13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars ($20) nor more than twenty-five dollars ($25).

(15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars ($100), and upon subsequent convictions, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or imprisoned for thirty (30) days, or both.

(17) (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.

(b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name such vehicle used in the transportation of inflammable liquids or explosives is licensed, such person shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500). Each violation shall constitute a separate offense.

(18) Any person who abandons a vehicle upon the right-of-way of a state highway for seven (7) consecutive days shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.

(19) Every person violating KRS 189.393 shall be punished upon a first conviction by imprisonment for a period of not less than five (5) days nor more than ninety (90) days, or by fine of not less than thirty-five dollars ($35) nor more than five hundred dollars ($500), or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than ten (10) days nor more than six (6) months, or by a fine of not less than sixty dollars ($60) nor more than one thousand dollars ($1,000), or by both such fine and imprisonment.

(20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.

(21) A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of such a regulation shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.

(22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars ($500) or imprisoned for not more than six (6) months, or both.

(23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars ($25) nor more than three hundred dollars ($300).

(24) Any person who violates the provisions of KRS 189.125(3) shall be fined fifty dollars ($50).

(25) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars ($25).

(26) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.

(27) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle, may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:

(a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and

(b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.

The Committee Substitute to **HB 450** is as follows:

AN ACT relating to traffic regulations.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 189.300 is amended to read as follows:

(1) ***Except as provided in subsection (3) of this section,*** the operator of any vehicle when upon a highway shall travel upon the right side of the highway whenever possible, and unless the left side of the highway is clear of all other traffic or obstructions and presents a clear vision for a distance of at least one hundred and fifty (150) feet ahead.

(2) ***Except as provided in subsection (3) of this section,*** the operator of any vehicle moving slowly upon a highway shall keep his vehicle as closely as practicable to the right-hand boundary of the highway, allowing more swiftly moving vehicles reasonably free passage to the left.

(3) On an interstate highway where speed limit is sixty-five (65) miles per hour, all semi-trailers and any combination of semi-trailers shall be prohibited from using a third lane designated for passing, except:

(a) Under emergency conditions;

(b) When ordered to use the lane by a law enforcement officer; or

(c) When use of the lane is required due to construction or maintenance being conducted on one (1) or more of the remaining two (2) lanes of traffic.

Section 2. KRS 189.990 is amended to read as follows:

(1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.290, ***subsections (1) and (2) of Section 1 of this Act, KRS 189.310***~~[189.300]~~ to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456 and 189.960, shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense. ***Any person who violates subsection (3) of Section 1 of this Act shall be fined not less than fifty dollars ($50) and not more than one hundred fifty dollars ($150).*** Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars ($20) nor more than two thousand dollars ($2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars ($11) nor more than thirty dollars ($30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.

(2) (a) Any person who violates the weight provisions of KRS 189.221, 189.222, 189.226, 189.230, 189.270, or 189.271 shall be fined two cents (2¢) per pound for each pound of excess load when the excess is two thousand (2,000) pounds or less, three cents (3¢) per pound when the excess exceeds two thousand (2,000) pounds and is three thousand (3,000) pounds or less, five cents (5¢) per pound when the excess exceeds three thousand (3,000) pounds and is four thousand (4,000) pounds or less, seven cents (7¢) per pound when the excess exceeds four thousand (4,000) pounds and is five thousand (5,000) pounds or less, and nine cents (9¢) per pound when the excess exceeds five thousand (5,000) pounds but in no case shall the fine be less than sixty dollars ($60) nor more than five hundred dollars ($500).

(b) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, or 189.490, for which another penalty is not specifically provided, shall be guilty of a misdemeanor and shall be fined not less than ten dollars ($10) nor more than five hundred dollars ($500).

(c) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.

(3) (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars ($15).

(b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars ($35) nor more than two hundred dollars ($200).

(4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.

(5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars ($100) nor more than two hundred dollars ($200) or imprisoned not less than thirty (30) days nor more than sixty (60) days or both. For each subsequent offense occurring within three (3) years, such person shall be fined not less than three hundred dollars ($300) nor more than five hundred dollars ($500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.

(6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars ($15) in excess of the cost of the repair of the road.

(7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars ($20) nor more than fifty dollars ($50).

(8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100).

(9) Any person who violates KRS 189.530 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.

(10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.

(11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars ($30) nor more than one hundred dollars ($100) for each offense.

(12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and in case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.

(13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars ($20) nor more than twenty-five dollars ($25).

(15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars ($100), and upon subsequent convictions, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or imprisoned for thirty (30) days, or both.

(17) (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.

(b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name such vehicle used in the transportation of inflammable liquids or explosives is licensed, such person shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500). Each violation shall constitute a separate offense.

(18) Any person who abandons a vehicle upon the right-of-way of a state highway for seven (7) consecutive days shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.

(19) Every person violating KRS 189.393 shall be punished upon a first conviction by imprisonment for a period of not less than five (5) days nor more than ninety (90) days, or by fine of not less than thirty-five dollars ($35) nor more than five hundred dollars ($500), or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than ten (10) days nor more than six (6) months, or by a fine of not less than sixty dollars ($60) nor more than one thousand dollars ($1,000), or by both such fine and imprisonment.

(20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.

(21) A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of such a regulation shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.

(22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars ($500) or imprisoned for not more than six (6) months, or both.

(23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars ($25) nor more than three hundred dollars ($300).

(24) Any person who violates the provisions of KRS 189.125(3) shall be fined fifty dollars ($50).

(25) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars ($25).

(26) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.

(27) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle, may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:

(a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and

(b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.

HB 625, AN ACT relating to air boards.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 183.132 is amended to read as follows:

(1) Any city or county, or city and county acting jointly, or any combination of two (2) or more cities and/or counties may establish a nonpartisan air board composed of six (6) members***.***~~[, or]~~ Any city other than the first class and county jointly~~[other than an urban-county government established pursuant to KRS Chapter 67A]~~ may establish a nonpartisan board composed of ten (10) members***.***~~[, or]~~ Any existing six (6) member board~~[, except a board established in an urban-county government,]~~ may be expanded to ten (10) members by joint action of the county and city.

(2) Any city of the first class, jointly with the county containing ***the***~~[such]~~ city may establish a nonpartisan air board composed of ten (10) members.~~[If a joint air board has been established prior to July 15, 1986, by a city of the first class and the county, the terms of the members on such board shall terminate as of July 15, 1986, and the]~~ Membership of the board shall be appointed in accordance with subsection (6) of this section.

(3) The board shall be a body politic and corporate with the usual corporate attributes, and in its corporate name may sue and be sued, contract and be contracted with and do all things reasonable or necessary to effectively carry out the duties prescribed by statute. The board shall constitute a legislative body for the purposes of KRS 183.630 to 183.740.

(4) The members of an air board composed of six (6) members shall be appointed as follows:

(a) If the air board is established by a city,~~[such]~~ members shall be appointed by the mayor of the city;

(b) If the air board is established by a county,~~[such]~~ members shall be appointed by the county judge/executive except that in the event that an airport is located outside the boundary of the county establishing the airport board, the county judge/executive shall appoint an additional member to the air board from the jurisdiction where the airport is physically located. The additional member shall serve a four (4) year term in accordance with the provisions of subsection (7) of this section and receive full voting privileges on matters brought before the airport board;

(c) If the air board is established as a joint city-county air board***,***~~[such]~~ members shall be appointed jointly by the mayor of the city and the county judge/executive;

(d) If a combination of cities and/or counties establishes a joint air board, the mayors and/or county judges/executive involved shall jointly choose six (6) members, and shall jointly choose successors***;***

(e) If the air board is established by an urban-county government, the mayor of the urban-county government or an officer of the urban-county government designated by the mayor shall serve as one (1) member of the board. The remaining five (5) members shall be appointed by the mayor, one of whom shall live within a three (3) mile radius of the airport.

(5) The members of an air board composed of ten (10) members in a city other than a city of the first class and county jointly other than an urban-county government established pursuant to KRS Chapter 67A shall be appointed as follows:

(a) Five (5) members shall be appointed by the mayor of the city, without approval of the legislative body;

(b) Five (5) members shall be appointed by the county judge/executive without approval of the other members of the fiscal court.

(6) The members of an air board composed of ten (10) members established jointly by a city of the first class and the county containing ***the***~~[such]~~ city shall be composed of the mayor of the city of the first class and the county judge/executive of

the county and eight (8) other members appointed as follows:

(a) Three (3) members shall be appointed by the mayor of the city of the first class;

(b) Three (3) members shall be appointed by the county judge/executive of the county, with the approval of the fiscal court; and

(c) Two (2) members, who shall be residents of ***the***[~~such~~] county containing a city of the first class or of counties contiguous thereto, shall be appointed by the Governor of the Commonwealth.

(7) ***The members of an air board composed of ten (10) members established by an urban-county government shall be composed of the mayor of the urban-county government or an officer of the urban-county government designated by the mayor. The remaining nine (9) members shall be appointed by the mayor, one of whom shall live within a three (3) mile radius of the airport.***

(8) Members of the board composed of six (6) members, shall serve for a term of four (4) years each, and until their successors are appointed and qualified***. The***,[~~ provided, however, that~~] initial appointments shall be made so that two (2) members are appointed for two (2) years, two (2) members for three (3) years and two (2) members for four (4) years. Upon expiration of ***the***[~~these~~] staggered terms, successors shall be appointed for a term of four (4) years.

(9)[~~(8)~~] Members of the board composed of ten (10) members in a city other than a city of the first class and county jointly[~~ other than an urban-county government established pursuant to KRS Chapter 67A,~~] shall serve for a term of four (4) years each, and until their successors are appointed and qualified***. The initial appointments made by***[~~, provided, however, that~~] the mayor and the county judge/executive shall ***be made***[~~each make their initial appointments~~] so that one (1) member is appointed for two (2) years, two (2) members are appointed for three (3) years, and two (2) members are appointed for four (4) years***.***[~~, except that~~] If an existing six (6) member board is being increased to a ten (10) member board, initial appointments of the four (4) new members shall be made so that the mayor and the county judge/executive***, or the mayor if the board is established by an urban-county government,*** each appoint one (1) member for two (2) years and one (1) member for four (4) years. Upon expiration of ***the***[~~these~~] initial terms, successors shall be appointed for a term of four (4) years. ***In the case of a board established by an urban-county government, the term of the mayor for the urban-county government, or the officer of the urban-county government designated by the mayor, shall be coextensive with the term of the mayor.***

(10)[~~(9)~~] Members of the board composed of ten (10) members and established jointly by a city of the first class and the county containing a city of the first class, shall serve for a term of three (3) years each, and until their successors are appointed and qualified***.***[~~, except that~~] The terms of the mayor and the county judge/executive shall be coextensive with their terms of office. The mayor and the county judge/executive shall each make their initial appointments so that one (1) member is appointed for one (1) year, one (1) member is appointed for two (2) years, and one (1) member is appointed for three (3) years. The Governor shall make the initial appointments so that one (1) member is appointed for two (2) years and one (1) member is appointed for three (3) years. Upon the expiration of ***the***[~~these~~] initial terms, successors shall be appointed for a term of four (4) years.

(11)[~~(10)~~] Members of the board shall serve without compensation but shall be allowed any reasonable expenses incurred by them in the conduct of the affairs of the board. The board shall, upon the appointment of its members, organize and elect officers. The board, except for a board composed of ten (10) members and established jointly by a city of the first class and the county containing a city of the first class, shall choose a chairman and vice chairman who shall serve for terms of one (1) year. Where the board is composed of ten (10) members, and established jointly by a city of the first class and the county containing a city of the first class, the mayor of the city of the first class and the county judge/executive shall jointly appoint the chairman from among the membership of the board. The board shall also choose a secretary-treasurer who may or may not be a member of the board. The board may fix a salary for the secretary-treasurer and the secretary-treasurer shall execute an official bond to be set and approved by the board, and the cost ***of the bond***[~~thereof~~] shall be paid by the board.

(12)[~~(11)~~] The board may employ necessary counsel, agents and employees to carry out its work and functions, and prescribe[~~ such~~] rules and regulations as it deems necessary.

(13)[~~(12)~~] The secretary-treasurer shall keep the minutes of all meetings of the board and shall also keep a set of books showing the receipts and expenditures of the board. ***The secretary-treasurer***[~~He~~] shall preserve on file duplicate vouchers for all expenditures and shall present to the board, upon request, complete reports of all financial transactions and the financial condition of the board.[~~ Such~~] Books and vouchers shall at all times be subject to examination by the legislative body or bodies by whom the board was created. ***The secretary-treasurer***[~~He~~] shall transmit at least once annually a detailed report of all acts and doings of the board to the legislative body or bodies by whom the board was created.

(14)[~~(13)~~] In the event that a joint air board is created by cities and/or counties, and thereafter a city or cities or county or counties desire to withdraw from participation, then the remaining participants may jointly choose a successor member or members of the board. ***A local government wanting to withdraw from participation in the board***[~~No such withdrawing~~

~~city or cities, county or counties~~] shall ***not*** be entitled to return of any moneys or property advanced ***the***[~~such~~] board.

(15)[~~(14)~~] A quorum for the transacting of the business of a six (6) member board shall consist of four (4) members, and of a ten (10) member board shall consist of six (6) members. Meetings of the board may be called by the chairman or by four (4) members. In case of tie voting by the board, the issue shall be deemed to have failed passage.

(16)[~~(15)~~] A board member may be replaced by the appointing authority upon a showing to ***the***[~~such~~] authority of misconduct as a board member or upon conviction of a felony. ***A***[~~No~~] board member ***shall not hold any official office with the appointing authority***, except for the mayor of a city of the first class and the county judge/executive on a board made up of ten (10) members and established jointly by a city of the first class and the county containing a city of the first class, ***or the mayor of an urban-county government or an officer of the urban-county government designated by the mayor on a board established by an urban-county government***[~~shall hold any official office with the appointing authority~~].

The Committee Substitute to **HB 625** is as follows:

AN ACT relating to air boards.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 183.132 is amended to read as follows:

(1) Any ***urban-county government,*** city***,*** or county, or city and county acting jointly, or any combination of two (2) or more cities and/or counties may establish a nonpartisan air board composed of six (6) members***.***[~~, or~~] Any city other than the first class and county jointly ***or***[~~other than~~] an urban-county government established pursuant to KRS Chapter 67A may establish a nonpartisan board composed of ten (10) members***.***[~~, or~~] Any existing six (6) member board, ***including***[~~except~~] a board established in an urban-county government, may be expanded to ten (10) members by joint action of the county and city.

(2) Any city of the first class, jointly with the county containing ***the***[~~such~~] city may establish a nonpartisan air board composed of ten (10) members.[~~ If a joint air board has been established prior to July 15, 1986, by a city of the first class and the county, the terms of the members on such board shall terminate as of July 15, 1986, and the~~] Membership of the board shall be appointed in accordance with subsection (6) of this section.

(3) The board shall be a body politic and corporate with the usual corporate attributes, and in its corporate name may sue and be sued, contract and be contracted with and do all things reasonable or necessary to effectively carry out the duties prescribed by statute. The board shall constitute a legislative body for the purposes of KRS 183.630 to 183.740.

(4) The members of an air board composed of six (6) members shall be appointed as follows:

(a) If the air board is established by a city,[~~ such~~] members shall be appointed by the mayor of the city;

(b) If the air board is established by a county,[~~ such~~] members shall be appointed by the county judge/executive except that in the event that an airport is located outside the boundary of the county establishing the airport board, the county judge/executive shall appoint an additional member to the air board from the jurisdiction where the airport is physically located. The additional member shall serve a four (4) year term in accordance with the provisions of subsection (7) of this section and receive full voting privileges on matters brought before the airport board;

(c) If the air board is established as a joint city-county air board***,***[~~ such~~] members shall be appointed jointly by the mayor of the city and the county judge/executive;

(d) If a combination of cities and/or counties establishes a joint air board, the mayors and/or county judges/executive involved shall jointly choose six (6) members, and shall jointly choose successors***;***

(e) If the air board is established by an urban-county government, the mayor of the urban-county government or an officer of the urban-county government designated by the mayor shall serve as one (1) member of the board. The remaining five (5) members shall be appointed by the mayor. One (1) of the members appointed by the mayor shall live within a three (3) mile radius of the airport.

(5) The members of an air board composed of ten (10) members in a city other than a city of the first class and county jointly other than an urban-county government established pursuant to KRS Chapter 67A shall be appointed as follows:

(a) Five (5) members shall be appointed by the mayor of the city, without approval of the legislative body;

(b) Five (5) members shall be appointed by the county judge/executive without approval of the other members of the fiscal court.

(6) The members of an air board composed of ten (10) members established jointly by a city of the first class and the county containing ***the***[~~such~~] city shall be composed of the mayor of the city of the first class and the county judge/executive of the county and eight (8) other members appointed as follows:

(a) Three (3) members shall be appointed by the mayor of the city of the first class;

(b) Three (3) members shall be appointed by the county judge/executive of the county, with the approval of the fiscal court; and

(c) Two (2) members, who shall be residents of ***the***[~~such~~] county containing a city of the first class or of counties contiguous thereto, shall be appointed by the Governor of the Commonwealth.

(7) ***The members of an air board composed of ten (10) members established by an urban-county government shall be composed of the mayor of the urban-county government or an officer of the urban-county government designated by the mayor. The remaining nine (9) members shall be appointed by the mayor. One (1) of the members appointed by the mayor shall live within a three (3) mile radius of the airport.***

(8) Members of the board composed of six (6) members, shall serve for a term of four (4) years each, and until their successors are appointed and qualified***. The***[~~, provided, however, that~~] initial appointments shall be made so that two (2) members are appointed for two (2) years, two (2) members for three (3) years and two (2) members for four (4) years. Upon expiration of ***the***[~~these~~] staggered terms, successors shall be appointed for a term of four (4) years.

(9)[~~(8)~~] Members of the board composed of ten (10) members in a city other than a city of the first class and county jointly[~~ other than an urban-county government established pursuant to KRS Chapter 67A,~~] shall serve for a term of four (4) years each, and until their successors are appointed and qualified***. The initial appointments made by***[~~, provided, however, that~~] the mayor and the county judge/executive shall ***be made***[~~each make their initial appointments~~] so that one (1) member is appointed for two (2) years, two (2) members are appointed for three (3) years, and two (2) members are appointed for four (4) years***.***[~~; except that~~] If an existing six (6) member board is being increased to a ten (10) member board, initial appointments of the four (4) new members shall be made so that the mayor and the county judge/executive***, or the mayor if the board is established by an urban-county government,*** each appoint one (1) member for two (2) years and one (1) member for four (4) years. Upon expiration of ***the***[~~these~~] initial terms, successors shall be appointed for a term of four (4) years. ***In the case of a board established by an urban-county government, the term of the mayor for the urban-county government, or the officer of the urban-county government designated by the mayor, shall be coextensive with the term of the mayor.***

(10)[~~(9)~~] Members of the board composed of ten (10) members and established jointly by a city of the first class and the county containing a city of the first class, shall serve for a term of three (3) years each, and until their successors are appointed and qualified***.***[~~, except that~~] The terms of the mayor and the county judge/executive shall be coextensive with their terms of office. The mayor and the county judge/executive shall each make their initial appointments so that one (1) member is appointed for one (1) year, one (1) member is appointed for two (2) years, and one (1) member is appointed for three (3) years. The Governor shall make the initial appointments so that one (1) member is appointed for two (2) years and one (1) member is appointed for three (3) years. Upon the expiration of ***the***[~~these~~] initial terms, successors shall be appointed for a term of four (4) years.

(11)[~~(10)~~] Members of the board shall serve without compensation but shall be allowed any reasonable expenses incurred by them in the conduct of the affairs of the board. The board shall, upon the appointment of its members, organize and elect officers. The board, except for a board composed of ten (10) members and established jointly by a city of the first class and the county containing a city of the first class, shall choose a chairman and vice chairman who shall serve for terms of one (1) year. Where the board is composed of ten (10) members, and established jointly by a city of the first class and the county containing a city of the first class, the mayor of the city of the first class and the county judge/executive shall jointly appoint the chairman from among the membership of the board. The board shall also choose a secretary-treasurer who may or may not be a member of the board. The board may fix a salary for the secretary-treasurer and the secretary-treasurer shall execute an official bond to be set and approved by the board, and the cost ***of the bond***[~~thereof~~] shall be paid by the board.

(12)[~~(11)~~] The board may employ necessary counsel, agents and employees to carry out its work and functions, and prescribe[~~ such~~] rules and regulations as it deems necessary.

(13)[~~(12)~~] The secretary-treasurer shall keep the minutes of all meetings of the board and shall also keep a set of books showing the receipts and expenditures of the board. ***The secretary-treasurer***[~~He~~] shall preserve on file duplicate vouchers for all expenditures and shall present to the board, upon request, complete reports of all financial transactions and the financial condition of the board.[~~ Such~~] Books and vouchers shall at all times be subject to examination by the legislative body or bodies by whom the board was created. ***The secretary-treasurer***[~~He~~] shall transmit at least once annually a detailed report of all acts and doings of the board to the legislative body or bodies by whom the board was created.

(14)[~~(13)~~] In the event that a joint air board is created by cities and/or counties, and thereafter a city or cities or county or counties desire to withdraw from participation, then the remaining participants may jointly choose a successor member or members of the board. ***A local government wanting to withdraw from participation in the board***[~~No such withdrawing city or cities, county or counties~~] shall ***not*** be entitled to return of any moneys or property advanced ***the***[~~such~~] board.

(15)[~~(14)~~] A quorum for the transacting of the business of a six (6) member board shall consist of four (4) members, and of a ten (10) member board shall consist of six (6) members. Meetings of the board may be called by the chairman or by four (4) members. In case of tie voting by the board, the issue shall be deemed to have failed passage.

(16)[~~(15)~~] A board member may be replaced by the appointing authority upon a showing to ***the***[~~such~~] authority of misconduct as a board member or upon conviction of a felony. ***A***[~~No~~] board member ***shall not hold any official office with the appointing authority***, except for the mayor of a city of the first class and the county judge/executive on a board made up of ten (10) members and established jointly by a city of the first class and the county containing a city of the first class, ***or the mayor of an urban-county government or an officer of the urban-county government designated by the mayor on a board established by an urban-county government***[~~shall hold any official office with the appointing authority~~].

HB 629, AN ACT relating to highways.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 177 IS CREATED TO READ AS FOLLOWS:

The Transportation Cabinet shall establish minimum spacing for ingress and egress to highways where access is controlled by permit. Access points may be permitted if the centerline of the requested access is not closer than one thousand two hundred (1,200) feet to the centerline of the nearest existing point of access in rural areas; or if the centerline of the requested access is not closer than six hundred (600) feet to the centerline of the nearest point of access in urban areas. Where these standards are considered to be overly restrictive, the cabinet may grant access in accordance with reasonable and appropriate safety standards on a case-by-case basis.

HB 645, AN ACT relating to identification cards.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 186.412 is amended to read as follows:

(1) A person may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed a valid instruction permit for at least one hundred eighty (180) days. The person shall apply for an operator's license in the office of the circuit clerk of the county where he lives. The application form shall require the applicant's full legal name and signature, date of birth, Social Security number, sex, present resident address, other information necessary to permit the application to also serve as an application for voter registration, and brief physical description of the applicant. The application shall state:

(a) If the applicant has previously been licensed as an operator and by what state;

(b) If a license is canceled, suspended, revoked, or refused; and

(c) Other information the cabinet may require by administrative regulation promulgated pursuant to KRS Chapter 13A.

(2) The Transportation Cabinet shall issue a plastic laminated operator's license bearing a color photograph of the applicant. The photograph shall be taken by the circuit clerk so that one (1) exposure will photograph the applicant and the application simultaneously, using the process determined under provisions of KRS 186.413. When taking the photograph, the applicant shall be prohibited from wearing sunglasses or any other attire that obscures any features of the applicant's face as determined by the clerk. The clerk shall require an applicant to remove sunglasses or other obscuring attire before taking the photograph required by this subsection. Any person who refuses to remove sunglasses or other attire prohibited by this section as directed by the clerk shall be prohibited from receiving an operator's license. The plastic laminated operator's license issued by the cabinet shall not contain the applicant's Social Security number. The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A that develop a numbering system that uses an identification system other than Social Security numbers. The license shall also designate by color coding and use the phrase "under (21)" if the licensee is under the age of twenty-one (21); "CDL" if the license is issued pursuant to KRS Chapter 281A; or "under 21 CDL" if the licensee holds a commercial driver's license issued pursuant to KRS Chapter 281A and is under the age of twenty-one (21).

(3) After January 1, 1996, a person may, before the renewal date for his operator's license, request a circuit clerk to issue a new plastic laminated operator's license that does not contain the person's Social Security number. The person shall be charged the fee established by KRS 186.531 for renewing an operator's license if the person requests a license pursuant to this subsection.

(4) Every applicant shall make oath to the circuit clerk as to the truthfulness of the statements contained in the form.

(5) The clerk may, after determining that the applicant has fully complied with the law governing applications, issue a temporary operator's license to be valid for not more than ninety (90) days. The temporary license shall be valid in lieu of

the permanent license during the certification period and shall be destroyed upon receipt of the permanent operator's license.

(6) The circuit clerk shall issue a color photo nondriver's identification card to any person who resides in the county who applies in person in the office of the circuit clerk. A nondriver's identification card shall be subject to the provisions of subsection (2) of this section. An application for a nondriver's identification card shall be accompanied by a signed Social Security card and a birth certificate, or other proof of the applicant's date of birth that is satisfactory to the clerk. The application shall require the applicant to provide his ***or her full legal name and*** most current resident address that may include, but is not limited to, a mailing address, post office box, or an address provided on a voter registration card. If an applicant for a nondriver's identification card is under the age of twenty-one (21), the applicant's most current resident address shall be required unless a current resident address is not available, in which case a mailing address, post office box, or an address provided on a voter registration card may be used. Every applicant for a nondriver's identification card shall make an oath to the circuit clerk as to the truthfulness of the statements contained on the application form. If the applicant is not the legal possessor of the address provided on the application form, the applicant shall swear that he has permission from the legal possessor to use the address for purposes of obtaining the nondriver's identification card. The nondriver's identification card shall designate by color coding and by use of the phrase "under 21" if the applicant is under the age of twenty-one (21).

(7) Military personnel and other licensed drivers temporarily out-of-county may be issued a license without a photograph. The license shall show in the space provided for the photograph the legend "valid without photo and signature." If a citizen of the Commonwealth has been serving in the United States military and has allowed his operator's license to expire, he shall, within ninety (90) days of returning to the Commonwealth, be permitted to renew his license without having to take a written test or road test. A citizen who does not renew his license within ninety (90) days of returning to the Commonwealth shall be required to comply with the provisions of this chapter governing renewal of a license that has expired.

(8) The cabinet shall provide on each license to operate motor vehicles, motorcycles, and mopeds a space for the licensed driver's:

(a) Blood type;

(b) Medical insignia if the person provides evidence that a medical identification bracelet noting specific physical ailments or a drug allergy is being worn or other proof as may be required by the cabinet; and

(c) A statement whereby the owner of the license may certify in the presence of two (2) witnesses his willingness to make an anatomical gift under KRS 311.195.

(9) If the motor vehicle operator denotes a physical ailment or drug allergy on the operator's license, he may apply for and shall receive, for a fee of one dollar ($1) paid to the circuit clerk, a medical insignia decal that may be affixed to the lower left side of the front windshield of a motor vehicle.

(10) An operator's license pursuant to this section shall be designated a Class D license.

(11) A person shall not have more than one (1) license.

(12) Upon marriage, a woman applying for an operator's license or a color photo nondriver's identification card shall provide the circuit clerk with her marriage license and complete an affidavit form provided by the circuit court clerk. She shall have the following choices in regard to her full legal name as required in subsections (1) and (6) of this section:

(a) Use her husband's last name;

(b) Retain her maiden name;

(c) Use her maiden name hyphenated with her husband's last name;

(d) Use her maiden name as a middle name and her husband's last name as her last name; or

(e) In the case of a previous marriage, retain that husband's last name.

HB 655, AN ACT relating to the six (6) year road plan.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 176.419 is amended to read as follows:

As used in KRS ***45.245, 45.246,*** 176.420, 176.430, ***and*** 176.440***:***[~~, 176.460, and 176.470,~~]

(1) "Project" means the design, right-of-way, utility, or construction phase of a highway construction project***; and***

(2) "Six (6) year road plan" means the short-term individual transportation projects that are scheduled to be constructed in each county and that are submitted each regular session to the General Assembly by the Department of Highways, including any amendments the General Assembly makes to the projects prior to the plan being enacted. The six (6) year road plan projects with phases scheduled for funding during the ensuing biennium shall be

enacted in the budget memorandum and the projects with phases in the last four (4) years of the plan shall be enacted in a joint resolution and shall include, but not be limited to:

(a) The county name;

(b) The Kentucky Transportation Cabinet project identification number;

(c) The route where the project is located;

(d) The length of the project;

(e) A description of the project and the scope of improvement;

(f) The type of local, state, or federal funds to be used on the project;

(g) The stage of development for the design, right-of-way, utility, and construction phase;

(h) The fiscal year in which each phase of the project should commence; and

(i) The estimated cost for each phase of the project.

(3) "Statewide transportation plan" means the long-range plan to be implemented over a twenty (20) year period for state improvements to air, bicycle, pedestrian, highway, public transportation, rail, water, and other intermodal transportation systems.

Section 2. KRS 176.420 is amended to read as follows:

(1) The Department of Highways shall undertake a continuing study of the needs of the highways under its jurisdiction for the purpose of bringing existing facilities to acceptable standards or for the replacement of existing facilities where required.

(2) The Department of Highways shall *submit the six (6) year road plan to*[~~provide~~] the General Assembly *at the same time*[~~, within ten (10) working days of submission of~~] the executive budget *is submitted by the Governor* to *each*[~~the~~] regular session of the General Assembly pursuant to KRS 48.100[~~, the biennial highway construction program and the additional four (4) year construction plan~~]. The *six (6) year road plan submitted shall be divided into five (5) sections as follows:*

(a) The first section shall set forth the cabinet's revenue estimates and assumptions used in developing the six (6) year road plan.

(b) The second section shall list the projects identified in the six (6) year road plan as defined in Section 1 of this Act.

(c) The third section shall specify the individual projects that will be funded from the "ZVARIOUS 99" category listed in the six (6) year road plan when the cost estimate for the project is to be used statewide and is represented as a lump sum that the cabinet will break down at a later date.

(d) The fourth section shall provide a comparison of the proposed six (6) year road plan to the six (6) year road plan enacted the previous biennium by the General Assembly. The comparison shall include a justification statement documenting the reason any project in the previously enacted six (6) year road plan was deleted from the proposed plan.

(e) The fifth section shall list by county all active road construction projects that are not included in the plan or are not shown in the plan submitted to the General Assembly because funding has been authorized for the project or work has been initiated on the project[~~biennial highway construction program shall detail those projects that the department shall advance to construction or preconstruction during the ensuing biennium. The Transportation Cabinet shall submit a justification statement for any project changed or deleted, including completed projects in the biennial highway construction program~~].

(3) *The department shall provide the General Assembly an electronic version of the six (6) year road plan as defined in Section 1 of this Act at the same time the department submits the printed six (6) year road plan to the General Assembly under subsection (2) of this section. The information shall be*[~~In addition to the information required to be submitted by subsection (2) of this section, the department shall provide the General Assembly with the computer tapes and file layout for the biennial highway construction program and four (4) year construction plan~~] in a form prescribed by the General Assembly[~~ or the Legislative Research Commission at the same time as the submission of the information~~].

(4) The department shall submit the statewide transportation plan as defined in Section 1 of this Act to the General Assembly at the same time the department submits the six (6) year road plan each regular session.

Section 3. KRS 176.430 is amended to read as follows:

(1) *It is the intent of the General Assembly to permit the cabinet to over program the number of projects included in the first year of the six (6) year road plan that exceed the Governor's budget by no more than ten percent (10%) as provided in subsection (2) of this section to maximize the use of all funds available to the cabinet, and to plan for the historical precedent of approximately ten percent (10%) of projects being delayed per year due to unforeseen*

circumstances. If the cabinet has to delay a project in the first year of the six (6) year road plan, the project shall slip to the second year of the road plan and all money authorized for the project shall remain with it and shift to the second year of the road plan. If a project has to be delayed in the second year, all money authorized for the project shall remain with it and shift to the third year of the road plan with all projects delayed in subsequent years automatically shifting to the succeeding year of the road plan along with any money authorized for the project. If the cabinet has a surplus of federal funds at the end of a fiscal year, then projects designated for funding with federal money from the next succeeding year of the six (6) year road plan may be advanced for work to begin.

(2) The *six (6) year road plan projects to be funded*[~~recommended biennial highway construction program submitted to the General Assembly as provided by KRS 45.245 and KRS 176.420(2) to be commenced~~] during the ensuing biennium shall not exceed the budget submitted by the Governor for highway construction *by more than ten percent (10%) in the first year of the biennium, and shall not exceed the budget submitted by the Governor in the second year of the biennium*.

(3)[~~(2)~~] The *projects to be funded in the last four (4) years of the six (6) year plan*[~~recommended additional four (4) year construction plan submitted to the General Assembly as provided in KRS 176.420(2)~~] shall not exceed revenue estimates provided by the Transportation Cabinet.[~~ The cabinet's revenue estimates and assumptions shall be submitted with the plan.~~]

(4)[~~(3)~~] In *developing the design, right-of-way, utility, and construction phase of*[~~determining~~] each project, the following factors shall be considered but are not exclusive:

(a) Alignment of existing roads;

(b) The width or elevation of existing roadways and shoulder surfaces;

(c) The width of rights-of-way;

(d) The cost of each phase of the project plus a separate identification of the cabinet's administrative costs for each phase;

(e) The type and volume of traffic;

(f) The condition of structures and drainage;

(g) The accident rate;

(h) The geographic distribution of roadways to be constructed or reconstructed; and

(i) The social, economic, and environmental impact of the proposed project.

(5)[~~(4)~~] The *six (6) year road*[~~biennial construction program and the four (4) year construction~~] plan shall designate the fiscal year each phase is scheduled to commence, a cost estimate for each phase, *and*[~~including a separate estimate of the cabinet's administrative costs for each phase,~~] a projected[~~ construction~~] date *for each phase to begin*[~~, and construction cost estimate~~].

(6)[~~(5)~~] The Transportation Cabinet shall *monthly transmit electronic data*[~~report monthly~~] to the General Assembly through the Legislative Research Commission *on all activity relating to all projects in the execution of the six (6) year road plan. The data for each project shall contain all cabinet activity on projects funded through the road fund including resurfacing and rural and secondary projects, and shall also include but not be limited to the following:*

(a) District number and project item number which shall remain in effect throughout the entire life of the project, subject to the following conditions:

1. A project split into more than one (1) project during its life shall maintain the same item number with a suffix;

2. Two (2) or more projects merged shall be identified by the new merged project maintaining the project item number of one (1) of the projects being merged. The total cost of the merged project shall be set forth; and

3. A project that has been merged with another project and all funds authorized for the initial project that is subsequently shifted to the new merged project shall remain in the six (6) year road plan and shall be identified with a cross reference to the superseded project and superseded project item number;

(b) The county name and county number;

(c) The route prefix, route number, and route suffix;

(d) Termini description including beginning milepoint and ending milepoint;

(e) Type of work;

(f) Length of the project in miles;

(g) Project authorization system number, date the project was authorized, the TD-10 number authorizing the

project, and the amount authorized;

(h) Year the project was enacted in a six (6) year road plan, and the notation "A" if the project is active and the notation "I" if the project is inactive;

(i) The phase code "P" for the planning phase, "D" for the design phase, "R" for the right-of-way phase, "U" for the utility phase, and "C" for the construction phase;

(j) The original estimate, fund code, and fiscal year each phase is expected to begin as enacted in the six (6) year road plan;

(k) The current estimate, fund code, and fiscal year each phase is expected to begin;

(l) The status of funding for each phase;

(m) The date current information has been changed for each phase;

(n) The letting date for each phase;

(o) Total number of right-of-way parcels, deeds signed, suits filed, and right-of-way entries completed;

(p) The date right-of-way plans are to be submitted to the central office in Frankfort and the status of right-of-way plans;

(q) Total utility relocations to be completed and the actual number completed;

(r) The award date, the construction project code number, and the award amount for the construction phase;

(s) The total number of contract change orders issued for each phase, the date of the most recent change order; and the net change order amount for each phase;

(t) The name of the contractor, the contractor's vendor number in the Statewide Accounting and Reporting System (STARS), current contract amount, and the current amount earned by the contractor;

(u) The estimated date for completion of the project, current percentage of work completed based upon time, and the actual contract completion date;

(v) The department's engineer's estimate for the project; and

(w) Total expenditures by phase.

(7) The department shall monthly transmit electronic data to the General Assembly through the Legislative Research Commission on the activity on all state resurfacing projects and all rural secondary projects that shall include as much applicable information as possible as identified in subsection (6) of this section.

(8) The department shall pursue digitizing all Kentucky roads on a geographic information system as funds are made available by the General Assembly. The digitized maps shall merge map layers and text layers to produce maps that display geographic information and textual information detailing the six (6) year road plan as enacted by the General Assembly[~~and Transportation Committee on action taken to execute the biennial highway construction program and four (4) year construction plan. The cabinet shall submit a written report as well as an electronic report identifying the following information on projects included in the biennial highway construction program and the four (4) year construction plan:~~

~~(a) Advertisements relating to the letting of projects;~~

~~(b) The top three (3) bids including the amount of the contract awarded and the contract number;~~

~~(c) Final project cost estimates;~~

~~(d) Bid rejections;~~

~~(e) All contract change orders required to be submitted pursuant to KRS 45.247(2); and~~

~~(f) All project authorizations.~~

~~(6) The secretary of transportation shall be responsible for the execution of each biennial highway construction program and four (4) year construction plan as approved by the General Assembly and shall through the monthly report required by subsection (5) of this section promptly account for and explain any deviations of funding and schedule to the Interim Joint Committee on Transportation~~].

Section 4. KRS 176.440 is amended to read as follows:

[~~(1) No later than July 1 of each odd numbered year prior to the convening of each regular session of the General Assembly, the cabinet shall furnish the biennial highway construction program, and the additional four (4) year construction plan. The cabinet shall submit the information with accompanying electronic format and file layout in a form prescribed by the General Assembly. If the cabinet fails to submit the information required by this subsection on July 1, the Transportation Committee shall notify the Legislative Research Commission and the Appropriations and Revenue Committee of the cabinet's noncompliance.~~

~~(2) When~~]The *six (6) year road*[~~final biennial highway construction program and the additional four (4) year highway~~

~~construction~~] plan[~~ are~~] presented to the General Assembly for approval and funding as provided in KRS 45.245***, the budget memorandum, Section 2 of this Act,*** and KRS 176.420(2)[~~, any project changes, additions, and deletions that the General Assembly determines are not in accordance with the factors stated in KRS 176.430(3)~~] may be amended by the General Assembly.

Section 5. KRS 45.245 is amended to read as follows:

The provision of any other law notwithstanding:

(1) The Governor shall include in the executive branch budget recommendation and in the draft budget bill for the executive branch submitted to each regular session of the General Assembly pursuant to KRS 48.100, the appropriations by each source of funds for a recommended ***six (6) year road plan***[~~biennial highway construction program~~].

(2) The Governor shall submit a recommended ***six (6) year road plan to the General Assembly when submitting***[~~biennial highway construction program within ten (10) working days after submission of~~] the branch budget recommendations pursuant to KRS 48.100.

[~~(3) The recommended biennial highway construction program shall include:~~

~~(a) A complete list and summary description of each specific highway project recommended for funding during the biennium; and~~

~~(b) For each project:~~

~~1. The county and highway district;~~

~~2. The highway department item number for each project which shall remain in effect throughout the entire life of the project, subject to the following conditions:~~

~~a. A project split during its life shall maintain the same item number with a suffix; and~~

~~b. Merged projects shall be identified with a cross reference to the superseded item number;~~

~~3. The route number and total miles to be constructed;~~

~~4. A project description;~~

~~5. The fiscal year each project phase is to commence and all estimated costs of each project phase including administrative costs of the cabinet; and~~

~~6. The source of funding to be used.~~

~~(4) During each biennium the amount allotted, from all sources, for expenditure on any project in the highway construction program for that biennium, shall not exceed the appropriation to the project by more than fifteen percent (15%) as shown in the biennial highway construction program, except as provided in KRS 45.247.~~

~~(5) Appropriations from the road fund to the recommended biennial highway construction program shall be based on the revenue estimates pursuant to KRS 48.120. In addition, the cabinet shall provide a separate and specific list of projects from the four (4) year plan which may be accelerated in the event biennial projects are delayed pursuant to KRS 176.460. This list shall not be included in the biennial highway construction program and shall not exceed twenty percent (20%) of the total amount appropriated for highway construction projects for the biennium. If additional highway construction projects are proposed that exceed revenue estimates pursuant to KRS 48.120 or that require the suspension or modification of an existing statute, the projects shall be separately stated and categorized with the recommended funding source and account.~~]

Section 6. KRS 45.246 is amended to read as follows:

The draft branch budget bills and draft bills including an appropriation provision, and the biennial highway construction act or acts submitted to the General Assembly by the Governor, and the act or acts enacted by the General Assembly, shall comply with the provisions of KRS 45.245 to ***45.247***[~~45.248~~]. Expression of general exclusion including, but not limited to, "any act or statute to the contrary notwithstanding," and "the provisions of any other law notwithstanding" shall not be effective as an exemption from the provisions of KRS 45.245 to ***45.247***[~~45.248~~]. Exemptions from the provisions of KRS 45.245 to ***45.247***[~~45.248~~] shall include the specific projects exempted.

Section 7. KRS 45.247 is amended to read as follows:

[~~(1) The Transportation Cabinet shall, prior to awarding any project phase that exceeded its cost estimate by more than fifteen percent (15%), present the project overrun to the Interim Joint Committee on Transportation for review as provided by KRS 45.248. Presentation of a project overrun shall include written certification to the Interim Joint Committee on Transportation from the state highway engineer of the Transportation Cabinet, that the project overrun is necessitated by cost increases resulting from unanticipated circumstances. This certification shall provide the specific details which have caused the project overrun.~~

~~(2) After the Transportation Cabinet has awarded a contract for a project, the cabinet shall submit written notification to the Interim Joint Committee on Transportation of the amount of the contract, the contract number, and the related item number and phase of work. Upon approving a contract change order that exceeds one hundred dollars ($100), the cabinet~~

~~shall submit a copy of the change order to the Interim Joint Committee on Transportation for information purposes only. If the General Assembly is in session, the cabinet shall submit the contract change order notification to the House and Senate Transportation Committees for information purposes only.~~

~~(3)~~] There is created within the road fund the highway construction contingency account. The account shall consist of moneys appropriated to the account by the General Assembly. The Transportation Cabinet may transfer money from the highway construction contingency account to a highway construction project, for expenditure thereon. These moneys may be authorized by the secretary of the Transportation Cabinet for*:*

(1) Projects of an emergency nature*;*[~~,~~]

(2) ***Promotion of***[~~To promote~~] economic or industrial development*;*[~~,~~]

(3) ***Relief of***[~~To relieve~~] a hazardous condition*;*[~~, or~~]

(4) [~~For~~]Other purposes ***that***[~~which~~] the secretary determines to be a priority*;*[~~.~~]

(5)[~~(4) Money in the highway construction contingency account may be used for the following purposes:~~

~~(a)~~] ***Provision of***[~~Providing~~] required state match for any unanticipated federal funds made available by the Federal Highway Administration to the Commonwealth as a result of other states not utilizing their total federal obligation;

(6)[~~(b)~~] The funding of any nonfederal share of a project in a previous or the current biennial highway construction programs that exceeds its cost estimate;

(7)[~~(c)~~]The nonfederal share of federal emergency highway projects, federal discretionary projects, and federal demonstration projects; and

(8)[~~(d)~~] The nonfederal share of projects due to an increase in the federal apportionment or federal obligation limits.

[~~(5) The federal share of projects identified in subsection (1) of this section shall be funded through the appropriate federal aid category.~~]

Section 8. The Transportation Cabinet shall create a new funding code to be used in the six (6) year road plan to be known as state contingency funds and the abbreviation the cabinet shall use for this funding code shall be SC. The state contingency funding code shall be in addition to all other funding codes used by the cabinet in the six (6) year road plan and shall be used to identify all projects funded with state contingency account moneys.

Section 9. The following KRS sections are repealed:

45.2451 Definition of "project" for KRS 45.245, 45.247, and 45.248.

45.248 Approval of proposed contingency account transfer by legislative committee -- Monitoring of costs of state highway construction.

176.435 Electronic information databases on construction programs.

176.460 Project to be commenced in biennium for which it is planned -- Effect of failure to commence -- Exceptions -- Reinstatement of funds for delayed project -- Limitations on application of KRS 176.420 to 176.460.

176.470 Annual report on status of highway projects.

HB 656, AN ACT relating to motor vehicles.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS 138.455 TO 138.470 IS CREATED TO READ AS FOLLOWS:

(1) A motor vehicle dealer who operates a service or repair component in his dealership may register a motor vehicle to be used exclusively as a loaner motor vehicle to the customers of this service or repair department. The dealer may pay usage tax on the loaner motor vehicle as provided in KRS 138.460, or, subject to the provisions of this section, may pay a usage tax of six percent (6%) levied upon the fair market lease value of the vehicle as established by the Transportation Cabinet in accordance with subsection (9) of Section 4 of this Act.

(2) A dealer shall pay the usage tax on a loaner motor vehicle in the manner provided by KRS 138.460 unless the dealer shows to the satisfaction of the cabinet that he is regularly engaged in the servicing or repair of motor vehicles and loans the loaner motor vehicle, for no consideration or monetary value except as allowed in subsection (4) of this section, to a retail customer while the customer's motor vehicle is at the dealership for repair or service.

(3) For a dealer to be eligible to pay the usage tax on a loaner motor vehicle under this section, the dealer shall identify the motor vehicle as a loaner motor vehicle to the Transportation Cabinet and shall maintain records, as required by the Transportation Cabinet, which show all uses of the loaner motor vehicle.

(4) The tax authorized by subsection (1) of this section shall be the direct obligation of the dealer, but may be charged to

and collected from the customer operating the loaner motor vehicle. The cost of providing liability insurance for the customer may also be charged to and collected from the customer. However, the customer shall not be required to pay any additional costs for the use of the loaner motor vehicle.

(5) The tax due under subsection (1) of this section shall be remitted to the cabinet monthly on forms prescribed by and in accordance with administrative regulations promulgated by the cabinet.

(6) (a) The cabinet shall audit each return as soon as practicable after it is received. If the amount of tax computed by the cabinet is greater than the amount returned by the taxpayer, the excess shall be assessed by the cabinet within four (4) years from the date the return was filed, except as provided in paragraph (b) of this subsection, and except that in the case of a failure to file a return or of a fraudulent return the excess may be assessed at any time. A notice of assessment shall be mailed to the taxpayer. The time provided in this paragraph may be extended by agreement between the taxpayer and the cabinet.

(b) Notwithstanding the four (4) year time limitation of paragraph (a) of this subsection, in the case of a return where the tax computed by the cabinet is greater by twenty-five percent (25%) or more than the amount returned by the taxpayer, the excess shall be assessed by the cabinet within six (6) years from the date the return was filed.

(c) For the purposes of paragraphs (a) and (b) of this subsection, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day.

(7) Failure of a motor vehicle dealer to remit the taxes applicable to a loaner motor vehicle under this subsection shall be sufficient cause for the Transportation Cabinet to revoke the authority to use that motor vehicle as a loaner motor vehicle and cause the usage tax on that motor vehicle to be due and payable in accordance with KRS 138.460 on the retail price of that motor vehicle when it was first purchased by the dealer.

Section 2. KRS 138.450 is amended to read as follows:

As used in KRS 138.455 to 138.470, unless the context requires otherwise:

(1) "Current model year" means a motor vehicle of either the model year corresponding to the current calendar year or of the succeeding calendar year if, the same model and make is being offered for sale by local dealers;

(2) "Dealer" means ***"motor vehicle dealer" as defined in KRS 190.010***~~[any person engaged in the sale of motor vehicles at retail]~~;

(3) "Dealer demonstrator" means a new motor vehicle or a previous model year motor vehicle with an odometer reading of least one thousand (1,000) miles that has been used either by representatives of the manufacturer or by a licensed Kentucky dealer, franchised to sell the particular model and make, for demonstration;

(4) "Motor vehicle" means any vehicle that is propelled by other than muscular power and that is used for transportation of persons or property over the public highways of the state, except road rollers, mopeds, vehicles that travel exclusively on rails, and vehicles propelled by electric power obtained from overhead wires;

(5) "Moped" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a motorized bicycle with a step through type frame which may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour;

(6) "New motor vehicle" means a motor vehicle of the current model year which has not previously been registered in any state or country;

(7) "Previous model year motor vehicle" means a motor vehicle not previously registered in any state or country which is neither of the current model year nor a dealer demonstrator;

(8) "Used motor vehicle" means a motor vehicle which has been previously registered in any state or country;

(9) Except as provided in subsection (10) of this section, "retail price" shall be determined as follows:

(a) For new motor vehicles, "retail price" shall be ninety percent (90%) of the manufacturer's suggested retail price of the vehicle with all equipment and accessories, standard and optional, and transportation charges. "Retail price" shall not include that portion of the price of the vehicle attributable to equipment or adaptive devices necessary to facilitate or accommodate an operator or passenger with physical disabilities;

(b) For used motor vehicles whose values appear in the automotive reference manual prescribed by the Revenue Cabinet, "retail price" shall be the value given in such reference manual;

(c) For the older used motor vehicles whose values no longer appear in the automotive reference manual, "retail price" shall be determined as follows:

Number of Years Removed	Retail

From Manual	Price
1	75% of value of same make vehicle last appearing in manual
2	50% of value of same make vehicle last appearing in manual
3	25% of value of same make vehicle last appearing in manual
All Others	10% of value of same make vehicle last appearing in manual;

(d) In the case of used motor vehicles previously registered in this state, which are sold in this state, a trade-in allowance equal to the "retail price" of the vehicle taken in trade shall be deducted in computing the "retail price" of the vehicle sold.

(e) If a holder of a U-Drive-It permit transfers a vehicle which he has registered as a U-Drive-It within one hundred eighty (180) days of the registration, and if less than five thousand (5,000) miles have been placed on the vehicle during the period of its registration as a U-Drive-It, then the "retail price" of the vehicle shall be the same as the retail price determined in subsection (9)(b) or (c) of this section computed as of the date on which the vehicle is transferred except that the provisions of paragraph (d) of this subsection shall not apply.

(f) For dealer demonstrator motor vehicles and previous model year vehicles, "retail price" shall be eighty-five percent (85%) of the retail price as determined in paragraph (a) of this subsection or the actual sales price, exclusive of any trade-in allowance, whichever is greater. In no case shall the retail price determined under this paragraph exceed the retail price determined in paragraph (a) of this subsection or be less than the retail price determined under paragraph (b) of this subsection.

(g) If a dealer transfers a motor vehicle which he has registered as a loaner motor vehicle within one hundred eighty (180) days of the registration, and if less than five thousand (5,000) miles have been placed on the vehicle during the period of its registration as a loaner motor vehicle, then the "retail price" of the vehicle shall be the same as the retail price determined by paragraph (b) or (c) of this subsection computed as of the date on which the vehicle is transferred, except that the provisions of paragraph (d) of this subsection shall not apply.

(10) "Wrecked motor vehicle" means any motor vehicle damaged by any cause except wear and tear or rust, including but not limited to damage caused by collision, fire, flood, wind, or vandalism. The retail price of a wrecked motor vehicle shall be the retail price as determined under subsection (9) of this section minus the average of the repair estimates submitted to the county clerk. The owner of the wrecked motor vehicle shall obtain a minimum of two (2) repair estimates from disinterested persons regularly engaged in the repair of motor vehicles and submit them to the county clerk. The estimates of repair and the wrecked condition of the vehicle shall be physically verified by a certified inspector as provided in KRS 186A.115. The fees imposed by KRS 186A.115 shall apply to verification services provided by a certified inspector.

(11) "Loaner motor vehicle" means a motor vehicle owned or registered by a dealer and which is loaned to customers of the service or repair component of the dealership.

Section 3. KRS 138.4631 is amended to read as follows:

(1) If any holder of a permit under KRS 138.463(2) fails or refuses to file a return or furnish any information requested in writing, the cabinet may, from any information in its possession, make an estimate of the permit holder's gross rental or lease charges and issue an assessment against the permit holder based on the estimated gross rental or lease charges and add a penalty of ten percent (10%) of the amount of the assessment so determined. This penalty shall be in addition to all other applicable penalties provided by law.

(2) ***If a dealer under Section 1 of this Act fails or refuses to file a return or furnish any information requested in writing, the cabinet may, from any information in its possession, make an estimate of the tax owed by the dealer on his loaner motor vehicles and issue an assessment against the dealer after adding a penalty of ten percent (10%) of the amount of the assessment so determined. The penalty shall be in addition to all other applicable penalties provided by law.***

(3) If any holder of a permit under KRS 138.463(2) ***or a dealer under Section 1 of this Act*** fails to make and file a return required by KRS 138.463 ***or Section 1 of this Act*** on or before the due date of the return or the due date as extended by the cabinet, ***or if the tax, or any installment or portion of the tax imposed by KRS 138.463 or Section 1 of this Act, is not paid on or before the date prescribed for its payment,*** then, unless it is shown to the satisfaction of the cabinet that the failure is due to a reasonable cause, five percent (5%) of the tax found to be due shall be added to the tax for each thirty (30) days or fraction thereof elapsing between the due date of the return and the date on which filed, but the total penalty shall not exceed twenty-five percent (25%) of the tax; provided, however, that in no case shall the penalty be less than ten dollars ($10).

(4)[~~(3)~~] If the tax imposed by KRS 138.463 ***or Section 1 of this Act***, whether assessed by the cabinet***, the dealer,*** or the permit holder, or any installment or portion of the tax is not paid on or before the date prescribed for its payment, there shall be collected, as a part of the tax, interest upon the unpaid amount at the tax interest rate as defined in KRS 131.010(6) from the date prescribed for its payment until payment is actually made.

Section 4. KRS 138.463 is amended to read as follows:

(1) A holder of a permit as required under KRS 281.615 to operate as a U-Drive-It as defined in KRS 281.014 may pay the usage tax as provided in KRS 138.460 or, subject to the provisions of this section, may pay a usage tax of six percent (6%) levied upon the amount of the gross rental or lease charges paid by a customer or lessee renting or leasing a motor vehicle from such holder of the permit.

(2) The provisions of KRS 138.462 and this section shall apply to all rental and leasehold contracts entered into after March 9, 1990.

(3) A holder of a permit shall pay the usage tax as provided in KRS 138.460 unless he shows to the satisfaction of the cabinet that he is regularly engaged in the renting or leasing of motor vehicles to retail customers as a part of an established business. The issuance of a U-Drive-It permit under the provisions of KRS Chapter 281 shall create a rebuttable presumption that the holder of a permit is regularly engaged in renting or leasing. Persons first engaging in the renting or leasing of motor vehicles to retail customers shall, in addition to obtaining a permit required under KRS 281.615, demonstrate to the satisfaction of the cabinet that they are prepared to qualify under the standards set forth in this subsection.

(4) In the event the holder of such permit qualifies under subsection (3) of this section and elects to pay the usage tax by the alternate method as provided in subsection (1) of this section, or is required by subsection (8) of this section to pay by the alternate method, he shall pay the seat tax imposed by KRS 186.281(3) and in addition shall pay the monthly tax authorized by subsection (1) of this section.[~~ The cabinet shall provide the holder with evidence that he has been qualified to pay the monthly tax. The holder shall present such evidence to the county clerk at the time the motor vehicle is offered for registration in Kentucky and the following provisions shall be applicable.~~]

(5) The tax authorized by subsection (1) of this section shall be the direct obligation of the holder of the permit but it may be charged to and collected from the customer in addition to the rental or lease charges. The tax due shall be remitted to the cabinet each month on forms and pursuant to regulations promulgated by the cabinet.

(6) (a) As soon as practicable after each return is received, the cabinet shall examine and audit it. If the amount of tax computed by the cabinet is greater than the amount returned by the taxpayer, the excess shall be assessed by the cabinet within four (4) years from the date the return was filed, except as provided in paragraph (c) of this subsection, and except that in the case of a failure to file a return or of a fraudulent return the excess may be assessed at any time. A notice of such assessment shall be mailed to the taxpayer. The time herein provided may be extended by agreement between the taxpayer and the cabinet.

(b) For the purpose of paragraphs (a) and (c) of this subsection, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

(c) Notwithstanding the four (4) year time limitation of paragraph (a) of this subsection, in the case of a return where the tax computed by the cabinet is greater by twenty-five percent (25%) or more than the amount returned by the taxpayer, the excess shall be assessed by the cabinet within six (6) years from the date the return was filed.

(7) Failure of the holder of the permit to remit the taxes applicable to the rental charges as provided herein shall be sufficient cause for the Department of Vehicle Regulation to void the permit issued to such holder and the usage tax on each of the motor vehicles which had been registered by the holder under the permit shall be due and payable on the retail price of each such motor vehicle when it was first purchased by the holder.

(8) Notwithstanding the provisions of KRS 138.460 and subsection (1) of this section, a holder of a permit operating a fleet of rental passenger cars which has been registered pursuant to an allocation formula approved by the cabinet shall pay the tax by the method provided in this section. The provisions of this section shall apply to all vehicles rented by the holder in this state.

(9) The usage tax reported and paid on every rental or lease of a vehicle registered pursuant to this section shall be based on the fair market rental or lease value of the vehicle. Fair market rental or lease value shall be based on standards established by administrative regulation promulgated by the cabinet. The cabinet may remove a vehicle from the U-Drive-It program without a hearing if it is determined by the cabinet that no taxes have been remitted on that vehicle

during the registration period. However, the tax reported and paid to the Transportation Cabinet shall not be less than the amount due based on the actual terms of a rental or lease agreement. The burden of proving that the consideration charged by the holder satisfies this subsection is on the holder.

The Committee Substitute to **HB 656** is as follows:

HB 656, AN ACT relating to motor vehicles.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS 138.455 TO 138.470 IS CREATED TO READ AS FOLLOWS:

(1) A motor vehicle dealer who operates a service or repair component in his dealership may register a motor vehicle to be used exclusively as a loaner motor vehicle to the customers of this service or repair department. The dealer may pay usage tax on the loaner motor vehicle as provided in KRS 138.460, or, subject to the provisions of this section, may pay a usage tax of six percent (6%) levied upon the fair market lease value of the vehicle as established by the Transportation Cabinet in accordance with subsection (9) of Section 4 of this Act.

(2) A dealer shall pay the usage tax on a loaner motor vehicle in the manner provided by KRS 138.460 unless the dealer shows to the satisfaction of the cabinet that he is regularly engaged in the servicing or repair of motor vehicles and loans the loaner motor vehicle, for no consideration or monetary value except as allowed in subsection (4) of this section, to a retail customer while the customer's motor vehicle is at the dealership for repair or service.

(3) For a dealer to be eligible to pay the usage tax on a loaner motor vehicle under this section, the dealer shall identify the motor vehicle as a loaner motor vehicle to the Transportation Cabinet and shall maintain records, as required by the Transportation Cabinet, which show all uses of the loaner motor vehicle.

(4) The tax authorized by subsection (1) of this section shall be the direct obligation of the dealer. However, the customer shall not be required to pay any additional costs for the use of the loaner motor vehicle.

(5) The tax due under subsection (1) of this section shall be remitted to the cabinet monthly on forms prescribed by and in accordance with administrative regulations promulgated by the cabinet.

(6) (a) The cabinet shall audit each return as soon as practicable after it is received. If the amount of tax computed by the cabinet is greater than the amount returned by the taxpayer, the excess shall be assessed by the cabinet within four (4) years from the date the return was filed, except as provided in paragraph (b) of this subsection, and except that in the case of a failure to file a return or of a fraudulent return the excess may be assessed at any time. A notice of assessment shall be mailed to the taxpayer. The time provided in this paragraph may be extended by agreement between the taxpayer and the cabinet.

(b) Notwithstanding the four (4) year time limitation of paragraph (a) of this subsection, in the case of a return where the tax computed by the cabinet is greater by twenty-five percent (25%) or more than the amount returned by the taxpayer, the excess shall be assessed by the cabinet within six (6) years from the date the return was filed.

(c) For the purposes of paragraphs (a) and (b) of this subsection, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day.

(7) Failure of a motor vehicle dealer to remit the taxes applicable to a loaner motor vehicle under this subsection shall be sufficient cause for the Transportation Cabinet to revoke the authority to use that motor vehicle as a loaner motor vehicle and cause the usage tax on that motor vehicle to be due and payable in accordance with KRS 138.460 on the retail price of that motor vehicle when it was first purchased by the dealer.

Section 2. KRS 138.450 is amended to read as follows:

As used in KRS 138.455 to 138.470, unless the context requires otherwise:

(1) "Current model year" means a motor vehicle of either the model year corresponding to the current calendar year or of the succeeding calendar year if, the same model and make is being offered for sale by local dealers;

(2) "Dealer" means ***"motor vehicle dealer" as defined in KRS 190.010***~~[any person engaged in the sale of motor vehicles at retail]~~;

(3) "Dealer demonstrator" means a new motor vehicle or a previous model year motor vehicle with an odometer reading of least one thousand (1,000) miles that has been used either by representatives of the manufacturer or by a licensed Kentucky dealer, franchised to sell the particular model and make, for demonstration;

(4) "Motor vehicle" means any vehicle that is propelled by other than muscular power and that is used for transportation of persons or property over the public highways of the state, except road rollers, mopeds, vehicles that travel exclusively on rails, and vehicles propelled by electric power obtained from overhead wires;

(5) "Moped" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars

supporting a fuel tank so long as it also has pedals, or a motorized bicycle with a step through type frame which may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour;

(6) "New motor vehicle" means a motor vehicle of the current model year which has not previously been registered in any state or country;

(7) "Previous model year motor vehicle" means a motor vehicle not previously registered in any state or country which is neither of the current model year nor a dealer demonstrator;

(8) "Used motor vehicle" means a motor vehicle which has been previously registered in any state or country;

(9) Except as provided in subsection (10) of this section, "retail price" shall be determined as follows:

(a) For new motor vehicles, "retail price" shall be ninety percent (90%) of the manufacturer's suggested retail price of the vehicle with all equipment and accessories, standard and optional, and transportation charges. "Retail price" shall not include that portion of the price of the vehicle attributable to equipment or adaptive devices necessary to facilitate or accommodate an operator or passenger with physical disabilities;

(b) For used motor vehicles whose values appear in the automotive reference manual prescribed by the Revenue Cabinet, "retail price" shall be the value given in such reference manual;

(c) For the older used motor vehicles whose values no longer appear in the automotive reference manual, "retail price" shall be determined as follows:

Number of Years Removed From Manual	Retail Price
1	75% of value of same make vehicle last appearing in manual
2	50% of value of same make vehicle last appearing in manual
3	25% of value of same make vehicle last appearing in manual
All Others	10% of value of same make vehicle last appearing in manual;

(d) In the case of used motor vehicles previously registered in this state, which are sold in this state, a trade-in allowance equal to the "retail price" of the vehicle taken in trade shall be deducted in computing the "retail price" of the vehicle sold.

(e) If a holder of a U-Drive-It permit transfers a vehicle which he has registered as a U-Drive-It within one hundred eighty (180) days of the registration, and if less than five thousand (5,000) miles have been placed on the vehicle during the period of its registration as a U-Drive-It, then the "retail price" of the vehicle shall be the same as the retail price determined in subsection (9)(b) or (c) of this section computed as of the date on which the vehicle is transferred except that the provisions of paragraph (d) of this subsection shall not apply.

(f) For dealer demonstrator motor vehicles and previous model year vehicles, "retail price" shall be eighty-five percent (85%) of the retail price as determined in paragraph (a) of this subsection or the actual sales price, exclusive of any trade-in allowance, whichever is greater. In no case shall the retail price determined under this paragraph exceed the retail price determined in paragraph (a) of this subsection or be less than the retail price determined under paragraph (b) of this subsection.

(g) If a dealer transfers a motor vehicle which he has registered as a loaner motor vehicle within one hundred eighty (180) days of the registration, and if less than five thousand (5,000) miles have been placed on the vehicle during the period of its registration as a loaner motor vehicle, then the "retail price" of the vehicle shall be the same as the retail price determined by paragraph (b) or (c) of this subsection computed as of the date on which the vehicle is transferred, except that the provisions of paragraph (d) of this subsection shall not apply.

(10) "Wrecked motor vehicle" means any motor vehicle damaged by any cause except wear and tear or rust, including but not

limited to damage caused by collision, fire, flood, wind, or vandalism. The retail price of a wrecked motor vehicle shall be the retail price as determined under subsection (9) of this section minus the average of the repair estimates submitted to the county clerk. The owner of the wrecked motor vehicle shall obtain a minimum of two (2) repair estimates from disinterested persons regularly engaged in the repair of motor vehicles and submit them to the county clerk. The estimates of repair and the wrecked condition of the vehicle shall be physically verified by a certified inspector as provided in KRS 186A.115. The fees imposed by KRS 186A.115 shall apply to verification services provided by a certified inspector.

(11) "Loaner motor vehicle" means a motor vehicle owned or registered by a dealer and which is loaned to customers of the service or repair component of the dealership.

Section 3. KRS 138.4631 is amended to read as follows:

(1) If any holder of a permit under KRS 138.463(2) fails or refuses to file a return or furnish any information requested in writing, the cabinet may, from any information in its possession, make an estimate of the permit holder's gross rental or lease charges and issue an assessment against the permit holder based on the estimated gross rental or lease charges and add a penalty of ten percent (10%) of the amount of the assessment so determined. This penalty shall be in addition to all other applicable penalties provided by law.

(2) ***If a dealer under Section 1 of this Act fails or refuses to file a return or furnish any information requested in writing, the cabinet may, from any information in its possession, make an estimate of the tax owed by the dealer on his loaner motor vehicles and issue an assessment against the dealer after adding a penalty of ten percent (10%) of the amount of the assessment so determined. The penalty shall be in addition to all other applicable penalties provided by law.***

(3) If any holder of a permit under KRS 138.463(2) ***or a dealer under Section 1 of this Act*** fails to make and file a return required by KRS 138.463 ***or Section 1 of this Act*** on or before the due date of the return or the due date as extended by the cabinet, ***or if the tax, or any installment or portion of the tax imposed by KRS 138.463 or Section 1 of this Act, is not paid on or before the date prescribed for its payment,*** then, unless it is shown to the satisfaction of the cabinet that the failure is due to a reasonable cause, five percent (5%) of the tax found to be due shall be added to the tax for each thirty (30) days or fraction thereof elapsing between the due date of the return and the date on which filed, but the total penalty shall not exceed twenty-five percent (25%) of the tax; provided, however, that in no case shall the penalty be less than ten dollars ($10).

(4)~~[(3)]~~ If the tax imposed by KRS 138.463 ***or Section 1 of this Act***, whether assessed by the cabinet***, the dealer,*** or the permit holder, or any installment or portion of the tax is not paid on or before the date prescribed for its payment, there shall be collected, as a part of the tax, interest upon the unpaid amount at the tax interest rate as defined in KRS 131.010(6) from the date prescribed for its payment until payment is actually made.

Section 4. KRS 138.463 is amended to read as follows:

(1) A holder of a permit as required under KRS 281.615 to operate as a U-Drive-It as defined in KRS 281.014 may pay the usage tax as provided in KRS 138.460 or, subject to the provisions of this section, may pay a usage tax of six percent (6%) levied upon the amount of the gross rental or lease charges paid by a customer or lessee renting or leasing a motor vehicle from such holder of the permit.

(2) The provisions of KRS 138.462 and this section shall apply to all rental and leasehold contracts entered into after March 9, 1990.

(3) A holder of a permit shall pay the usage tax as provided in KRS 138.460 unless he shows to the satisfaction of the cabinet that he is regularly engaged in the renting or leasing of motor vehicles to retail customers as a part of an established business. The issuance of a U-Drive-It permit under the provisions of KRS Chapter 281 shall create a rebuttable presumption that the holder of a permit is regularly engaged in renting or leasing. Persons first engaging in the renting or leasing of motor vehicles to retail customers shall, in addition to obtaining a permit required under KRS 281.615, demonstrate to the satisfaction of the cabinet that they are prepared to qualify under the standards set forth in this subsection.

(4) In the event the holder of such permit qualifies under subsection (3) of this section and elects to pay the usage tax by the alternate method as provided in subsection (1) of this section, or is required by subsection (8) of this section to pay by the alternate method, he shall pay the seat tax imposed by KRS 186.281(3) and in addition shall pay the monthly tax authorized by subsection (1) of this section.~~[The cabinet shall provide the holder with evidence that he has been qualified to pay the monthly tax. The holder shall present such evidence to the county clerk at the time the motor vehicle is offered for registration in Kentucky and the following provisions shall be applicable.]~~

(5) The tax authorized by subsection (1) of this section shall be the direct obligation of the holder of the permit but it may be charged to and collected from the customer in addition to the rental or lease charges. The tax due shall be remitted to the cabinet each month on forms and pursuant to regulations promulgated by the cabinet.

(6) (a) As soon as practicable after each return is received, the cabinet shall examine and audit it. If the amount of tax

computed by the cabinet is greater than the amount returned by the taxpayer, the excess shall be assessed by the cabinet within four (4) years from the date the return was filed, except as provided in paragraph (c) of this subsection, and except that in the case of a failure to file a return or of a fraudulent return the excess may be assessed at any time. A notice of such assessment shall be mailed to the taxpayer. The time herein provided may be extended by agreement between the taxpayer and the cabinet.

(b) For the purpose of paragraphs (a) and (c) of this subsection, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

(c) Notwithstanding the four (4) year time limitation of paragraph (a) of this subsection, in the case of a return where the tax computed by the cabinet is greater by twenty-five percent (25%) or more than the amount returned by the taxpayer, the excess shall be assessed by the cabinet within six (6) years from the date the return was filed.

(7) Failure of the holder of the permit to remit the taxes applicable to the rental charges as provided herein shall be sufficient cause for the Department of Vehicle Regulation to void the permit issued to such holder and the usage tax on each of the motor vehicles which had been registered by the holder under the permit shall be due and payable on the retail price of each such motor vehicle when it was first purchased by the holder.

(8) Notwithstanding the provisions of KRS 138.460 and subsection (1) of this section, a holder of a permit operating a fleet of rental passenger cars which has been registered pursuant to an allocation formula approved by the cabinet shall pay the tax by the method provided in this section. The provisions of this section shall apply to all vehicles rented by the holder in this state.

(9) The usage tax reported and paid on every rental or lease of a vehicle registered pursuant to this section shall be based on the fair market rental or lease value of the vehicle. Fair market rental or lease value shall be based on standards established by administrative regulation promulgated by the cabinet. The cabinet may remove a vehicle from the U-Drive-It program without a hearing if it is determined by the cabinet that no taxes have been remitted on that vehicle during the registration period. However, the tax reported and paid to the Transportation Cabinet shall not be less than the amount due based on the actual terms of a rental or lease agreement. The burden of proving that the consideration charged by the holder satisfies this subsection is on the holder.

SB 167, AN ACT relating to motor carriers.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 281.624 is amended to read as follows:

[~~(1)~~]The term "household goods certificate" means a certificate granting authority to operate as an irregular route common carrier transporting ***personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of the dwelling, and similar property if the transportation of the effects or property is:***

(1) Arranged and paid for by the householder, including transportation of property from a factory or store when the property is purchased by the householder with intent to use in his or her dwelling; or

(2) Arranged and paid for by another party[~~uncrated office and store furniture and used household goods, uncrated new furniture, uncrated computers and electronic equipment which because of their unusual nature or value require specialized handling and equipment usually employed in moving household goods, and crated computers and electronic equipment of unusual nature or value which are to be delivered for installation to the premises of the ultimate user; provided, however, that nothing in this section shall be construed to obviate or remove any specific restriction or limitation as to areas which may be served that presently exist in any certificate, and any limitation or restriction shall remain in effect.~~

~~(2) Any person, or his respective predecessor in interest, engaged as of December 31, 1969, in the transportation of uncrated office and store furniture and used household goods, and uncrated new furniture, pursuant to a valid certificate issued by the department authorizing the activity as an irregular route common carrier, shall, upon application, be entitled to the issuance of a household goods certificate to thereafter authorize a continuation of the same operations, including a designation of the location of the situs of the office and terminal facilities of the person utilized as of December 31, 1969. Upon petition by any interested party, or, upon its own motion if it so desires, the department shall require a hearing upon any application to establish an applicant's rights thereunder. The hearing shall be conducted in accordance with KRS Chapter 13B. Any subsequent change in situs, or additional situs to a household goods certificate shall be granted only upon application to the department in the same manner as other applications made under KRS 281.625~~].

Section 2. KRS 281.631 is amended to read as follows:

(1) Every holder of a ***regular route*** certificate of public convenience and necessity issued by the Department of Vehicle Regulation authorizing the transportation of persons[~~ or property~~] for hire, which certificate authorizes service at a point that is also a point at which service is authorized under the terms of any other certificate of the same type held by the same person, is authorized to transport persons[~~ or property, as the case may be,~~] for hire, from any point on either of said certificated routes via such common point of service to any point on any other such connecting certificated route or

routes, unless such service be restricted by the terms of any of said certificates.

(2) It is the purpose of this section to further clarify the provisions of this chapter relating to the application of the administrative and judicial interpretations of the Federal Motor Carrier Act to the administration of this chapter.

Section 3. KRS 281.680 is amended to read as follows:

(1) Under ***administrative***[~~rules and~~] regulations ***promulgated***[~~prescribed~~] by the department ***under KRS Chapter 13A***, every common carrier or irregular route common carrier ***of passengers or household goods***, except carriers operating pursuant to a[~~ local cartage certificate,~~] taxicab certificate***, a disabled person's vehicle certificate, a limousine certificate, an airport shuttle certificate,*** or an industrial bus certificate, shall maintain on file with the department a schedule of rates, fares, charges and classifications, and a time schedule, if any, of all motor vehicles operated under a certificate, and shall keep open for public inspection at designated offices so much of such schedules as the department deems necessary for public information. The carriers may become a participating party to a tariff published or issued by a tariff-issuing agency, and the issuing agent of the tariff shall file the tariff with the department, but such tariff-issuing agent may not represent any carrier in any matters before the department. Notwithstanding the exclusion of carriers operating pursuant to a[~~ local cartage certificate,~~] taxicab certificate***, a disabled person's vehicle certificate, a limousine certificate, an airport shuttle certificate,*** or an industrial bus certificate, the department may by ***administrative*** regulation require[~~ such~~] carriers to file a schedule of their rates, fares, charges, and classifications.

(2) Under ***administrative***[~~rules and~~] regulations ***promulgated***[~~prescribed~~] by the department ***under KRS Chapter 13A***, every contract carrier shall maintain on file with the department all contracts made for transportation, and shall keep open for public inspection at designated offices such contracts as the department deems necessary for public information.

(3)[~~No schedule of rates need be filed for the transportation of any commodity that has been exempted by the department, except that the department may require the filing of a schedule of rates.~~

~~(4)~~] The department shall have full power concerning the control of rates and contracts under its ***administrative***[~~rules and~~] regulations.

(4)[~~(5)~~] To ensure nondiscriminatory rates, charges, and classifications for all shippers and users of regulated transportation services for which the department prescribes rates, charges, and classifications, the department shall establish collective ratemaking procedures for all commodities and services for which it prescribes rates, charges and classifications. ***The***[~~Such~~] procedures shall assure that respective revenues and costs of carriers engaged in the transportation of the particular commodity or service, for which rates are prescribed, are ascertained.

Section 4. KRS 281.685 is amended to read as follows:

(1) ***A***[~~No~~] common carrier or irregular route common carrier ***of passengers or household goods*** shall ***not*** charge, demand, collect or receive a greater, less or different compensation for the transportation of persons or property or for any service in connection therewith, than the rates, fares and charges specified in its tariffs and classifications filed with the department and in effect at the time; ***and a***[~~nor shall any~~] common carrier or irregular route common carrier ***shall not*** refund or remit any part of the rates, fares or charges so specified, or make or give any unreasonable preference or advantage to any person, or subject any person to any unreasonable discrimination.

(2) ***A***[~~No~~] contract carrier shall ***not*** charge, demand, collect or receive a greater, less or different compensation for the transportation of persons[~~ or property~~] or for any service in connection therewith than that contained in the contract required to be filed with the department and in effect at the time; ***and a***[~~nor shall any~~] contract carrier ***shall not*** refund or remit any part of the charges specified in the contract, or make or give any unreasonable preference or advantage to any person, or subject any person to any unreasonable discrimination.

Section 5. KRS 281.690 is amended to read as follows:

(1) ***A***[~~No~~] common carrier or irregular route common carrier ***of passengers or household goods*** shall ***not*** make any change in any rate that has been duly established under this chapter except after thirty (30) days' notice to the department, which notice shall state plainly the changes proposed to be made and the proposed effective date of the change. The carrier shall also give notice of the proposed change to other interested persons in the manner as the department directs in its administrative regulations. All proposed changes shall be shown by filing new tariffs in the form and manner prescribed by the department. The department may, in accordance with ***administrative*** regulations ***and***[~~prescribe therefor,~~] upon the showing of good cause, provide for the allowance of a change in rates by holders of certificates authorizing only transportation of property upon notice less than that specified in this subsection.

(2) Whenever any tariff setting forth a change in rates is filed, the department may, upon its own initiative, and shall, upon protest filed in accordance with the administrative regulations of the department, enter upon a hearing, to be conducted in accordance with KRS Chapter 13B, concerning the lawfulness of the proposed rate. The department shall mail written notice of the hearing to the applicant, the protestant, and to any other person who, in the opinion of the department, may be interested in or affected by the proposed change in rate. The department may suspend the operation of the new rates for a period of not more than six (6) months from the proposed effective date by order, giving reasons therefor. If after the hearing the department finds the proposed rate, or any part thereof, to be unjust, unreasonable, or unjustly

discriminatory, or in violation of law, the department shall determine the just and reasonable rate to be charged and shall fix the same by final order.

(3) ***A***[~~No~~] contract carrier shall ***not*** make any change in its contract filed with the department except upon the approval of the department.

Section 6. KRS 281.990 is amended to read as follows:

(1) ***A person shall be fined not less than twenty-five dollars ($25) and no more than two hundred dollars ($200), or imprisoned for not more than thirty (30) days, or both, if the person:***

(a) [~~Any person who~~]Violates,[~~ or~~] causes, aids***,*** or abets any violation of[~~, any of~~] the provisions of this chapter***,*** or any order, rule or ***administrative*** regulation lawfully issued pursuant to authority granted by this chapter***;***

(b) [~~, or who~~]Knowingly makes any false or erroneous statement, report or representation to the Department of Vehicle Regulation with respect to any matter placed under the jurisdiction of the department by this chapter***;***

(c) [~~, or who~~]Knowingly makes any false entry in the accounts or records required to be kept pursuant to the authority granted by this chapter***;***[~~,~~] or

(d) [~~ who~~]Knowingly fails to keep, or knowingly destroys or mutilates, any[~~ such~~] accounts or records[~~, shall be fined not less than twenty five dollars ($25) nor more than two hundred dollars ($200), or imprisoned for not more than thirty (30) days, or both~~].

Every device to evade or to prevent the application of any provision of this chapter, or any lawful order, rule or ***administrative*** regulation of the department issued pursuant thereto, shall constitute a violation thereof.

(2) ***(a)*** Any person who violates KRS 281.615***(1)*** shall be fined not less than ***two thousand***[~~sixty~~] dollars ***($2,000)***[~~($60)~~] nor more than ***three thousand five***[~~two~~] hundred dollars ***($3,500)***[~~($200)~~], or imprisoned for not more than thirty (30) days or both.

(b) Any person who violates KRS 281.615(2) shall be fined not less than one thousand dollars ($1,000) nor more than one thousand five hundred dollars ($1,500), or imprisoned for not more than thirty (30) days or both.

(c) Any person who operates as a motor carrier in violation of the terms of his or her certificate or permit shall be fined not less than two hundred dollars ($200) nor more than five hundred dollars ($500), or imprisoned for not more than thirty (30) days or both.

(3) In addition to the penalties prescribed in subsection (1) of this section, in case of violation by any person in whose name an industrial bus is licensed, ***the***[~~such~~] person shall forfeit all certificates and permits held by him, and shall not be eligible to hold any certificate or permit for a period of five (5) years thereafter.

The House Committee Substitute to **SB 167** is as follows:

AN ACT relating to motor carriers.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 281.624 is amended to read as follows:

[~~(1)~~]The term "household goods certificate" means a certificate granting authority to operate as an irregular route common carrier transporting ***personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of the dwelling, and similar property if the transportation of the effects or property is:***

(1) Arranged and paid for by the householder, including transportation of property from a factory or store when the property is purchased by the householder with intent to use in his or her dwelling; or

(2) Arranged and paid for by another party[~~uncrated office and store furniture and used household goods, uncrated new furniture, uncrated computers and electronic equipment which because of their unusual nature or value require specialized handling and equipment usually employed in moving household goods, and crated computers and electronic equipment of unusual nature or value which are to be delivered for installation to the premises of the ultimate user; provided, however, that nothing in this section shall be construed to obviate or remove any specific restriction or limitation as to areas which may be served that presently exist in any certificate, and any limitation or restriction shall remain in effect.~~

~~(2) Any person, or his respective predecessor in interest, engaged as of December 31, 1969, in the transportation of uncrated office and store furniture and used household goods, and uncrated new furniture, pursuant to a valid certificate issued by the department authorizing the activity as an irregular route common carrier, shall, upon application, be entitled to the issuance of a household goods certificate to thereafter authorize a continuation of the same operations, including a designation of the location of the situs of the office and terminal facilities of the person utilized as of December 31, 1969. Upon petition by any interested party, or, upon its own motion if it so desires, the department shall require a hearing upon any application to establish an applicant's rights thereunder. The hearing shall be conducted in accordance with~~

~~KRS Chapter 13B. Any subsequent change in situs, or additional situs to a household goods certificate shall be granted only upon application to the department in the same manner as other applications made under KRS 281.625~~].

Section 2. KRS 281.631 is amended to read as follows:

(1) Every holder of a ***regular route*** certificate of public convenience and necessity issued by the Department of Vehicle Regulation authorizing the transportation of persons[~~ or property~~] for hire, which certificate authorizes service at a point that is also a point at which service is authorized under the terms of any other certificate of the same type held by the same person, is authorized to transport persons[~~ or property, as the case may be,~~] for hire, from any point on either of said certificated routes via such common point of service to any point on any other such connecting certificated route or routes, unless such service be restricted by the terms of any of said certificates.

(2) It is the purpose of this section to further clarify the provisions of this chapter relating to the application of the administrative and judicial interpretations of the Federal Motor Carrier Act to the administration of this chapter.

Section 3. KRS 281.680 is amended to read as follows:

(1) Under ***administrative***[~~rules and~~] regulations ***promulgated***[~~prescribed~~] by the department ***under KRS Chapter 13A***, every common carrier or irregular route common carrier ***of passengers or household goods***, except carriers operating pursuant to a[~~ local cartage certificate,~~] taxicab certificate***, a disabled person's vehicle certificate, a limousine certificate, an airport shuttle certificate,*** or an industrial bus certificate, shall maintain on file with the department a schedule of rates, fares, charges and classifications, and a time schedule, if any, of all motor vehicles operated under a certificate, and shall keep open for public inspection at designated offices so much of such schedules as the department deems necessary for public information. The carriers may become a participating party to a tariff published or issued by a tariff-issuing agency, and the issuing agent of the tariff shall file the tariff with the department, but such tariff-issuing agent may not represent any carrier in any matters before the department. Notwithstanding the exclusion of carriers operating pursuant to a[~~ local cartage certificate,~~] taxicab certificate***, a disabled person's vehicle certificate, a limousine certificate, an airport shuttle certificate,*** or an industrial bus certificate, the department may by ***administrative*** regulation require[~~ such~~] carriers to file a schedule of their rates, fares, charges, and classifications.

(2) Under ***administrative***[~~rules and~~] regulations ***promulgated***[~~prescribed~~] by the department ***under KRS Chapter 13A***, every contract carrier shall maintain on file with the department all contracts made for transportation, and shall keep open for public inspection at designated offices such contracts as the department deems necessary for public information.

(3)[~~ No schedule of rates need be filed for the transportation of any commodity that has been exempted by the department, except that the department may require the filing of a schedule of rates.~~

~~(4)~~] The department shall have full power concerning the control of rates and contracts under its ***administrative***[~~rules and~~] regulations.

(4)[~~(5)~~] To ensure nondiscriminatory rates, charges, and classifications for all shippers and users of regulated transportation services for which the department prescribes rates, charges, and classifications, the department shall establish collective ratemaking procedures for all commodities and services for which it prescribes rates, charges and classifications. ***The***[~~Such~~] procedures shall assure that respective revenues and costs of carriers engaged in the transportation of the particular commodity or service, for which rates are prescribed, are ascertained.

Section 4. KRS 281.685 is amended to read as follows:

(1) ***A***[~~No~~] common carrier or irregular route common carrier ***of passengers or household goods*** shall ***not*** charge, demand, collect or receive a greater, less or different compensation for the transportation of persons or property or for any service in connection therewith, than the rates, fares and charges specified in its tariffs and classifications filed with the department and in effect at the time; ***and a***[~~nor shall any~~] common carrier or irregular route common carrier ***shall not*** refund or remit any part of the rates, fares or charges so specified, or make or give any unreasonable preference or advantage to any person, or subject any person to any unreasonable discrimination.

(2) ***A***[~~No~~] contract carrier shall ***not*** charge, demand, collect or receive a greater, less or different compensation for the transportation of persons[~~ or property~~] or for any service in connection therewith than that contained in the contract required to be filed with the department and in effect at the time; ***and a***[~~nor shall any~~] contract carrier ***shall not*** refund or remit any part of the charges specified in the contract, or make or give any unreasonable preference or advantage to any person, or subject any person to any unreasonable discrimination.

Section 5. KRS 281.690 is amended to read as follows:

(1) ***A***[~~No~~] common carrier or irregular route common carrier ***of passengers or household goods*** shall ***not*** make any change in any rate that has been duly established under this chapter except after thirty (30) days' notice to the department, which notice shall state plainly the changes proposed to be made and the proposed effective date of the change. The carrier shall also give notice of the proposed change to other interested persons in the manner as the department directs in its administrative regulations. All proposed changes shall be shown by filing new tariffs in the form and manner prescribed by the department. The department may, in accordance with ***administrative*** regulations ***and***[~~prescribe therefor,~~] upon the showing of good cause, provide for the allowance of a change in rates by holders of certificates authorizing only

transportation of property upon notice less than that specified in this subsection.

(2) Whenever any tariff setting forth a change in rates is filed, the department may, upon its own initiative, and shall, upon protest filed in accordance with the administrative regulations of the department, enter upon a hearing, to be conducted in accordance with KRS Chapter 13B, concerning the lawfulness of the proposed rate. The department shall mail written notice of the hearing to the applicant, the protestant, and to any other person who, in the opinion of the department, may be interested in or affected by the proposed change in rate. The department may suspend the operation of the new rates for a period of not more than six (6) months from the proposed effective date by order, giving reasons therefor. If after the hearing the department finds the proposed rate, or any part thereof, to be unjust, unreasonable, or unjustly discriminatory, or in violation of law, the department shall determine the just and reasonable rate to be charged and shall fix the same by final order.

(3) ***A***~~[No]~~ contract carrier shall ***not*** make any change in its contract filed with the department except upon the approval of the department.

Section 6. KRS 281.990 is amended to read as follows:

(1) ***A person shall be fined not less than twenty-five dollars ($25) and no more than two hundred dollars ($200), or imprisoned for not more than thirty (30) days, or both, if the person:***

(a) ~~[Any person who]~~Violates,~~[or]~~ causes, aids***,*** or abets any violation of~~[, any of]~~ the provisions of this chapter***,*** or any order, rule or ***administrative*** regulation lawfully issued pursuant to authority granted by this chapter***;***

(b) ~~[, or who]~~Knowingly makes any false or erroneous statement, report or representation to the Department of Vehicle Regulation with respect to any matter placed under the jurisdiction of the department by this chapter***;***

(c) ~~[, or who]~~Knowingly makes any false entry in the accounts or records required to be kept pursuant to the authority granted by this chapter***;***~~[,]~~ or

(d) ~~[who]~~Knowingly fails to keep, or knowingly destroys or mutilates, any~~[such]~~ accounts or records~~[, shall be fined not less than twenty-five dollars ($25) nor more than two hundred dollars ($200), or imprisoned for not more than thirty (30) days, or both]~~.

Every device to evade or to prevent the application of any provision of this chapter, or any lawful order, rule or ***administrative*** regulation of the department issued pursuant thereto, shall constitute a violation thereof.

(2) ***(a)*** Any person who violates KRS 281.615***(1)*** shall be fined not less than ***two thousand***~~[sixty]~~ dollars ***($2,000)***~~[($60)]~~ nor more than ***three thousand five***~~[two]~~ hundred dollars ***($3,500)***~~[($200)]~~, or imprisoned for not more than thirty (30) days or both.

(b) Any person who operates as a motor carrier in violation of the terms of his or her certificate or permit shall be fined not less than two thousand dollars ($2,000) nor more than three thousand five hundred dollars ($3,500), or imprisoned for not more than thirty (30) days or both.

(3) In addition to the penalties prescribed in subsection (1) of this section, in case of violation by any person in whose name an industrial bus is licensed, ***the***~~[such]~~ person shall forfeit all certificates and permits held by him, and shall not be eligible to hold any certificate or permit for a period of five (5) years thereafter.

(4) A person who violates KRS 281.615(2) shall not be subject to a penalty under this section.

SB 259, AN ACT relating to motor carriers.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 281.632 is amended to read as follows:

(1) To enable the provision of service for which there is an immediate and urgent need to or from a point or points or within a territory having no carrier service capable of meeting such need, the department may, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a common carrier or contract carrier by motor vehicle or by an applicant for a nonprofit bus certificate, as the case may be. Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the department shall specify but for not more than an aggregate of one hundred eighty (180) days, and shall create no presumption that corresponding permanent authority will be granted thereafter. ***For good cause shown, the temporary authority period may be extended for one (1) or more additional one hundred eighty (180) day periods, as needed to allow the department's hearing process to reach a conclusion.***

(2) Pending the determination of an application filed with the department for approval of a consolidation or merger of the properties of two (2) or more motor carriers, or of a purchase, lease, or contract to operate the properties of one or more motor carriers, the department may, in its discretion, and without hearings or other proceedings, grant temporary approval, for a period not exceeding one hundred eighty (180) days, of the operation of the motor carrier properties sought to be acquired by the persons proposing in such pending application to acquire such properties, if it shall appear

that failure to grant such temporary approval may result in destruction of or injury to such motor carrier properties sought to be acquired, or to interfere substantially with their future usefulness in the performance of adequate and continuous service to the public. ***For good cause shown, the temporary authority period may be extended for one (1) or more additional one hundred eighty (180) day periods, as needed to allow the department's hearing process to reach a conclusion.***

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bill has been posted for Committee consideration:

Health and Welfare: **HB 679**

Calendar

HB 377, SB 149, SB 150, SB 152, SB 153, SB 156, SB 158, SB 162, SB 173 SB 174, SB 175, SB 176, SB 178, SB 190, HB 568, HB 521, HB 572, HB 577, HB 631, HB 644, HB 673, HCR 77, HB 565, HB 602, HB 609, HB 632, HB 649, HB 446, HB 485, HB 532, HB 279, HB 467, HB 545, HB 548, HB 624, SB 13, SB 43, and **SB 182** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Representative Adkins moved that the rules be suspended to grant floor privileges and to act upon a Legislative Citation. Agreed. Representative Adkins moved the adoption of the following **Legislative Citation No. 117**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes and commends Lori Menshouse for the elegance and grace that she has brought to all her endeavors as the 1997 Miss Kentucky. This extraordinary young lady has worked diligently to represent her community and state with honor and integrity and throughout, has brought a gracious charm and endearing compassion to all those whom she has encountered. The members of the Kentucky House of Representatives are pleased to join with Representative Rocky Adkins in applauding the stellar achievements of Lori Menshouse and in extending to her best wishes as she continues to serve both her community and the Commonwealth of Kentucky. **Legislative Citation No. 117** was adopted without objection. (See February 26, 1998 roll call to co-sponsor **Legislative Citation No. 117** - Appendix.)

Floor Amendments (Continued)

Floor Amendment No. 1 to **HB 492**, by Representative Wayne:

On page 3, line 10, after "***(5%)***" by deleting "***or which***"; and

On page 3, line 11, by deleting "***has a value of at least ten thousand dollars ($10,000)***".

Floor Amendment No. 2 to **HB 273**, by Representative Wayne:

On page 1, line 17, by removing the brackets and strikethroughs; and

On page 4, lines 24 and 25, by removing the brackets and strikethroughs; and

On page 4, line 25, by changing "two (2)" to "***four (4)***".

Floor Amendment No. 1 to **HB 274**, by Representative Wayne:

On page 3, line 16, after "***authority***" by inserting "***, if applicable,***".

Floor Amendment No. 1 to **HB 271**, by Representative Wayne:

On page 2, line 7, after "***basis***" by inserting "***for a period of time not less than six (6) months***"; and

On page 4, line 8-9, by deleting "***, or which has a value of at least ten thousand dollars ($10,000)***"; and

On page 4, lines 11-12, by deleting "***or which has a value of at least ten thousand dollars ($10,000),***".

Floor Amendment No. 1 to **HB 272**, by Representative Wayne:

On page 4, line 13, by deleting "***or which has a value of at least ten thousand dollars ($10,000)***"; and

On page 7, before line 1, by inserting the following:

"SECTION 4. A NEW SECTION OF KRS CHAPTER 11A IS CREATED TO READ AS FOLLOWS:

A state agency may contract with a former officer or public servant within six (6) months after the officer or public servant leaves state employment concerning matters in which the former officer or public servant was not directly involved during his last thirty-six (36) months of state employment if the contract is limited to a period of six (6) months or less and if the contract receives approval from the commission."; and

On page 7, line 1, by changing the "4" to a "5".

Floor Amendment No. 13 to the Committee Substitute No. 2 to **HB 74**, by Representative Stewart:

On page 19, between lines 16 and 17, insert the following new section:

"Section 10. KRS 132.200 is amended to read as follows:

All property subject to taxation for state purposes shall also be subject to taxation in the county, city, school, or other taxing district in which it has a taxable situs, except the classes of property described in KRS 132.030 and 132.050, and the following classes of property, which shall be subject to taxation for state purposes only:

(1) Farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operation;

(2) Livestock, ratite birds, and domestic fowl;

(3) Capital stock of savings and loan associations;

(4) Machinery and products in course of manufacture, of individuals or corporations actually engaged in manufacturing, and their raw material actually on hand at their plant for the purpose of manufacture. Individuals or corporations actually engaged in the printing, publication, and distribution of a newspaper or operating a job printing plant shall be deemed to be actually engaged in manufacturing;

(5) Commercial radio, television, and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna; however, radio or television towers not essential to the production of the wave or signal broadcast shall not be included;

(6) Unmanufactured agricultural products. They shall be exempt from taxation for state purposes to the extent of the value, or amount, of any unpaid nonrecourse loans thereon granted by the United States government or any agency thereof, and except that cities and counties may each impose an ad valorem tax of not exceeding one and one-half cents ($0.015) on each one hundred dollars ($100) of the fair cash value of all unmanufactured tobacco and not exceeding four and one-half cents ($0.045) on each one hundred dollars ($100) of the fair cash value of all other unmanufactured agricultural products, subject to taxation within their limits that are not actually on hand at the plants of manufacturing concerns for the purpose of manufacture, nor in the hands of the producer or any agent of the producer to whom the products have been conveyed or assigned for the purpose of sale;

(7) Money in hand, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, and shares of stock. Nothing in this section shall forbid local taxation of franchises of corporations or of financial institutions, as provided for in KRS 136.575, or domestic life insurance companies;

(8) All privately-owned leasehold interest in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;

(9) Property which has been certified as a pollution control facility as defined in KRS 224.01-300;

(10) Property which has been certified as an alcohol production facility as defined in KRS 247.910;

(11) On and after January 1, 1977, the assessed value of unmined coal shall be included in the formula contained in KRS 132.590(9) in determining the amount of county appropriation to the office of the property valuation administrator;

(12) Tangible personal property located in a foreign trade zone as designated under 19 U.S.C. sec. 81;

(13) Motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043. However, nothing herein shall be construed to exempt historical motor vehicles from the usage tax imposed by KRS 138.460 based on the vehicle's fair market value at the time of sale;

(14) Property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;

(15) All motor vehicles held for sale in the inventory of a licensed motor vehicle dealer, which are not currently titled and registered in Kentucky and are held on an assignment pursuant to the provisions of KRS 186A.230;

(16) Machinery or equipment owned by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes as defined in KRS 139.095; ~~[and]~~

(17) New farm machinery and other equipment held in the retailer's inventory for sale under a floor plan financing

arrangement by a retailer, as defined under KRS 365.800***; and***

(18) Motor vehicles registered to individuals that have been married for at least fifty (50) continuous years."; and

On page 19, line 17, by renumbering "Section 10" as "Section 11"; and

On page 19, line 25, by renumbering "Section 11" as "Section 12".

Floor Amendment No. 1 to **SB 13**, by Representative Vincent:

On page 1, line 7, after the words "***full-time deputy sheriff***" by inserting the following: "***, including those providing court security,***".

Floor Amendment No. 4 to the Committee Substitute No. 2 to **HB 455**, by Representative Bowling:

On page 107, lines 17 and 18, by deleting "***Circuit court and each District Court by the Administrative Office of the Courts***" and inserting in lieu thereof "***judicial circuit***"; and

On page 107, line 19, by placing "***judicial***" before circuit; and

On page 107, line 19, by deleting "***or district, as appropriate***" and inserting in lieu thereof "***, in cooperation with the Commonwealth's Attorney***"; and

On page 108, line 11, by deleting "***a minor***" and inserting in lieu thereof "***Any person***"; and

On page 108 line 26, by deleting "***All fees collected shall be placed in a trust and agency account that shall***"; and

On page 108, line 27, by deleting the entire line; and

On page 109, by deleting the first line in its entirety; and

On page 110, line 2, by deleting "***Administrative Office of the Courts***" and inserting in lieu thereof "***Division of Probation and Parole***"; and

On page 110, lines 12 and 13, by deleting "***Administrative Office of the Courts***" and inserting in lieu thereof "***Division of Probation and Parole***"; and

Report On Enrolled Bills

The Committee on Enrollment reported that **HB 58, HB 106, HB 201, HB 202, HB 245, HB 287, HB 383, HCR 9, HCR 10, HCR 32, HCR 45,** and **HCR 46** have been examined and found correctly enrolled. Said Bills and Resolutions were read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -2:32 p.m.)

Recess

Representative Stumbo moved to suspend the rules to allow the House to recess for a Committee on Rules meeting in the Speaker's Office. Agreed. At the appointed hour, the Speaker resumed the Chair and called the House to order.

Representative Stumbo moved that the rules be suspended for a Committee on Rules Report. Agreed.

Report of Committees (Continued)

The Committee on Rules reported that **SB 102, HB 406, HB 545, HB 572, HB 577, HB 602, HB 609, HB 624, HB 631, HB 649, SB 149, SB 150, SB 152, SB 153, SB 156, SB 158, SB 162, SB 173, SB 174, SB 175, SB 176, SB 178, SB 182, SB 190,** and **HB 74** have been posted for passage in the Orders of the Day for February 27, 1998.

The Committee on Rules reported that the following Bills have been recommitted:

Appropriations and Revenue: **HB 249, HB 617, HB 377, HB 532**

Floor Amendments (Continued)

Floor Amendment No. 6 to the Committee Substitute No. 2 to **HB 455**, by Representative Damron:

On page 145, between lines 14 and 15, to insert the following:

"Section 121. KRS 95.435 is amended to read as follows:

(1) The police department in cities of the second class, and urban-county government shall take charge of property, within their jurisdiction, alleged to be or suspected of being the proceeds of crime, property taken from the person of a prisoner, lost or abandoned property taken into the custody of any member of the police force or criminal court, and property taken from persons supposed to be insane, intoxicated or otherwise incapable of taking care of themselves. The officer or court having custody of such property shall as soon as practicable deliver it into the custody of the police department.

(2) All such property shall be particularly described and registered by the police department in a book kept for that purpose, containing the name of the owner, if ascertained, the place where found, the name of the person from whom taken, with the general circumstances, the date of its receipt, the name of the officer recovering the property, the names of all claimants thereto, and any final disposition of the property. The police department shall advertise the property pursuant to KRS Chapter 424 for the information of the public as to the amount and disposition of the property.

(3) If any property in the custody of the police department is desired as evidence in any criminal court, such property shall be delivered to any officer who presents an order to that effect from the court. Such property shall not be retained in the court, but shall be returned to the police department.

(4) All property ***except firearms*** that remains in the custody of the police department for three (3) months, without any lawful claimant thereto, may be sold at public auction in a suitable room designated for that purpose, after having been advertised pursuant to KRS Chapter 424. The proceeds of such sales shall be paid into the police and firefighters' pension fund of said city or urban-county government. ***Firearms shall be disposed of as provided by KRS 500.090.***"; and

To renumber the ensuing sections accordingly.

Floor Amendment No. 7 to the Committee Substitute No. 2 to **HB 455**, by Representative Damron:

On page 108, line 11, to delete "***minor***" and to insert in lieu thereof "***person***".

Floor Amendment No. 8 to the Committee Substitute No. 2 to **HB 455**, by Representative Damron:

On page 130, lines 7 through 27, to delete the same; and
On page 131, lines 1 through 27, to delete the same; and
On page 132, lines 1 through 27, to delete the same; and
On page 133, lines 1 through 27, to delete the same; and
On page 134, lines 1 thorough 27, to delete the same; and
On page 135, lines 1 and 2, to delete the same; and
To renumber the ensuing sections accordingly.

Floor Amendment No. 9 to the Committee Substitute No. 2 to **HB 455**, by Representative Damron:

On page 145, between lines 14 and 15, to insert the following:

"SECTION 121. A NEW SECTION OF KRS CHAPTER 508 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of disarming a peace officer when he intentionally:

(a) Removes a firearm or other deadly weapon from the person of a peace officer when the peace officer is acting within the scope of his official duties; or

(b) Deprives a peace officer of the officer's use of a firearm or deadly weapon when the peace officer is acting within the scope of his official duties.

(2) Disarming a peace officer is a Class D felony.

(3) The provisions of this section shall not apply when:

(a) The defendant does not know or could not reasonably have known that the person disarmed was a peace officer; or

(b) The peace officer was, at the time of the disarming or incident thereto, engaged in felonious conduct."; and

To renumber the ensuing sections accordingly.

Floor Amendment No. 10 to the Committee Substitute No. 2 to **HB 455**, by Representative Damron:

On page 145, between lines 14 and 15, to insert the following:

"Section 121. KRS 438.250 is amended to read as follows:

(1) When a public servant, as defined in KRS 521.010, or victim of a crime is bitten by, suffers a puncture wound caused by, or is exposed to the blood or body fluids of a criminal defendant, inmate, parolee, or probationer or the blood or body fluids of a criminal defendant, inmate, parolee, or probationer have come into contact with the skin or unprotected clothing of a public servant during any incident in which the public servant and the criminal defendant, inmate, parolee, or probationer are involved, the criminal defendant, inmate, parolee, or probationer shall be ordered to submit to testing of the blood for human immunodeficiency virus (HIV)***, hepatitis A and B, and tuberculosis***.

(2) The written results of the testing shall be made available to each public servant, criminal defendant, inmate, parolee, or probationer coming within the purview of subsection (1). However, the results shall not be public records and shall be disclosed to others only on a need-to-know basis.

(3) If a criminal defendant, inmate, parolee, or probationer fails or refuses to be tested as ordered, he may be held in criminal contempt. A Circuit or District Judge shall compel the criminal defendant, inmate, parolee, or probationer to undergo the testing required herein if he fails or refuses to do so. Undergoing compulsory testing after a failure or refusal to be tested shall not relieve the criminal defendant, inmate, parolee, or probationer of the liability imposed by this subsection.

(4) The costs of the testing shall be borne by the criminal defendant, inmate, parolee, or probationer unless he is determined unable to pay for the test by a court of competent jurisdiction for criminal defendants and probationers and by the Department of Corrections pursuant to their indigency standards for inmates and parolees, in which case the Commonwealth shall pay for the testing.

(5) The provisions of subsections (1) to (4) of this section shall apply to juveniles falling within any category specified in subsections (1) to (4) of this section as well as to adults."; and

To renumber the ensuing sections accordingly.

Floor Amendment No. 11 to the Committee Substitute No. 2 to **HB 455**, by Representative Damron:

On page 145, between lines 14 and 15, to insert the following:

"SECTION 121. A NEW SECTION OF KRS CHAPTER 197 IS CREATED TO READ AS FOLLOWS:

(1) No person who is incarcerated by a court of law and being detained in any public or private prison, correctional facility, jail, temporary holding center, pre-release center, or halfway house shall have access to or use of any of the following types of equipment purchased, leased, or otherwise provided by public funds, regardless of the reason for the sentence:

(a) Free-weight equipment, commonly known as barbells or dumbbells;

(b) Weight-machine equipment that utilizes weight plates, tension bands, or any similar device that provides weight-training resistance;

(c) Any exercise device or equipment designed to increase muscle mass or strength; or

(d) Any other device deemed by correctional facility personnel to allow inmates to increase their physical strength, thus increasing physical risk to corrections personnel or, upon release, to police officers or potential crime victims.

(2) No person who is incarcerated by a court of law and being detained in any public or private prison, correctional facility, jail, temporary holding center, pre-release center, or halfway house shall have access to or use of any of the following programs supported by state, federal, or local government funds, or provided by employees of the facility:

(a) Boxing;

(b) Wrestling;

(c) Karate, judo, or martial arts of any form; or

(d) Any other program deemed by correctional facility personnel to allow inmates to increase their physical strength or fighting skills, thus increasing physical risk to corrections personnel or, upon release, to police officers or potential crime victims.

(3) Nothing in this section shall be construed to prohibit an inmate from engaging in physical activities such as basketball, jogging, stationary-exercise bicycles, calisthenics supervised by corrections staff, and other forms of exercise not for the primary purpose of increasing their physical strength or fighting skills, thus increasing physical risk to corrections personnel or, upon release, to police officers or potential crime victims.

SECTION 122. A NEW SECTION OF KRS CHAPTER 441 IS CREATED TO READ AS FOLLOWS:

(1) No person who is incarcerated by a court of law and being detained in any correctional facility, jail, or temporary holding center shall have access to or use of any of the following types of equipment purchased, leased, or otherwise provided by public funds, regardless of the reason for the sentence:

(a) Free-weight equipment, commonly known as barbells or dumbbells;

(b) Weight-machine equipment that utilizes weight plates, tension bands, or any similar device that provides weight-training resistance;

(c) Any exercise device or equipment designed to increase muscle mass or strength; or

(d) Any other device deemed by correctional facility personnel to allow inmates to increase their physical strength, thus increasing physical risk to corrections personnel or, upon release, to police officers or potential crime victims.

(2) No person who is incarcerated by a court of law and being detained in any correctional facility, jail, or temporary holding center shall have access to or use of any of the following programs, whether the programs are supported by state, federal, or local government funds, or provided by employees of the facility:

(a) Boxing;

(b) Wrestling;

(c) Karate, judo, or martial arts of any form; or

(d) Any other program deemed by correctional facility personnel to allow inmates to increase their physical strength or fighting skills, thus increasing physical risk to corrections personnel or, upon release, to police officers or potential crime victims.

(3) Nothing in this section shall be construed to prohibit an inmate from engaging in physical activities such as basketball, jogging, stationary exercise bicycles, calisthenics supervised by corrections staff, and other forms of exercise not for the primary purpose of increasing their physical strength or fighting skills, thus increasing physical risk to corrections personnel or, upon release, to police officers or potential crime victims.

Section 123. (1) Any facility that permits activities prohibited by Sections 118 or 119 of this Act shall remove and suspend all equipment obtained with public funds and prohibited training programs funded by public funds immediately upon the effective date of this Act.

(2) All weight-lifting and boxing equipment obtained with public funds in the possession of any of the correctional facilities shall be liquidated as follows:

(a) All equipment shall be given to the facility's correctional officers for use in the correctional officer and staff recreation areas by corrections personnel.

(b) Extra equipment not utilized by the correctional officers shall be donated through lottery drawing to law enforcement agencies in the surrounding area for use by law enforcement personnel.

(c) Any remaining equipment not utilized by corrections officers or law enforcement agencies shall be donated through lottery drawing to emergency medical services or fire and rescue service agencies for use by their personnel."; and

To renumber the ensuing sections accordingly.

Floor Amendment No. 1 to **HB 515**, by Representative Cave:

On page 3, line 6, by deleting the bracket and strikthrough; and

On page 3, line 7, by inserting at the beginning of the line:

"*(f) With the approval of the commissioner, an independent contractor that solicits mortgage loans for only one (1) licensed mortgage loan company or licensed mortgage loan broker may be exempted from obtaining a license under this chapter if:*

1. The licensed mortgage loan company or licensed mortgage loan broker notifies the department that it will assume legal responsibility for the actions of the independent contractor in complying with the provisions of KRS Chapter 294; and

2. The licensed mortgage loan company or licensed mortgage loan broker provides the department with proof that its bond will cover the independent contractor"; and

On page 3, line 7, by placing "[" before "~~(h)~~".

Floor Amendment No. 14 to the Committee Substitute No. 2 to **HB 74**, by Representative Hatcher:

On page 7, line 21, after the word "***means***" and before the word "***the***" insert "***either***"; and

On page 7, line 23, after the word "*seller*" and before the period "*.*" insert:

"*, or the average trade-in value given in the automotive reference manual prescribed by the Revenue Cabinet,*

excluding any amount allowed as a trade-in allowance by the seller, whichever value is less"; and

On page 7, line 27, after the word "***be***" delete the word "***established***" and insert:

"***the average trade-in value given in the automotive reference manual prescribed***"; and

On page 7, line 27, after the word "***Cabinet***" insert "***; and***"; and

On page 8, lines 1 and 2, by deleting lines 1 and 2 in their entirety.

Floor Amendment No. 15 to the Committee Substitute No. 2 to **HB 74**, by Representative Anderson:

On page 1, line 8, after the word "***average***" delete the word "***trade-in***" and insert in lieu thereof "***loan***"; and

On page 19, lines 17 through 24, by deleting lines 17 through 24 in their entirety and inserting in lieu thereof the following:

"Section 10. The amendment contained in Section 1 of this Act shall apply to tax assessments made on or after January 1, 1999.".

Floor Amendment No. 16 to the Committee Substitute No. 2 to **HB 74**, by Representative Anderson:

On page 5, line 22, after the word "be" delete the remainder of the line in its entirety; and

On page 5, lines 23 through 26, by deleting lines 23 through 26 in their entirety and inserting in lieu thereof the following:

"***the total consideration given at the time of purchase or at a later date, including all equipment and accessories, standard and optional, from an automotive reference manual prescribed by the Revenue Cabinet, for any motor vehicle taken in trade, as attested to in a notarized affidavit signed by both the buyer and the seller. The signatures of the buyer and seller shall be individually notarized. Total consideration given shall not include:***

1. Any amount allowed as a trade-in allowance by the seller, if the amount allowed is disclosed in the notarized affidavit;

2. Any amount allowed as a manufacturer or dealer rebate if the rebate is provided at the time of purchase and is applied to the purchase of the motor vehicle;

3 Any interest payments to be made over the life of a loan for the purchase of a motor vehicle; and

4. Any item not considered to be equipment or accessories.

If a notarized affidavit signed by both the buyer and seller is not available to establish the total consideration given for a motor vehicle, "retail price" shall be established by the Revenue Cabinet;"; and

On page 5, line 27, delete the subparagraph number "***1.***"; and

On page 5, line 27, by placing an opening bracket before the word "Ninety" and striking through the existing language on line 27; and

On page 6, lines 2 through 7, by deleting all the new language on lines 2 through 7; and

On page 6, line 2, by deleting the opening and closing brackets; and

On page 6, lines 1 through 9, by striking through all the existing language on lines 1 through 9 and by placing a closing bracket after the semicolon ";" on line 9.

Floor Amendment No. 1 to **HB 337**, by Representative R. Adams:

On page 1, line 11, following "***installments.***" to add the following:

"***The first payment shall be accompanied by a handling fee of two dollars and fifty-cents ($2.50) to be paid directly to the Circuit Clerk and to be used to defray the costs of operation of the Circuit Clerk's office.***"

Floor Amendment No. 12 to the Committee Substitute No. 2 to **HB 455**, by Representative Damron:

On page 145, between lines 14 and 15, to insert the following:

"SECTION 121. A NEW SECTION OF KRS CHAPTER 16 IS CREATED TO READ AS FOLLOWS:

(1) Subject to the duty to return confiscated firearms to innocent owners pursuant to Section 124 of this Act, all firearms confiscated by the Kentucky State Police and not retained for official use pursuant to Section 124 of this

Act shall be sold at public auction to federally licensed firearms dealers holding a license appropriate for the type of firearm sold. Prior to the sale of any firearm, the Kentucky State Police shall make an attempt to determine if the firearm to be sold has been stolen or otherwise unlawfully obtained from an innocent owner and return the firearm to its lawful innocent owner, unless that person is ineligible to purchase a firearm under federal law.

(2) The proceeds of firearms sales shall be utilized by the Kentucky State Police to provide grants to city, county, charter county, and urban-county police and sheriff's departments for the purchase of body armor for sworn peace officers of those departments. Body armor purchased by the department receiving grant funds shall meet or exceed the standards issued by the National Institute of Justice for body armor. No police or sheriff's department shall apply for a grant to replace existing body armor unless that body armor has been in actual use for a period of five (5) years or longer.

Section 122. KRS 15.210 is amended to read as follows::

(1) Property taken by the Kentucky State Police shall be placed with the property officer of the post to which the officer is assigned.

(2) Property which is forfeited may be disposed of as provided by KRS 500.090; however, the proceeds of any sale shall go to the state ***or be distributed as otherwise provided by law***.

(3) All other property may be disposed of as provided in KRS 67.592 and 67.594 except that all proceeds from any sale shall go to the state.

Section 123. KRS 237.090 is amended to read as follows:

Any firearm or ammunition forfeited pursuant to KRS 237.060 to 237.090 shall, upon order of a court of competent jurisdiction, ***be disposed of***~~[destroyed, sold,]~~ or retained as provided in KRS 500.090.

Section 124. KRS 500.090 is amended to read as follows:

(1) All property which is subject to forfeiture under any section of the Kentucky Penal Code shall be disposed of in accordance with this section.

(a) Property ***other than firearms*** which is forfeited under any section of this code may, upon order of the trial court, be destroyed by the sheriff of the county in which the conviction was obtained.

(b) Property ***other than firearms*** which is forfeited under any section of this code may, upon order of the trial court, be sold at public auction. The expenses of keeping and selling such property and the amount of all valid recorded liens that are established by intervention as being bona fide shall be paid out of the proceeds of the sale. The balance shall be paid to:

1. The state if the property was seized by an agency of the state or peace officer thereof;
2. The county, if the property was seized by the sheriff or an agency or peace officer of the county;
3. The Department of Fish and Wildlife Resources, if the property was seized by a peace officer of the Department of Fish and Wildlife or was seized by any other officer for violation of KRS Chapter 150;
4. The city, if the property was seized by the city or by an agency or peace officer thereof and the property was delivered to the city property clerk;
5. The city (ninety percent (90%) of the proceeds) and the sheriff (ten percent (10%) of the proceeds) if the property was seized by the city or by an agency or peace officer thereof and the property was delivered to the sheriff or the county police; or
6. The state, if the property was seized by any combination of agencies listed above.

(c) ***Subject to the duty to return confiscated firearms to innocent owners pursuant to this section, all firearms confiscated by a state or local law enforcement agency, all firearms ordered forfeited by a court, and all abandoned firearms coming into the custody of a state or local law enforcement agency and not retained for official use shall be sold at public auction to federally licensed firearms dealers holding a license appropriate for the type of firearms sold. Prior to the sale of any firearm, the law enforcement agency shall make a bona fide attempt to determine if the firearm to be sold has been stolen or otherwise unlawfully obtained from an innocent owner and return the firearm to its lawful innocent owner, unless that person is ineligible to purchase a firearm under federal law. This subsection relating to auction of firearms shall not apply to firearms auctioned by the Department of Fish and Wildlife that may be sold to individual purchasers residing in Kentucky who are eligible under federal law to purchase firearms of the type auctioned.***

(d) Proceeds from firearms sales shall be utilized by the law enforcement agency for the purchase of body armor meeting National Institute of Justice Standards for sworn officers of the law enforcement agency or for the purchase of firearms, ammunition, or range facilities, or a combination thereof, by the law enforcement agency. This subsection shall not apply to the Department of Fish and Wildlife.

(e) If property which is forfeited under any section of this code is determined by the trial court to be worthless, encumbered with liens in excess of its value, or otherwise a burdensome asset, the court may abandon any interest in such property. Property which is abandoned pursuant to this section shall be returned to the lawful claimant upon payment of expenses for keeping the property.

(f)[~~(d)~~] Property which is forfeited under any section of this code may, upon order of the trial court, be retained for official use in the following manner. Property which has been seized by an agency of the state may be retained for official state use. Property which has been seized by an agency of county, city, or urban-county government may be retained for official use by the government whose agency seized the property or for official state use. Property seized by any other unit of government may be retained only for official state use. The expenses for keeping and transferring such property shall be paid by the unit of government by which the property is retained.

(2) Money which has been obtained or conferred in violation of any section of this code shall, upon conviction, be forfeited for the use of the state. This subsection shall not apply when, during the course of the proceeding in which the conviction is obtained, the person from whom said money was unlawfully acquired is identified.

(3) Property forfeited under any section of this code shall be disposed of in accordance with this section only after being advertised pursuant to KRS Chapter 424. This subsection shall not apply to property which is designed and suitable only for criminal use or to money forfeited under subsection (2) of this section.

(4) The trial court shall remit the forfeiture of property when the lawful claimant:

(a) Asserts his claim before disposition of the property pursuant to this section;

(b) Establishes his legal interest in the property; and

(c) Establishes that the unlawful use of the property was without his knowledge and consent. Subsection (4) shall not apply to a lienholder of record when the trial court elects to dispose of the property pursuant to subsection (1)(b) of this section.

(5) For purposes of this section, "lawful claimant" means owner or lienholder of record.

(6) Before property which has had its identity obscured in violation of KRS 514.120 may be sold or retained for official use as provided in this section, the court shall cause a serial or other identifying number to be placed thereon and a record of the number assigned shall be placed in the court order authorizing the sale or retention of the property. This number shall be assigned, whenever applicable, in consultation with the Kentucky State Police and any other state or federal regulatory agency. The purchaser of the property shall be given a document stating that the property had been forfeited pursuant to law and that a number, shown on the document, has been assigned which shall be deemed as compliance of the owner with KRS 514.120. When property is returned to an owner pursuant to this section and its identity has been obscured by another person in violation of KRS 514.120 the court shall provide a document to the owner relieving him of liability for its continued possession. This document shall serve as evidence of compliance with KRS 514.120 by the owner or any person to whom he lawfully disposes of the property. This section shall not apply to any person after property has been sold or returned in compliance with this section, who violates the provisions of KRS 514.120 with respect to that property.

(7) Before forfeiture of any property under this section it shall be the duty of the trial court to determine if a lawful owner or claimant to the property has been identified or is identifiable. If a lawful owner or claimant has been identified or is identifiable the court shall notify the owner or claimant that the property is being held and specify a reasonable period of time during which the claim may be made, or may, in lieu thereof, order the return of the property to the lawful owner or claimant. If the lawful owner or claimant does not assert his claim to the property after notification or if he renounces his claim to the property, the property shall be disposed of as provided in this section. It shall be the duty of all peace officers and other public officers or officials having knowledge of the lawful owner or claimant of property subject to forfeiture to report the same to the trial court before the act of forfeiture occurs.

SECTION 125. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) When a police department, sheriff's department, or other agency of city, county, urban-county, or charter county government or other unit of local government disposes of firearms or ammunition owned by that unit of local government, the disposition shall be by:

(a) Public auction to persons eligible under federal law to purchase the type of firearm or ammunition being offered for sale;

(b) Trade to the federally licensed firearms dealer providing new firearms or ammunition to the agency; or

(c) Transfer to another government agency or government-operated museum in Kentucky for official use or display.

(2) If the firearms or ammunition are sold, the proceeds of the sale shall be utilized solely for the purchase of body armor meeting or exceeding National Institute of Justice standards, firearms, ammunition, or range facilities, or a combination thereof, by the agency of government.

SECTION 126. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) When an agency of Kentucky state government disposes of firearms or ammunition owned by that agency, the disposition shall be by:

- *(a) Public auction to persons who are eligible under federal law to purchase the type of firearm or ammunition;*
- *(b) Trade to the federally licensed firearms dealer providing new firearms or ammunition to the agency;*
- *(c) Transfer to another government agency or government-operated museum in Kentucky for official use or display; or*
- *(d) Sale to a retiring employee as authorized by law.*

(2) If the firearms or ammunition are sold, the proceeds of the sale shall be utilized solely for the purchase of body armor meeting or exceeding National Institute of Justice standards, firearms, ammunition, or range facilities, or a combination thereof, by the agency of government. The provisions of this subsection shall not apply to the Department of Fish and Wildlife."; and

To renumber the ensuing sections accordingly.

Orders of the Day

HB 205 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative L. Clark moved that **HB 205** be passed.

On the roll call the vote was: Yeas 86, Nays 0 (See February 26, 1998 roll call on **HB 205** - Appendix.) **HB 205** was passed and the title agreed to. Representative L. Clark moved that the vote by which **HB 205** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 189, with Committee Substitute and Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Marzian moved the adoption of the Committee Substitute to **HB 189**. Agreed.

Representative Marzian moved that **HB 189**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 79, Nays 12 (See February 26, 1998 roll call on **HB 189** - Appendix.) **HB 189**, by way of Committee Substitute, was passed. Representative Marzian moved the adoption of Committee Amendment No. 1 Title to the Committee Substitute to **HB 189**. Agreed; and the title was agreed to. Representative Marzian moved that the vote by which **HB 189**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 207 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Ford moved that **HB 207** be passed.

On the roll call the vote was: Yeas 95, Nays 0 (See February 26, 1998 roll call on **HB 207** - Appendix.) **HB 207** was passed and the title agreed to. Representative Ford moved that the vote by which **HB 207** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 332, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative G. Graham moved the adoption of the Committee Substitute to **HB 332**. Agreed.

Representative G. Graham moved that **HB 332**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 93, Nays 2 (See February 26, 1998 roll call on **HB 332** - Appendix.) **HB 332**, by way of Committee Substitute, was passed and the title agreed to. Representative G. Graham moved that the vote by which **HB 332**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 13 to the Committee Substitute No. 2 to **HB 455**, by Representative Geveden:

On page 3, lines 21 and 22, by deleting "***or post-adjudication facilities***"; and

On page 3, line 24, by deleting "***, subject to increases approved by the department***"

Orders of the Day (Continued)

HB 440 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 440** be passed.

On the roll call the vote was: Yeas 95, Nays 0 (See February 26, 1998 roll call on **HB 440** - Appendix.) **HB 440** was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 440** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 451 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 451** be passed.

On the roll call the vote was: Yeas 85, Nays 2 (See February 26, 1998 roll call on **HB 451** - Appendix.) **HB 451** was passed and the title agreed to. Representative Stumbo moved that the vote by which **HB 451** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 453, with Committee Substitute and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Geveden moved the adoption of the Committee Substitute to **HB 453**. Agreed.

Representative Geveden moved the adoption of Floor Amendment No. 1 to the Committee Substitute to **HB 453**. Agreed.

Representative Geveden moved that **HB 453**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 80, Nays 9 (See February 26, 1998 roll call on **HB 453** - Appendix.) **HB 453**, by way of Committee Substitute as amended, was passed and the title agreed to. Representative Geveden moved that the vote by which **HB 453**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

SB 155 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **SB 155** be passed.

On the roll call the vote was: Yeas 90, Nays 0 (See February 26, 1998 roll call on **SB 155** - Appendix.) **SB 155** was passed and the title agreed to. Representative Stumbo moved that the vote by which **SB 155** was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 22 to the Committee Substitute No. 2 to **HB 74**, by Representative Anderson:

On page 5, line 23, by deleting "***including***" and inserting in lieu thereof "***excluding***".

Floor Amendment No. 21 to the Committee Substitute No. 2 to **HB 74**, by Representative Anderson:

On page 1, line 8, after the word "***average***" delete the word "***trade-in***" and insert in lieu thereof "***loan***"; and

On page 5, line 23, by deleting "***including***" and inserting in lieu thereof "***excluding***"; and

On page 19, lines 17 through 24, by deleting lines 17 through 24 in their entirety and inserting in lieu thereof the following:

"Section 10. The amendment contained in Section 1 of this Act shall apply to tax assessments made on or after January 1, 1999.".

Floor Amendment No. 20 to the Committee Substitute No. 2 to **HB 74**, by Representative Anderson:

On page 5, line 23, by deleting "***including***" and inserting in lieu thereof "***excluding***".

On page 9, line 9, before "six" by inserting "***seven percent (7%)***"; and

On page 9, line 9, by placing an opening bracket before "six" and by striking through "six"; and

On page 9, line 10, by striking through "percent (6%)"; and

On page 9, line 10, by placing a closing bracket after "(6%)".

Floor Amendment No. 19 to the Committee Substitute No. 2 to **HB 74**, by Representative Anderson:

On page 1, line 8, after the word "***average***" delete the word "***trade-in***" and insert in lieu thereof "***loan***"; and

On page 5, line 23, by deleting "***including***" and inserting in lieu thereof "***excluding***"; and

On page 9, line 9, before "six" by inserting "***seven percent (7%)***"; and

On page 9, line 9, by placing an opening bracket before "six" and by striking through "six"; and

On page 9, line 10, by striking through "percent (6%)"; and

On page 9, line 10, by placing a closing bracket after "(6%)"; and

On page 19, lines 17 through 24, by deleting lines 17 through 24 in their entirety and inserting in lieu thereof the following:

"Section 10. The amendment contained in Section 1 of this Act shall apply to tax assessments made on or after January 1, 1999.".

Floor Amendment No. 17 to the Committee Substitute No. 2 to **HB 74**, by Representative Anderson:

On page 7, line 22, by deleting "***excluding***" and inserting in lieu thereof "***including***".

Floor Amendment No. 18 to the Committee Substitute No. 2 to **HB 74**, by Representative Anderson:

On page 1, line 8, after the word "***average***" delete the word "***trade-in***" and insert in lieu thereof "***loan***"; and

On page 19, between lines 16 and 17, by inserting the following:

"Section 10. KRS 132.020 is amended to read as follows:

(1) An annual ad valorem tax for state purposes of thirty-one and one-half cents ($0.315) upon each one hundred dollars ($100) of value of all real property directed to be assessed for taxation, and one and one-half cents ($0.015) upon each one hundred dollars ($100) of value of all privately-owned leasehold interests in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 directed to be assessed for taxation, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing, and one and one-half cents ($0.015) upon each one hundred dollars ($100) of value of all tobacco directed to be assessed for taxation, and twenty-five cents ($0.25) upon each one hundred dollars ($100) of value of all money in hand, shares of stock, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, except as otherwise provided in subsection (2) of this section, and one and one-half cents ($0.015) upon each one hundred dollars ($100) of value of unmanufactured agricultural products, one-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value of all farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operations, one-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value of all livestock and domestic fowl, one-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value of all tangible personal property located in a foreign trade zone as designated under 19 U.S.C. Sec. 81, fifteen cents ($0.15) upon machinery of individuals or corporations actually engaged in manufacturing, fifteen cents ($0.15) upon commercial radio, television and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna, fifteen cents ($0.15) upon property which has been certified as a pollution control facility as defined in KRS 224.01-300, one-tenth of one cent ($0.001) upon property which has been certified as an alcohol production facility as defined in KRS 247.910, or as a fluidized bed energy production facility as defined in KRS 211.390, twenty-five cents ($0.25) upon each one hundred dollars ($100) of value of motor vehicles~~[qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043]~~, and forty-five cents ($0.45) upon each one hundred dollars

($100) of value of all other property directed to be assessed for taxation shall be paid by the owner or person assessed except as provided in subsection (2) of this section and KRS 132.030, 132.050, 132.200, 136.300, 136.320, and other sections providing a different tax rate for particular property.

(2) (a) An annual ad valorem tax for state purposes of one and one-half cents ($0.015) upon each one hundred dollars ($100) of value shall be paid upon the following classes of intangible personal properties, when the intangible personal properties have not acquired a taxable situs without this state:

1. Accounts receivable, notes, bonds, credits, and any other intangible property rights arising out of or created in the course of regular and continuing business transactions substantially performed outside this state;
2. Patents, trademarks, copyrights, and licensing or royalty agreements relating to these;
3. Shares of capital stock of any affiliated company as defined in subsection (3) of this section and notes, bonds, accounts receivable, and all other intercompany intangible personal property due from the company; and
4. Tobacco base allotments.

(b) An annual ad valorem tax for state purposes of one-thousandth of one percent (0.001%) shall be paid upon money in hand, shares of stock, notes, bonds, accounts, credits, and other intangible assets, whether by mortgage, pledge, or otherwise, or unsecured, of financial institutions, as defined in KRS 136.500.

(3) "Affiliated company" shall mean a parent corporation or subsidiary corporation, and any corporation principally engaged in business outside the United States in which the owner or the person assessed directly or indirectly owns or controls not less than ten percent (10%) of the outstanding voting stock.

(4) With respect to the intangible properties taxed pursuant to subsection (2) of this section, no other ad valorem tax shall be levied by the state or any county, city, school, or other taxing district on the intangible properties, or directly or indirectly against the owner.

(5) Thirty cents ($0.30) of the thirty-one and one-half cents ($0.315) state tax rate on real property and thirty cents ($0.30) of the forty-five cents ($0.45) state tax on tangible personalty subject to local taxation shall be considered as local school district tax levies for purposes of computing any direct payments of state or federal funds to said districts as replacement for ad valorem taxes lost on property acquired by a governmental agency. Should the equivalency ever be less than thirty cents ($0.30), as certified by the Department of Education, the direct payments shall be reduced proportionately.

(6) The provisions of subsection (1) of this section notwithstanding, the state tax rate on real property shall be reduced to compensate for any increase in the aggregate assessed value of real property to the extent that the increase exceeds the preceding year's assessment by more than four percent (4%). In any year in which the aggregate assessed value of real property is less than the preceding year, the state rate shall be increased to the extent necessary to produce the approximate amount of revenue that was produced in the preceding year from real property.

(7) By July 1 each year, the cabinet shall compute the state tax rate applicable to real property for the current year in accordance with the provisions of subsection (5) of this section and certify the rate to the county clerks for their use in preparing the tax bills. If the assessments for all counties have not been certified by July 1, the cabinet shall, when either real property assessments of at least seventy-five percent (75%) of the total number of counties of the Commonwealth have been determined to be acceptable by the cabinet, or when the number of counties having at least seventy-five percent (75%) of the total real property assessment for the previous year have been determined to be acceptable by the cabinet, make an estimate of the real property assessments of the uncertified counties and compute the state tax rate.

(8) If the tax rate set by the cabinet as provided in subsection (6) of this section produces more than a four percent (4%) increase in real property tax revenues, the rate shall be adjusted in the succeeding year so that the cumulative total of each year's property tax revenue increase shall not exceed four percent (4%) per year.

(9) The provisions of subsection (6) of this section notwithstanding, the assessed value of unmined coal certified by the cabinet after July 1, 1994, shall not be included with the assessed value of other real property in determining the state real property tax rate. All omitted unmined coal assessments made after July 1, 1994, shall also be excluded from the provisions of subsection (6) of this section. The calculated rate shall, however, be applied to unmined coal property and the state revenue shall be devoted to the program described in KRS 146.550 through 146.570 except that four hundred thousand dollars ($400,000) of the state revenue shall be paid annually to the State Treasury and credited to the Coal Marketing and Export Council for the purpose of public education of coal-related issues.

(10) Effective on or after January 1, 1990, an ad valorem tax for state purposes of five cents ($0.05) upon each one hundred dollars ($100) of value shall be paid upon goods held for sale in the regular course of business and raw materials, which includes distilled spirits and distilled spirits inventory, and in-process materials, which includes distilled spirits and distilled spirits inventory, held for incorporation in finished goods held for sale in the regular course of business.

(11) An ad valorem tax for state purposes of ten cents ($0.10) per one hundred dollars ($100) of assessed value shall be paid on the operating property of railroads or railway companies that operate solely within the Commonwealth."; and

On page 19, lines 17 through 24, by deleting lines 17 through 24 in their entirety and inserting in lieu thereof the following:

"Section 11. The amendment contained in Section 1 of this Act shall apply to tax assessments made on or after January 1, 1999."; and

On page 19, line 25, by deleting "11" and inserting in lieu thereof "12".

Floor Amendment No. 1 to the Committee Substitute to **HB 381**, by Representative Stumbo:

On Page 1, line 8 after the word "have" by inserting "eighteen (18)", and by deleting "fourteen (14)"; and

On line 9, after the word "include" the first time that it appears on that line, by inserting "eight (8)" and deleting "four (4)"; and

On that same line after the word "include" the second time that it appears, by inserting "one (1) member in each respective legislative chamber from the majority and minority party which shall be appointed by the Legislative Research Commission,".

Floor Amendment No. 5 to the Committee Substitute No. 2 to **HB 455**, by Representative Hogancamp:

On page 12, line 7, after "***requested***", by inserting "***in writing, and pertaining to status offenders, public offenders, youthful offenders, juveniles remanded to detention, and any juvenile convicted by a court,***"; and

On page 12, lines 7 and 8, by deleting "***upon written request***"

Floor Amendment No. 1 to **HB 410**, by Representative Gray:

On page 1, line 12, after the word "***working.***", by inserting the following: "***Assistive device does not mean hearing instruments licensed under KRS Chapter 334.***".

Orders of the Day (Continued)

SCR 2 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Ballard moved that **SCR 2** be passed.

On the roll call the vote was: Yeas 93, Nays 0 (See February 26, 1998 roll call on **SCR 2** - Appendix.) **SCR 2** was passed and the title agreed to. Representative Ballard moved that the vote by which **SCR 2** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 323 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative J. Clarke moved that **HB 323** be passed.

On the roll call the vote was: Yeas 27, Nays 60 (See February 26, 1998 roll call on **HB 323** - Appendix.) **HB 323** was defeated.

HB 195, with Senate Committee Substitute and Senate Committee Amendment attached thereto, taken from the Orders of the Day. Representative Stumbo moved that it be placed upon its passage. Agreed.

The Senate Committee Substitute to **HB 195** is as follows:

HB 195, AN ACT relating to off-road vehicles.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 189.010 is amended to read as follows:

As used in this chapter:

(1) "Department" means the Department of Highways.

(2) "Crosswalk" means:

(a) That part of a roadway at an intersection within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or in the absence of curbs, from the edges of the traversable roadway; or

(b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

(3) "Highway" means any public road, street, avenue, alley or boulevard, bridge, viaduct, or trestle and the approaches to them and includes off-street parking facilities offered for public use, whether publicly or privately owned, except for-hire parking facilities listed in KRS 189.700.

(4) "Intersection" means:

(a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two (2) highways which join one another, but do not necessarily continue, at approximately right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come into conflict; or

(b) Where a highway includes two (2) roadways thirty (30) feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. If the intersecting highway also includes two (2) roadways thirty (30) feet or more apart, every crossing of two (2) roadways of the highways shall be regarded as a separate intersection. The junction of a private alley with a public street or highway shall not constitute an intersection.

(5) "Manufactured home" has the same meaning as defined in KRS 186.650.

(6) "Motor truck" means any motor-propelled vehicle designed for carrying freight or merchandise. It shall not include self-propelled vehicles designed primarily for passenger transportation, but equipped with frames, racks, or bodies having a load capacity of not exceeding one thousand (1,000) pounds.

(7) "Operator" means the person in actual physical control of a vehicle.

(8) "Pedestrian" means any person afoot.

(9) "Right-of-way" means the right of one (1) vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other.

(10) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. If a highway includes two (2) or more separate roadways, the term "roadway" as used herein shall refer to any roadway separately but not to all such roadways collectively.

(11) "Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

(12) "Semitrailer" means a vehicle designed to be attached to, and having its front end supported by, a motor truck or truck tractor, intended for the carrying of freight or merchandise and having a load capacity of over one thousand (1,000) pounds.

(13) "Truck tractor" means any motor-propelled vehicle designed to draw and to support the front end of a semitrailer. The semitrailer and the truck tractor shall be considered to be one (1) unit.

(14) "Sharp curve" means a curve of not less than thirty (30) degrees.

(15) "State Police" includes any agency for the enforcement of the highway laws established pursuant to law.

(16) "Steep grade" means a grade exceeding seven percent (7%).

(17) "Trailer" means any vehicle designed to be drawn by a motor truck or truck-tractor, but supported wholly upon its own wheels, intended for the carriage of freight or merchandise, and having a load capacity of over one thousand (1,000) pounds.

(18) "Unobstructed highway" means a straight, level, first-class road upon which no other vehicle is passing or attempting to pass, and upon which no other vehicle or pedestrian is approaching in the opposite direction, closer than three hundred (300) yards.

(19) (a) "Vehicle" includes:

1. All agencies for the transportation of persons or property over or upon the public highways of the Commonwealth; and

2. All vehicles passing over or upon the highways.

(b) "Motor vehicle" includes all vehicles, as defined in paragraph (a) of this subsection except:

1. Road rollers;

2. Road graders;

3. Farm tractors;

4. Vehicles on which power shovels are mounted;

5. Construction equipment customarily used only on the site of construction and which is not practical for the transportation of persons or property upon the highways;
6. Vehicles that travel exclusively upon rails;
7. Vehicles propelled by electric power obtained from overhead wires while being operated within any municipality or where the vehicles do not travel more than five (5) miles beyond the city limits of any municipality; and
8. Vehicles propelled by muscular power.

(20) "Reflectance" means the ratio of the amount of total light, expressed in a percentage, which is reflected outward by the product or material to the amount of total light falling on the product or material.

(21) "Sunscreening material" means a product or material, including film, glazing, and perforated sunscreening, which, when applied to the windshield or windows of a motor vehicle, reduces the effects of the sun with respect to light reflectance or transmittance.

(22) "Transmittance" means the ratio of the amount of total light, expressed in a percentage, which is allowed to pass through the product or material, including glazing, to the amount of total light falling on the product or material and the glazing.

(23) "Window" means any device designed for exterior viewing from a motor vehicle, except the windshield, any roof-mounted viewing device, and any viewing device having less than one hundred fifty (150) square inches in area.

(24) "All-terrain vehicle" means any motor vehicle ***used*** for ***recreational*** off-road use[~~, which is fifty (50) inches or less in width; has a dry weight of six hundred (600) pounds or less; travels on three (3) or more low pressure tires; is designed for operator use only with no passengers; and has a seat or saddle designed to be straddled by the operator, and handle bars for steering control~~].

Section 2. KRS 189.515 is amended to read as follows:

(1) ***Except for vehicles authorized to operate on a public highway as of the effective date of this Act, and except as provided in subsection (6) of this section, a***[~~No~~] person shall ***not*** operate an all-terrain vehicle upon any public highway or roadway or upon the right-of-way of any public highway or roadway.

(2) ***A***[~~No~~] person shall ***not*** operate an all-terrain vehicle on[~~ any public or~~] private property without the consent of the landowner, tenant, or ***individual***[~~governmental agency~~] responsible for the property***.***

(3) A person shall not operate an all-terrain vehicle on public property[~~, and~~] unless the ***governmental agency responsible for the property has approved the use of all-terrain vehicles.***

(4) Except for vehicles authorized to operate on a public highway as of the effective date of this Act, a person operating an all-terrain vehicle on public property shall wear[~~operator wears~~] approved protective headgear, in the manner prescribed by the secretary of the Transportation Cabinet, at all times that the vehicle is in motion. The approved headgear requirement shall not apply when the operator of ***any***[~~the~~] all-terrain vehicle is engaged in***:***

(a) Farm or agriculture related activities***;***

(b) Mining or mining exploration activities;

(c) Logging activities;

(d) Any other business, commercial, or industrial activity; or

(e) Use of that vehicle on private property.

(5)[~~(3)~~] ***A***[~~No~~] person under the age of sixteen (16) years shall ***not*** operate an all-terrain vehicle with an engine size exceeding ninety (90) cubic centimeters displacement, ***and a***[~~nor shall any~~] person under the age of sixteen (16) years ***shall not*** operate an all-terrain vehicle except under direct parental supervision.

[~~(4)~~] ***A***[~~No~~] person under the age of twelve (12) years shall ***not*** operate an all-terrain vehicle with an engine size exceeding seventy (70) cubic centimeters displacement.

(6) The Transportation Cabinet may designate, and a city or county government may designate, those public highways, segments of public highways, and adjoining rights-of-way of public highways under its jurisdiction where all-terrain vehicles that were prohibited, as of the effective date of this Act, may be operated.

The Senate Committee Amendment No. 1 Title to the Senate Committee Substitute to **HB 195** is as follows:

On page 1, by amending the title to read as follows:

"AN ACT relating to all-terrain vehicles.".

Representative Stacy moved that the House concur in Senate Committee Substitute to **HB 195**. Agreed.

Representative Stacy moved that **HB 195**, by way of Senate Committee Substitute, be passed.

On the roll call the vote was: Yeas 86, Nays 3 (See February 26, 1997 roll call on **HB 195** - Appendix.) **HB 195**, by way of Senate Committee Substitute, was passed. Representative Stacy moved that the House concur in Senate Committee Amendment No. 1 Title. Agreed; and the title was agreed to. Representative Stacy moved that the vote by which **HB 195**, by way of Senate Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 171, with Senate Committee Substitute attached thereto, taken from the Orders of the Day. Representative Stumbo moved that it be placed upon its passage. Agreed.

The Senate Committee Substitute to **HB 171** is as follows:

HB 171, AN ACT relating to radioactive waste.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

(1) The General Assembly finds:

(a) That the Central Midwest Interstate Low-Level Radioactive Waste Compact was enacted by the State of Illinois and the Commonwealth of Kentucky to provide the instrument and framework for a cooperative effort, and to provide sufficient facilities for the proper management of low-level radioactive waste generated within the region, limiting the number of facilities, protecting the health and safety of citizens, and promoting the volume and source reduction of low-level radioactive waste generated in the region, and for other purposes.

(b) That it is the responsibility of each party state to the compact to prescribe and enforce penalties against any person who is not an officer of another state for violation of any provision of the compact.

(2) It is the purpose of Sections 1 to 6 of this Act to establish a program by which these sections and the provisions of the compact may be implemented and enforced.

SECTION 2. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 6 of this Act, unless the compact requires otherwise:

(1) "Commission" means the Central Midwest Interstate Low-Level Radioactive Waste Commission;

(2) "Cabinet" means the Cabinet for Human Resources;

(3) "Compact" means the Central Midwest Interstate Low-Level Radioactive Waste Compact;

(4) "Disposal" means the isolation of waste from the biosphere in a permanent facility designed for that purpose;

(5) "Facility" means a parcel of land or site, together with the structures, equipment, and improvements on, or appurtenant to, the land or site, that is used or is being developed for the treatment, storage, or disposal of low-level radioactive waste;

(6) "Low-level radioactive waste" or "waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in Section 11e(2) of the Federal Atomic Energy Act. This definition shall apply regardless of any declaration by the federal government or any state that any radioactive material is exempt from any regulatory control;

(7) "Management plan" means the plan adopted by the commission for the storage, transportation, treatment, and disposal of waste within the region;

(8) "Naturally-occurring radioactive material" (NORM) means naturally occurring materials not regulated under the Atomic Energy Act of 1954, as amended, whose radionuclide concentrations have been increased by or as a result of human practices. Naturally occurring radioactive material does not include the natural radioactivity of rocks or soils, or background radiation, but instead refers to materials whose radioactivity is technologically enhanced by controllable practices (or by past human practices).

(9) "Person" means any individual, corporation, business enterprise, or other legal entity, public or private, and any legal successor, representative, agent or agency of that individual, corporation, business enterprise, or legal entity;

(10) "Region" means the geographical area of the state of Illinois and the Commonwealth of Kentucky;

(11) "Regional facility" means any facility as defined in this section that is located in Kentucky, and established by Kentucky pursuant to designation of Kentucky as a host state by the commission;

(12) "Storage" means the temporary holding of radioactive material for treatment or disposal; and

(13) "Treatment" means any method, technique, or process, including storage for radioactive decay, designed to change the physical, chemical, or biological characteristics of the radioactive material in order to render the radioactive material safe for transport or management, amenable to recovery, convertible to another usable material, or reduced

in volume.

SECTION 3. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

(1) Unless otherwise authorized by the commission:

(a) After the effective date of this Act, no person shall deposit at a facility in Kentucky any low-level radioactive waste not generated within the region.

(b) After the effective date of this Act, no person shall accept at a facility in Kentucky low-level radioactive waste not generated within the region.

(c) No person shall deposit at any regional facility in Kentucky any low-level radioactive waste that is owned or generated by the United States Department of Energy, owned or generated by the United States Navy as a result of decommissioning of vessels of the United States Navy, or owned or generated as the result of any research, development, testing, or production of any atomic weapon.

(d) No person shall accept at any regional facility in Kentucky any low-level radioactive waste that is owned or generated by the United States Department of Energy, owned or generated by the United States Navy as a result of decommissioning of vessels of the United States Navy, or owned or generated as the result of any research, development, testing, or production of any atomic weapon.

(e) No person shall export from the region low-level radioactive waste that is generated in Kentucky, other than low-level radioactive waste that is owned or generated by the United States Department of Energy, owned or generated by the United States Navy as a result of decommissioning of vessels of the United States Navy, or owned or generated as the result of any research, development, testing, or production of any atomic weapon.

(f) No person shall dispose of low-level radioactive waste in Kentucky except at a regional disposal facility.

(g) No person who provides a service by arranging for the collection, transportation, treatment, storage, or disposal of low-level radioactive waste from outside the region shall dispose of any low-level radioactive waste, regardless of origin, at a facility in Kentucky without prior specific approval by the commission.

(2) No person shall treat or store low-level radioactive waste at a facility other than a regional facility, if the treatment or storage is prohibited by the commission.

(3) Naturally occurring radioactive material (NORM) as defined in Section 2, subsection (8), of this Act, shall be the exclusive regulatory responsibility of the states, except that no person shall import naturally occurring radioactive material (NORM) from outside the region for disposal in Kentucky, or dispose of such imported material in Kentucky, if the imports or disposal are inconsistent with polices of the commission.

(4) Any low-level radioactive waste which is not the responsibility of the Commonwealth of Kentucky or the Central Midwest Interstate Low-Level Radioactive Waste Commission pursuant to 42 U.S.C. 2297h-11 shall be exempt from the provisions of this Act and from the provisions of KRS 211.859.

SECTION 4. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

(1) The cabinet shall promulgate administrative regulations to administer and enforce the provisions of Sections 1 to 6 of this Act. The administrative regulations shall be promulgated with the consultation and cooperation of the commission.

(2) Administrative regulations promulgated by the cabinet shall prohibit the shipment into or acceptance of low-level radioactive waste in Kentucky if the shipment or acceptance would result in a violation of any provision of the compact or Sections 3, 4, and 5 of this Act.

(3) The cabinet may, by administrative regulation, impose conditions on the shipment into or acceptance of low-level radioactive waste in Kentucky that the cabinet determines to be reasonable and necessary to enforce the provisions of Sections 3, 4, and 5 of this Act. The conditions may include, but are not limited to:

(a) Requiring prior notification of any proposed shipment or receipt of low-level radioactive waste;

(b) Requiring the shipper or recipient to identify the location to which the low-level radioactive waste will be sent for disposal following treatment or storage in Kentucky;

(c) Limiting the time that low-level radioactive waste from outside of Kentucky may be held in Kentucky;

(d) Requiring the shipper or recipient to post bond, or by other mechanisms assure that radioactive material will not be treated, stored, or disposed of in Kentucky in violation of any provisions of Sections 3, 4, and 5 of this Act; and

(e) Requiring that the shipper consent to service of process before shipment of low-level radioactive waste into Kentucky.

(4) The administrative regulations promulgated by the cabinet may provide for the granting of exemptions, but only upon a showing by the applicant that the granting of an exemption would be consistent with the compact.

SECTION 5. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

(1) Any person who fails to comply with any provision of KRS 211.859 or Section 3 of this Act, or with any administrative regulations promulgated pursuant to KRS 211.859 or Section 4 of this Act, or fails to comply with any order of the cabinet issued pursuant to KRS 211.859 or Sections 3 and 4 of this Act shall be assessed a civil penalty not less than ten thousand dollars ($10,000) nor more than one hundred thousand dollars ($100,000). Each day of the violation or noncompliance shall constitute a separate offense.

(2) Any person who fails to pay a civil penalty imposed pursuant to subsection (1) of this section, or any portion of that penalty, shall be liable in a civil action in an amount not to exceed four (4) times the amount imposed and not paid. Any civil penalties recovered shall be deposited into the State Treasury and credited to a trust and agency fund to be used by the cabinet in carrying out the provisions of Sections 1 to 6 of this Act.

(3) Any person who intentionally violates a provision of Section 3 of this Act shall be guilty of a Class D felony.

(4) At the request of the cabinet, the Attorney General shall, on behalf of the Commonwealth of Kentucky, bring an action for the recovery of any civil penalty or the prosecution of any criminal offense in violation of Sections 3 and 4 of this Act.

SECTION 6. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

The cabinet may accept donations of money, equipment, supplies, materials, and services from any person for accomplishing the purposes of Sections 1 to 6 of this Act. Any donation of money shall be deposited into the State Treasury and credited to a trust and agency fund to be used by the cabinet in carrying out the provisions of Sections 1 to 6 of this Act and shall be expended by the cabinet only in accordance with the purposes of the donation.

Representative Brown moved that the House concur in Senate Committee Substitute to **HB 171**. Agreed.

Representative Brown moved that **HB 171**, by way of Senate Committee Substitute, be passed.

On the roll call the vote was: Yeas 93, Nays 0 (See February 26, 1997 roll call on **HB 171** - Appendix.) **HB 171**, by way of Senate Committee Substitute, was passed and the title agreed to. Representative Brown moved that the vote by which **HB 171**, by way of Senate Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 1 to the Committee Substitute to **HB 48**, by Representative L. Clark:

On page 1, line 22, after the word "than", by inserting "*eight (8)*", and on that same line, place brackets and strikethroughs around the word "five (5)".

Orders of the Day (Continued)

HB 1, with Senate Committee Amendment attached thereto, taken from the Orders of the Day. Representative Stumbo moved that it be placed upon its passage. Agreed.

The Senate Committee Amendment No. 1 to **HB 1** is as follows:

On page 4, lines 21 through 24, by deleting lines 21 through 24 in their entirety and inserting in lieu thereof the following:

"*(9) The parent, legal guardian, or other adult who has direct supervision over a minor under the age of eighteen (18) shall not knowingly authorize or permit the minor to operate a motorboat or personal watercraft in violation of this section.*".

Representative R. Adams moved that the House concur in Senate Committee Amendment No. 1 to **HB 1**. Agreed.

Representative R. Adams moved that **HB 1**, as amended by the Senate, be passed.

On the roll call the vote was: Yeas 92, Nays 0 (See February 26, 1998 roll call on **HB 1** - Appendix.) **HB 1**, as amended by the Senate, was passed and the title agreed to. Representative R. Adams moved that the vote by which **HB 1**, as amended by the Senate, was passed be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions, Report of Committees and Posting of Bills and Resolutions for Consideration. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 744, by Representative Jordan: AN ACT relating to state forms.

HB 745, by Representative Jenkins: AN ACT relating to school employees.

HB 746, by Representative Haydon: AN ACT relating to commercial drivers licenses.

HB 747, by Representative Weaver: AN ACT relating to traffic regulations.

HB 748, by Representative Simpson: AN ACT relating to retirement.

HB 749, by Representative Horlander: AN ACT relating to local board of education reports.

HB 750, by Representatives J. Arnold, Newsome, Stacy, Treesh, Collins, Yonts, and Colter: AN ACT relating to health care facilities.

HB 751, by Representative Palumbo: AN ACT relating to income taxation.

HB 752, by Representative Cave: AN ACT relating to income taxation.

HB 753, by Representative Bowling: AN ACT relating to judicial retirement.

HB 754, by Representative Bowling: AN ACT relating to the judiciary.

HR 99, by Representative Damron: A RESOLUTION adjourning the House of Representatives in honor of Esther Robison upon the occasion of her imminent retirement.

HR 100, by Representative Adkins: A RESOLUTION adjourning the House of Representatives in honor of Ms. Lori Menshouse for being named Miss Kentucky 1997.

HR 101, by Representative P. Clark: A RESOLUTION opposing the American Heritage Rivers Initiative and urging that the proposed initiative be rejected by the Congress of the United States.

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Appropriations and Revenue: **HB 217, HB 85, HB 122, HB 114, HB 685, HB 146, HB 675, HB 266, HB 289, HB 36, HB 327**

Judiciary: **HB 238, HB 181, HB 297, HB 702**

Health and Welfare: **HB 677, HB 711, HB 653, HB 679, HB 718**

Economic Development: **HB 206**

Report of Committees (Continued)

The Committee on Judiciary reported **HB 115**, with Committee Substitute attached thereto, **HB 312**, with Committee Substitute attached thereto, **HB 454**, **HB 537**, with Committee Substitute attached thereto, **HB 563**, **HB 623**, with Committee Substitute attached thereto, **HB 638**, and **SB 207**, with Committee Amendment attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 115, AN ACT relating to drugs.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 217.015 is amended to read as follows:

For the purposes of KRS 217.005 to 217.215:

(1) The term "secretary" means the secretary of the Cabinet for Human Resources;

(2) The term "cabinet" means the Cabinet for Human Resources or its designee;

(3) The term "person" means an individual, or a firm, partnership, company, corporation, trustee, association, or any public or private entity;

(4) The term "food" means:

(a) Articles used for food or drink for man or other animals;

(b) Chewing gum; and

(c) Articles used for components of any such article;

(5) The term "drug" means:

(a) Articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;

(c) Articles, other than food, intended to affect the structure or any function of the body of man or other animals; and

(d) Articles intended for use as a component of any article specified in this subsection but does not include devices or their components, parts, or accessories;

(6) The term "device", except when used in subsection (12) of this section and in subsection (10) of KRS 217.175, subsection (6) of KRS 217.035, subsection (3) of KRS 217.065, and subsection (3) of KRS 217.095, means instruments, apparatus and contrivances, including their components, parts and accessories, intended:

(a) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or

(b) To affect the structure or any function of the body of man or other animals;

(7) The term "cosmetic" means:

(a) Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and

(b) Articles intended for use as a component of any such articles, except that such term shall not include soap;

(8) The term "official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them;

(9) The term "label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of KRS 217.005 to 217.215 that any word, statement, or other information appearing on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article, or is easily legible through the outside container or wrapper;

(10) The term "immediate container" shall not include package liners;

(11) The term "labeling" means all labels and other written, printed or graphic matter:

(a) Upon an article or any of its containers or wrappers; or

(b) Accompanying the article;

(12) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under the conditions of use as are customary or usual;

(13) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics;

(14) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use involving prolonged contact with the body;

(15) The term "legend drug" means a drug defined by the Federal Food, Drug and Cosmetic Act, as amended, and under which definition its label is required to bear the statement "Caution: Federal law prohibits dispensing without prescription.";

(16)[~~(15)~~] The term "new drug" means:

(a) Any drug the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or

(b) Any drug the composition of which is such that the drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions;

(17)[~~(16)~~] The term "contaminated with filth" shall apply to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations;

(18)[~~(17)~~] The provisions of KRS 217.005 to 217.215 regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment;

(19)[~~(18)~~] The term "federal act" means the federal Food, Drug and Cosmetic Act (21 U.S.C. Sec. 301 et seq.; 52 Stat. 1040 et seq., or amendments thereto);

(20)[~~(19)~~] The term "flour" shall include and be limited to the foods, commonly known as flour, white flour, wheat flour, plain flour, bromated flour, self-rising flour, self-rising white flour, self-rising wheat flour, phosphated flour, phosphated white flour, and phosphated wheat flour, defined under the federal act;

(21)[~~(20)~~] The term "enriched" as applied to flour, means the addition to flour of vitamins and other nutritional ingredients necessary to make it conform to the definition and standard of "enriched" flour as defined under the federal act;

(22)[~~(21)~~] The terms "bread" and "enriched bread" shall include, and be limited to, the foods commonly known and described as "white bread," "white rolls," "white buns," "enriched white bread," "enriched rolls," and "enriched white buns," as defined under the federal act;

(23)[~~(22)~~] The term "filled milk" means any milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat, except the fat or oil of contained eggs and nuts and the fat or oil of substances used for flavoring purposes only, so that the resulting product is an imitation or semblance of milk, cream, skimmed milk, ice cream mix, ice cream, or frozen desserts, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, whether in bulk or in containers, hermetically sealed or unsealed. This definition shall not mean or include any milk or cream from which no part of the milk or butter fat has been extracted, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has been added any substance rich in vitamins, nor any distinctive proprietary food compound not readily mistaken for milk or cream or for condensed, evaporated, concentrated, powdered, dried, or desiccated milk or cream, if the compound is prepared and designed for the feeding of infants or young children, sick or infirm persons, and customarily used on the order of a physician, and is packed in individual containers bearing a label in bold type that the contents are to be used for those purposes; nor shall this definition prevent the use, blending or compounding of chocolate as a flavor with milk, cream, or skimmed milk, desiccated, whether in bulk or in containers, hermetically sealed or unsealed, to or with which has been added, blended or compounded no other fat or oil other than milk or butter fat;

(24) The term "dispense" means to deliver a drug or device to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery;

(25) The term "dispenser" means a person who lawfully dispenses a drug or device to or for the use of an ultimate user;

(26)[~~(23)~~] The term "practitioner" means medical or osteopathic physicians, dentists, chiropodists, and veterinarians who are licensed under the professional licensing laws of Kentucky to prescribe and administer drugs and devices; it shall also include optometrists when administering or prescribing pharmaceutical agents authorized in subsections (13), (14), and (15) of KRS 320.240, and advanced registered nurse practitioners as authorized in KRS 314.011 and 314.042;

(27)[~~(24)~~] The term "prescription" means a written or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, signed or given or authorized by a medical, dental, chiropody, veterinarian, or optometric practitioner, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(28) The term "prescription blank" means a document that conforms with KRS 217.216 and is intended for prescribing a drug to an ultimate user;

(29) The term "second or subsequent offense" has the same meaning as it does in KRS 218A.010;

(30) The term "traffic" has the same meaning as it does in KRS 218A.010;

(31) The term "ultimate user" has the same meaning as it does in KRS 218A.010;

(32)[~~(25)~~] The term "Meat Inspection Act" means the federal Meat Inspection Act (21 U.S.C. Sec. 71 et seq.; 34 Stat. 1260 et seq., including any amendments thereto);

(33)[~~(26)~~] The term "Poultry Products Inspection Act" means the federal Poultry and Poultry Products Inspection Act; 21 U.S.C. Sec. 451 et seq.; Public Law 85-172; 71 Stat. 441, including any amendments thereto;

(34)[~~(27)~~] The term "Fair Packaging and Labeling Act" means the Fair Packaging and Labeling Act as it relates to foods and cosmetics, 15 U.S.C. Sec. 1451 et seq., and all amendments thereto;

(35)[~~(28)~~] The term "pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" within the meaning of the federal Insecticide, Fungicide and Rodenticide Act and subsequent amendments thereto, and which is used in the production, storage, or transportation of raw agricultural commodities;

(36)[~~(29)~~] The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing;

(37)[~~(30)~~] The term "food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use, if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food to be safe under the conditions of its intended use; except that the term does not include:

(a) A pesticide chemical in or on a raw agricultural commodity; or

(b) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or

(c) A color additive; or

(d) Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act; the Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq., or the Meat Inspection Act of 1907 and subsequent amendments thereto;

(38)[~~(31)~~] (a) The term "color additive" means a material which:

1. Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

2. When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable, alone or through reaction with other substance, of imparting color thereto; except that the term shall not include any material which has been or hereafter is exempted under the federal act;

(b) The term "color" shall include, but not be limited to black, white, and intermediate grays;

(c) Nothing in paragraph (a)1. of this subsection shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

(39)[~~(32)~~] The term "Environmental Pesticide Control Act of 1972" means the federal Environmental Pesticide Control Act of 1972, Public Law 92-516, and all amendments thereto;

(40)[~~(33)~~] The term "retail food establishment" means any food service establishment, retail food store, or a combination of both within the same establishment;

(41)[~~(34)~~] The term "food service establishment" means any fixed or mobile commercial establishment that engages in the preparation and serving of ready-to-eat foods in portions to the consumer, including, but not limited to: restaurants; coffee shops; cafeterias; short order cafes; luncheonettes; grills; tea rooms; sandwich shops; soda fountains; taverns; bars; cocktail lounges; nightclubs; roadside stands; industrial feeding establishments; private, public or nonprofit organizations or institutions routinely serving food; catering kitchens; commissaries; or similar places in which food is prepared for sale or service on the premises or elsewhere with or without charge. It shall not include food vending machines, establishments serving beverages only in single service or original containers or retail food stores which only cut, slice, and prepare cold-cut sandwiches for individual consumption;

(42)[~~(35)~~] The term "temporary food service establishment" means any food service establishment which operates at a fixed location for a period of time, not to exceed fourteen (14) consecutive days;

(43)[~~(36)~~] The term "retail food store" means any fixed or mobile establishment where food or food products, including prepackaged, labeled sandwiches or other foods to be heated in a microwave or infrared oven at the time of purchase, are offered for sale to the consumer, and intended for off-premises consumption, but shall not include establishments which handle only prepackaged, snack-type, nonpotentially hazardous foods, markets that offer only fresh fruits and vegetables

for sale, food service establishments, food and beverage vending machines, vending machine commissaries, or food processing establishments;

(44)[~~(37)~~] The term "salvage distributor" means a person who engages in the business of distributing, peddling, or otherwise trafficking in any salvaged merchandise;

(45)[~~(38)~~] The term "salvage processing plant" means an establishment operated by a person engaged in the business of reconditioning, labeling, relabeling, repackaging, recoopering, sorting, cleaning, culling or who by other means salvages, sells, offers for sale, or distributes for human or animal consumption or use any salvaged food, beverage, including beer, wine and distilled spirits, vitamins, food supplements, dentifices, cosmetics, single-service food containers or utensils, containers and packaging materials used for foods and cosmetics, soda straws, paper napkins, or any other product of a similar nature that has been damaged or contaminated by fire, water, smoke, chemicals, transit, or by any other means;

(46)[~~(39)~~] The term "food processing establishment" means any commercial establishment in which food is manufactured, processed, or packaged for human consumption, but shall not include retail food establishments; and

(47)[~~(40)~~] The term "food storage warehouse" means any establishment in which food is stored for subsequent distribution.

SECTION 2. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of theft of a legend drug when he unlawfully takes or exercises control over a legend drug that is not a controlled substance, belonging to another person, with the intent to deprive him thereof.

(2) Theft of a legend drug is:

(a) For a first offense a Class D felony, if the legend drug has a value of three hundred dollars ($300) or less; or

(b) For a second or subsequent offense, or a value of greater than three hundred dollars ($300), a Class C felony.

SECTION 3. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of theft of a prescription blank when he unlawfully takes or exercises control over a prescription blank belonging to another.

(2) A person is guilty of criminal possession of a prescription blank when, with knowledge that he has no lawful authority to possess a prescription blank, he possesses a prescription blank with the intent to make or utter a forged prescription or sell or transfer the prescription blank to another person for that purpose.

(3) A person is guilty of trafficking in prescription blanks when he knowingly and unlawfully traffics in a prescription blank or a forged prescription for a legend drug.

(4) The possession of a prescription blank by a person other than a pharmacist, practitioner, or other person authorized by law to prescribe or dispense a legend drug, a manufacturer, wholesaler, or distributor, or by a person lawfully printing or reproducing prescription blanks, shall be prima facie evidence that the prescription blank was possessed for the purpose of making or uttering a forged prescription or for sale or transfer to another person for that purpose.

(5) Any person who violates any subsection of this section shall be guilty of a Class A misdemeanor for the first offense and a Class D felony for a second or subsequent offense.

SECTION 4. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of forgery of a prescription when, with intent to defraud, deceive, or injure another, he falsely makes, completes, or alters a written instrument which is or purports to be or which is calculated to become or to represent a prescription for a legend drug when completed.

(2) Forgery of a prescription is:

(a) For a first offense, a Class D felony.

(b) For a second or subsequent offense, a Class C felony.

SECTION 5. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of criminal possession of a forged prescription when, with knowledge that it is forged and with intent to defraud, deceive, or injure another, he possesses a forged prescription.

(2) Criminal possession of a forged prescription is:

(a) For a first offense, a Class A misdemeanor.

(b) For second or subsequent offense, a Class D felony.

SECTION 6. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

(1) A pharmacist, practitioner, or other person authorized by law to dispense legend drugs, or an employee of that person, may seize and retain any prescription which he has reasonable suspicion for believing is forged, altered, or possessed in violation of Section 3, 4, or 5 of this Act.

(2) Seizure and retention shall be for a reasonable period of time to make reasonable inquiry as to whether the prescription is forged, altered, or illegally possessed.

(3) If after reasonable inquiry the pharmacist, practitioner, or other person determines that the prescription is forged, altered, or stolen, he shall report the seizure to a law enforcement officer and shall surrender the prescription to the officer upon the request of the officer.

SECTION 7. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

For purposes of Sections 3, 4, and 5 of this Act, the definitions found in KRS 516.010 apply.

SECTION 8. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

(1) A duly licensed manufacturer, distributor, or wholesaler may sell or distribute a legend drug to any of the following:

- ***(a) A manufacturer, wholesaler, distributor, or pharmacy;***
- ***(b) A practitioner;***
- ***(c) The administrator in charge of a hospital, but only for use by or in that hospital; and***
- ***(d) A person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes.***

(2) A pharmacist may sell or distribute a legend drug:

- ***(a) Pursuant to a prescription that conforms to the requirements of this chapter; or***
- ***(b) To a person licensed to administer, dispense, distribute, or possess a legend drug.***

(3) A practitioner may:

- ***(a) Administer, dispense, or prescribe a legend drug for a legitimate medical purpose and in the course of professional practice; or***
- ***(b) Distribute a legend drug to a person licensed to administer, dispense, distribute, or possess a legend drug.***

(4) Possession or control of legend drugs obtained as authorized by this section shall be lawful if it occurred in the regular course of business, occupation, profession, employment, or duty of the possessor.

Section 9. KRS 514.030 is amended to read as follows:

(1) ***Except as otherwise provided in Section 2 or 15 of this Act,*** a person is guilty of theft by unlawful taking or disposition when he unlawfully:

- (a) Takes or exercises control over movable property of another with intent to deprive him thereof; or
- (b) Obtains immovable property of another or any interest therein with intent to benefit himself or another not entitled thereto.

(2) Theft by unlawful taking or disposition is a Class A misdemeanor unless the value of the property is three hundred dollars ($300) or more, or unless the property is a firearm (regardless of the value of the firearm), in which case it is a Class D felony.

SECTION 10. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

Unless this chapter provides a specific penalty for the same act, the provisions of KRS Chapter 56 shall apply to offenses under KRS 217.005 to 217.215.

SECTION 11. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

(1) All police officers and deputy sheriffs, directly employed full-time by state, county, city, or urban-county governments, the State Police, the Cabinet for Human Resources, the offices of all city, county, and Commonwealth's attorneys, the Office of the Attorney General, and any of their officers and agents, within their respective jurisdictions, shall enforce Section 2, 3, 4, or 5 of this Act relating to legend drugs and cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to legend drugs.

(2) For the purpose of enforcing Section 2, 3, 4, or 5 of this Act relating to legend drugs, the designated agents of the Cabinet for Human Resources shall have the full power and authority of peace officers in this state, including the power of arrest and the authority to bear arms, and shall have the power and authority to administer oaths; to enter upon premises at all times for the purpose of making inspections; to seize evidence; to interrogate all persons; to require the production of prescriptions, books, papers, documents, or other evidence; to employ special investigators; and to expend funds for the purpose of obtaining evidence.

(3) Designated agents of the Cabinet for Human Resources and the Kentucky Board of Pharmacy are empowered to remove from the files of any pharmacy or other custodian any prescription or other legend drug record upon tendering a receipt. The receipt shall be sufficiently detailed to accurately identify the record.

Section 12. KRS 218A.010 is amended to read as follows:

As used in this chapter:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) A practitioner or by his authorized agent under his immediate supervision and pursuant to his order; or

(b) The patient or research subject at the direction and in the presence of the practitioner.

(2) "Anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone that promotes muscle growth and includes those substances listed in KRS 218A.090(5) but does not include estrogens, progestins, and anticosteroids.

(3) ***"Cabinet" means the Cabinet for Human Resources.***

(4) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V and includes a controlled substance analogue.

(5)[~~(4)~~] (a) "Controlled substance analogue", except as provided in subparagraph (b), means a substance:

1. The chemical structure of which is substantially similar to the structure of a controlled substance in Schedule I or II; and

2. Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or

3. With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.

(b) Such term does not include:

1. Any substance for which there is an approved new drug application;

2. With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent conduct with respect to such substance is pursuant to such exemption; or

3. Any substance to the extent not intended for human consumption before the exemption described in subparagraph 2. of this paragraph takes effect with respect to that substance.

(6)[~~(5)~~] "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(7)[~~(6)~~] "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery.

(8) "Dispenser" means a person who lawfully dispenses a Schedule II, III, IV, or V controlled substance to or for the use of an ultimate user.

(9)[~~(7)~~] "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(10)[~~(8)~~] "Drug" means:

(a) Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(b) Substances intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man or animals;

(c) Substances (other than food) intended to affect the structure or any function of the body of man or animals; and

(d) Substances intended for use as a component of any article specified in this subsection.

It does not include devices or their components, parts, or accessories.

(11)[~~(9)~~] "Immediate precursor" means a substance which is the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(12)[~~(10)~~] "Isomer" means the optical isomer, except as used in KRS 218A.050(3) and 218A.070(1)(d). As used in KRS 218A.050(3), the term "isomer" means the optical, positional, or geometric isomer. As used in KRS 218A.070(1)(d), the term "isomer" means the optical or geometric isomer.

(13)[~~(11)~~] "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include activities:

(a) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(b) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or

(c) By a pharmacist as an incident to his dispensing of a controlled substance in the course of his professional practice.

(14)[~~(12)~~] "Marijuana" means all parts of the plant Cannabis sp., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin or any compound, mixture, or preparation which contains any quantity of these substances.

(15)[~~(13)~~] "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in ***paragraph***[~~subsection (13)~~] (a) of this ***subsection***[~~section~~], but not including the isoquinoline alkaloids of opium;

(c) Opium poppy and poppy straw;

(d) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.

(e) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

(g) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (a) to (f) ***of this subsection***.

(16)[~~(14)~~] "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under KRS 218A.030, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(17)[~~(15)~~] "Opium poppy" means the plant of the species papaver somniferum L., except its seeds.

(18)[~~(16)~~] "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(19)[~~(17)~~] "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(20)[~~(18)~~] "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy.

(21)[~~(19)~~] "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific investigator, optometrist as authorized in KRS 320.240, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

(22) "Prescription" means a written, electronic, or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, signed or given or authorized by a medical, dental, chiropody, veterinarian, or optometric practitioner, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals.

(23) "Prescription blank," with reference to a controlled substance, means a document that meets the requirements of Section 14 of this Act and KRS 217.216.

(24)[~~(20)~~] "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(25)[~~(21)~~] "Second or subsequent offense" means that for the purposes of this chapter an offense is considered as a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter, or under any statute of the United States, or of any state relating to substances classified as controlled substances or counterfeit substances, except that a prior conviction for a nontrafficking offense shall be treated as a prior offense only when the subsequent offense is a nontrafficking offense. For the purposes of this section, a conviction voided under KRS 218A.275 or 218A.276 shall not constitute a conviction under this chapter.

(26)[~~(22)~~] "Sell" means to dispose of a controlled substance to another person for consideration or in furtherance of commercial distribution.

(27)[~~(23)~~] "Tetrahydrocannabinols" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the plant Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

1. Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;
2. Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers;
3. Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers.

(28)[~~(24)~~] "Traffic" means to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, or sell a controlled substance.

(29)[~~(25)~~] "Transfer" means to dispose of a controlled substance to another person without consideration and not in furtherance of commercial distribution.

(30)[~~(26)~~] "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

SECTION 13. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) The Cabinet for Human Resources shall establish a system for monitoring Schedules II, III, IV, and V controlled substances that are dispensed within the Commonwealth by a practitioner or pharmacist or dispensed to an address within the Commonwealth by a pharmacy licensed by the Kentucky Board of Pharmacy.

(2) Every dispenser within the Commonwealth or who is licensed by the Kentucky Board of Pharmacy shall report to the Cabinet for Human Resources the data required by this section in a timely manner as prescribed by the cabinet except that reporting shall not be required for:

(a) A drug administered directly to a patient; or

(b) A drug dispensed by a practitioner at a facility licensed by the cabinet provided that the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of forty-eight (48) hours.

(3) Data for each controlled substance that is dispensed shall include but not be limited to the following:

(a) Patient identifier;

(b) Drug dispensed;

(c) Date of dispensing;

(d) Quantity dispensed;

(e) Prescriber; and

(f) Dispenser.

(4) The data shall be provided in the format specified by the Cabinet for Human Resources unless a waiver has been granted by the cabinet to an individual dispenser.

(5) The Cabinet for Human Resources shall be authorized to provide data to:

(a) A designated representative of a board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other person who is authorized to prescribe, administer, or dispense controlled substances and who is involved in a bona fide specific investigation involving a designated person;

(b) A state, federal, or municipal officer whose duty is to enforce the laws of this state or the United States relating to drugs and who is engaged in a bona fide specific investigation involving a designated person;

(c) A properly convened grand jury pursuant to a subpoena properly issued for the records; or

(d) A practitioner or pharmacist who requests information and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide current patient.

(6) The Cabinet for Human Resources, all law enforcement officers, all officers of the court, and all regulatory agencies and officers, in using the data for investigative or prosecution purposes, shall consider the nature of the prescriber's and dispenser's practice and the condition for which the patient is being treated.

(7) The data and any report obtained therefrom shall not be a public record.

(8) Knowing failure by a dispenser to transmit data to the cabinet as required by subsection (2), (3), or (4) of this section shall be a Class A misdemeanor.

(9) Disclosure of transmitted data to a person not authorized by subsection (5) of this section or authorized by KRS 315.121 shall be a Class D felony.

SECTION 14. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall promulgate administrative regulations in accordance with KRS Chapter 13A which *establish security requirements for all written or oral prescriptions. The administrative regulations shall include a procedure to obtain a waiver for prescription blanks that provides substantially equivalent protection against forgery.*

SECTION 15. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of theft of a controlled substance when he unlawfully takes or exercises control over a controlled substance belonging to another person with the intent to deprive him thereof.

(2) Theft of a controlled substance is:

(a) For a first offense a Class D felony if the controlled substance has a value of three hundred dollars ($300) or less.

(b) For a second or subsequent offense, or value greater than three hundred dollars ($300), a Class C felony.

SECTION 16. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of forgery of a prescription when, with intent to defraud, deceive, or injure another, he falsely makes, completes, or alters a written instrument which is or purports to be or which is calculated to become or to represent a prescription for a controlled substance when completed.

(2) Forgery of a prescription is:

(a) For a first offense, a Class D felony.

(b) For a second or subsequent offense, a Class C felony.

SECTION 17. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of criminal possession of a forged prescription when, with knowledge that it is forged and with intent to defraud, deceive, or injure another, he utters or possesses a forged prescription for a controlled substance.

(2) Criminal possession of a forged prescription is:

(a) For a first offense, a Class D felony.

(b) For a second or subsequent offense, a Class C felony.

SECTION 18. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

For purposes of Sections 16 and 17 of this Act, the definitions found in KRS 516.010 apply.

SECTION 19. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of theft of a prescription blank when he unlawfully takes or exercises control over a prescription blank belonging to another.

(2) A person is guilty of criminal possession of a prescription blank when, with knowledge that he has no lawful authority to possess a prescription blank, he possesses a prescription blank with the intent to utter a forged prescription or sell or transfer the prescription blank to another person for that purpose.

(3) A person is guilty of trafficking in prescription blanks when he knowingly and unlawfully traffics in a prescription blank or a forged prescription for a controlled substance.

(4) The possession of a prescription blank by a person other than a pharmacist, practitioner, or other person authorized by law to prescribe or dispense a controlled substance, a manufacturer, wholesaler, or distributor, or by a person lawfully printing or reproducing prescription blanks, shall be prima facie evidence that the prescription blank was possessed for the purpose of uttering a forged prescription or for sale or transfer to another person for that purpose.

(5) Any person who violates any subsection of this section shall be guilty of a Class D felony for the first offense and a Class C felony for a second or subsequent offense.

SECTION 20. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) A pharmacist, practitioner, or other person authorized by law to dispense controlled substances, or an employee of that person, may seize and retain any prescription which he has reasonable suspicion for believing is forged, altered, or deceitful in violation of Section 16, 17, or 22 of this Act.

(2) Seizure and retention shall be for a reasonable period of time to make reasonable inquiry as to whether the prescription is forged, altered, or deceitful.

(3) If after reasonable inquiry the pharmacist, practitioner, or other person determines that the prescription is forged, altered, or deceitful, he shall report the seizure to a law enforcement officer and shall surrender the prescription to the officer upon the request of the officer.

SECTION 21. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

Unless this chapter provides a specific penalty for the same act, the provisions of KRS Chapter 506 shall apply to offenses under this chapter.

Section 22. KRS 218A.140 is amended to read as follows:

(1) (a) No person shall obtain or attempt to obtain a ***prescription for a controlled substance by knowingly misrepresenting to, or knowingly withholding information from, a practitioner***[~~controlled substance, or procure or attempt to procure the administration of a controlled substance by fraud, deceit, misrepresentation, or subterfuge, or by the forgery or alteration of a prescription, or by the concealment of a material fact, or by the use of a false name or the giving of a false address~~].

(b) ***No person shall procure or attempt to procure the administration of a controlled substance by knowingly misrepresenting to, or withholding information from, a practitioner.***

(c) No person shall obtain or attempt to obtain a controlled substance or procure or attempt to procure the administration of a controlled substance by the use of a false name or the giving of a false address.

(d) No person shall ***knowingly***[~~willfully~~] make a false statement regarding any prescription, order, report, or record required by this chapter.

(e)[~~(c)~~]No person shall, for the purpose of obtaining a controlled substance, falsely assume the title of or represent himself to be a manufacturer, wholesaler, distributor, repacker, pharmacist, practitioner, or other authorized person.

(f) In order to obtain a controlled substance, no person shall present a prescription for a controlled substance that was obtained in violation of this chapter

[~~(d) No person shall make or utter any false or forged prescription~~].

(g)[~~(e)~~]No person shall affix any false or forged label to a package or receptacle containing any controlled substance.

(2) No person shall possess, manufacture, sell, dispense, prescribe, distribute, or administer any counterfeit substance.

(3) Any person who violates any subsection of this section shall be guilty of a Class D felony for a first offense and a Class C felony for subsequent offenses.

Section 23. KRS 218A.170 is amended to read as follows:

(1) A duly licensed manufacturer***, distributor,*** or wholesaler may sell ***or***[~~and~~] distribute controlled substances, other than samples, to any of the following persons:

(a) To a manufacturer, wholesaler, or pharmacy;

(b) To a practitioner;

(c) To the administrator in charge of a hospital, but only for use by or in that hospital;

(d) To a person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes;

(e) To a person registered pursuant to the federal controlled substances laws.

(2) ***A pharmacist may sell or distribute a controlled substance:***

(a) Pursuant to a prescription that conforms to the requirements of this chapter; or

(b) To a person registered pursuant to the federal controlled substances laws.

(3) A practitioner may:

(a) Administer, dispense, or prescribe a controlled substance only for a legitimate medical purpose and in the course of professional practice; or

(b) Distribute a controlled substance to a person registered pursuant to the federal controlled substance laws.

(4) All sales and distributions shall be in accordance with ***KRS 218A.200 and*** the federal controlled substances laws, including the requirements governing the use of order forms.

(5)[~~(3)~~] Possession of or control of controlled substances obtained as authorized by this section shall be lawful if in the regular course of business, occupation, profession, employment, or duty of the possessor.

Section 24. KRS 218A.180 is amended to read as follows:

(1) Except when dispensed directly by a practitioner to an ultimate user, no controlled substance in Schedule II may be dispensed without the written prescription of a practitioner. ***No prescription for a controlled substance in Schedule II shall be valid after sixty (60) days from the date issued.*** No ***prescription for a*** controlled substance in Schedule II shall be refilled. All prescriptions for controlled substances classified in Schedule II shall be maintained in a separate prescription file.

(2) Except when dispensed directly by a practitioner to an ultimate user, a controlled substance included in Schedules III, IV, and V, which is a prescription drug, shall not be dispensed without a written***, electronic,*** or oral prescription by a practitioner. [~~All oral prescriptions shall be dated and signed by the pharmacist. A pharmacist refilling any prescription shall record on the prescription the date, the quantity and his initials. The maintenance of prescription records under the federal controlled substances laws and regulations, containing substantially the same information as specified herein,~~]

~~shall constitute compliance with this subsection.~~] The prescription shall not be filled or refilled more than six (6) months after the date ***issued***[~~ thereof~~] or be refilled more than five (5) times, unless renewed by the practitioner and a new prescription, written***, electronic,*** or oral shall be required.

(3) ***(a) To be valid, a prescription for a controlled substance shall be issued only for a legitimate medical purpose by a practitioner acting in the usual course of his professional practice. Responsibility for the proper dispensing of a controlled substance pursuant to a prescription for a legitimate medical purpose is upon the pharmacist who fills the prescription.***

(b) A prescription shall not be issued for a practitioner to obtain a controlled substance for the purpose of general dispensing or administering to patients.

(4) All written prescriptions for controlled substances shall be dated[~~ as of~~] and signed by the practitioner on the date[~~ when~~] issued and shall bear the full name and address of the patient***, drug name, strength, dosage form, quantity prescribed, directions for use,*** and the name, address and registration number of the practitioner.[~~ All prescriptions for controlled substances shall be retained for a period of two (2) years.~~]

(5) All oral or electronic prescriptions shall include the full name and address of the patient, drug name, strength, dosage form, quantity prescribed, directions for use, and the name, address and registration number of the practitioner.

(6) All oral or electronic prescriptions shall be immediately reduced to writing, dated, and signed by the pharmacist. Information contained in a computer shall not be considered writing.

(7) A pharmacist refilling any prescription shall record on the prescription or other equivalent record the date, the quantity, and the pharmacist's initials. The maintenance of prescription records under the federal controlled substances laws and regulations containing substantially the same information as specified in this subsection shall constitute compliance with this subsection.

(8)[~~(4)~~] The pharmacist filling a written***, electronic,*** or oral prescription for a controlled substance shall affix to the package a label showing the date of filling, the pharmacy name and address, the serial number of the prescription, the name of the patient, the name of the prescribing practitioner and directions for use and cautionary statements, if any, contained in such prescription or required by law.

(9) Any person who violates any provision of this section shall:

(a) For the first offense, be guilty of a Class A misdemeanor.

(b) For a second or subsequent offense, be guilty of a Class D felony.

Section 25. KRS 218A.200 is amended to read as follows:

(1) Every practitioner who is authorized to administer or professionally use controlled substances, shall keep a record of[~~ such~~] substances received by him, and a record of all[~~ such~~] substances administered, dispensed, or professionally used by him otherwise than by prescription.

(2) Manufacturers and wholesalers shall keep records of all controlled substances compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all controlled substances received and disposed of by them.

(3) Pharmacists shall keep records of all controlled substances received and disposed of by them.

(4) The record of controlled substances received shall in every case show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received. The record of all controlled substances sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered or dispensed, and the kind and quantity. Every such record shall be kept for a period of ***five (5)***[~~two (2)~~] years. The keeping of a record under the federal controlled substances laws, containing substantially the same information as is specified herein, shall constitute compliance with this section. A copy of the detailed list of controlled substances lost, destroyed, or stolen shall be forwarded to the Cabinet for Human Resources as soon as practical.

(5) Every manufacturer, distributor, wholesaler, repacker, practitioner, pharmacist, or other person authorized to possess controlled substances shall take an inventory of all controlled substances in his possession in every two (2) years. In addition to the biennial inventory required by federal controlled substances laws, an inventory shall be taken of those substances controlled by the provisions of this chapter. A substance which is added to any schedule of controlled substances and which was not previously listed in any schedule shall be inventoried within thirty (30) days of the effective date of the statute or administrative regulation which adds the substance to the provisions of this chapter.

(6) Any person who violates any provision of this section shall be guilty of a Class A misdemeanor for a first offense and a Class D felony for subsequent offenses.

Section 26. KRS 218A.240 is amended to read as follows:

(1) ***All police officers and deputy sheriffs directly employed full-time by state, county, city, or urban-county governments***[~~It is hereby made the duty of all Peace officers within this state~~], the State Police, the Cabinet for Human Resources, their officers and agents, and of all city, county, and Commonwealth's attorneys, and the Attorney General, within their respective jurisdictions, ***shall***[~~to~~] enforce all provisions of this chapter and cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to controlled substances.

(2) For the purpose of enforcing the provisions of this chapter, the designated agents of the Cabinet for Human Resources shall have the full power and authority of peace officers in this state, including the power of arrest and the authority to bear arms, and shall have the power and authority to administer oaths, to enter upon premises at all times for the purpose of making inspections, to seize evidence, to interrogate all persons, to require the production of prescriptions, of books, papers, documents or other evidence, to employ special investigators, and to expend funds for the purpose of obtaining evidence.

(3) The Kentucky Board of Pharmacy, its agents and inspectors, shall have the same powers of inspection and enforcement as the Cabinet for Human Resources.

(4) Designated agents of the Cabinet for Human Resources and the Kentucky Board of Pharmacy are empowered to remove from the files of any pharmacy or other custodian any controlled substance prescription ***or other controlled substance record*** upon tendering a receipt[~~ therefor~~]. ***The receipt shall be sufficiently detailed to accurately identify the record. A receipt for the record shall be a defense to a charge of failure to maintain the record.***

(5) Notwithstanding the existence or pursuit of any other remedy, civil or criminal, any law enforcement authority may maintain, in its own name, an action to restrain or enjoin any violation of this chapter, or to forfeit any property subject to forfeiture under KRS 218A.410, irrespective of whether the owner of the property has been charged with or convicted of any offense under this chapter.

(a) Any civil action against any person brought pursuant to this section may be instituted in the Circuit Court in any county in which the person resides, in which any property owned by the person and subject to forfeiture is found, or in which the person has violated any provision of this chapter.

(b) A final judgment rendered in favor of the Commonwealth in any criminal proceeding brought under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought pursuant to this section.

(c) The prevailing party in any civil proceeding brought pursuant to this section shall recover his costs, including a reasonable attorney's fee.

(d) Distribution of funds under this section shall be made in the same manner as in KRS 218A.435, except that if the Commonwealth's attorney has not initiated the forfeiture action under this section, his percentage of the funds shall go to the agency initiating the forfeiture action.

(6) [~~It shall be the duty of~~]The Cabinet for Human Resources ***shall***[~~to~~] make or cause to be made examinations of samples secured under the provisions of this chapter to determine whether[~~ or not~~] any provision[~~ thereof~~] has been violated.

Section 27. KRS 315.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Administer" means the direct application of a drug to a patient or research subject by injection, inhalation, or ingestion, whether topically or by any other means;

(2) "Association" means the Kentucky Pharmacists Association;

(3) "Board" means the Kentucky Board of Pharmacy;

(4) "Collaborative care agreement" means a written agreement between a specifically identified individual practitioner and a pharmacist who is specifically identified, whereby the practitioner outlines a plan of cooperative management of a specifically identified individual patient's drug-related health care needs that fall within the practitioner's statutory scope of practice. The agreement shall be limited to specification of the drug-related regimen to be provided and any tests which may be necessarily incident to its provisions; stipulated conditions for initiating, continuing, or discontinuing drug therapy; directions concerning the monitoring of drug therapy and stipulated conditions which warrant modifications to dose, dosage regimen, dosage form, or route of administration;

(5) "Compound" or "compounding" means the preparation or labeling of a drug pursuant to or in anticipation of a valid prescription drug order including, but not limited to, packaging, intravenous admixture or manual combination of drug ingredients. Compounding, as used in this chapter, shall not preclude simple reconstitution, mixing, or modification of drug products prior to administration by nonpharmacists;

(6) "Confidential information" means information which is accessed or maintained by a pharmacist in a patient's record, or communicated to a patient as part of patient counseling, whether it is preserved on paper, microfilm, magnetic media, electronic media, or any other form;

(7) "Continuing education unit" means ten (10) contact hours of board approved continuing pharmacy education. A "contact hour" means fifty (50) continuous minutes without a break period;

(8) "Dispense" or "dispensing" means to deliver one (1) or more doses of a prescription drug in a suitable container, appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug;

(9) "Drug" means any of the following:

(a) Articles recognized as drugs or drug products in any official compendium or supplement thereto; or

(b) Articles, other than food, intended to affect the structure or function of the body of man or other animals; or

(c) Articles, including radioactive substances, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; or

(d) Articles intended for use as a component of any articles specified in paragraphs (a) to (c) of this subsection;

(10) "Drug regimen review" means retrospective, concurrent, and prospective review by a pharmacist of a patient's drug-related history, including but not limited to, the following areas:

(a) Evaluation of prescription drug orders and patient records for:

1. Known allergies;
2. Rational therapy contraindications;
3. Appropriate dose and route of administration;
4. Appropriate directions for use; or
5. Duplicative therapies.

(b) Evaluation of prescription drug orders and patient records for drug-drug, drug-food, drug-disease, and drug-clinical laboratory interactions;

(c) Evaluation of prescription drug orders and patient records for adverse drug reactions; or

(d) Evaluation of prescription drug orders and patient records for proper utilization and optimal therapeutic outcomes;

(11) "Immediate supervision" means under the physical and visual supervision of a pharmacist;

(12) "Manufacturer" means any person, except a pharmacist compounding in the normal course of professional practice, within the Commonwealth engaged in the commercial production, preparation, propagation, compounding, conversion or processing of a drug, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or both, and includes any packaging or repackaging of a drug or the labeling or relabeling of its container;

(13) "Medical order" means a lawful order of a specifically-identified practitioner for a specifically-identified patient for the patient's health care needs. "Medical order" may or may not include a prescription drug order;

(14) "Nonprescription drugs" means nonnarcotic medicines or drugs which may be sold without a prescription and are prepackaged and labeled for use by the consumer in accordance with the requirements of the statutes and regulations of this state and the federal government;

(15) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy;

(16) "Pharmacist intern" means a natural person who is:

(a) Currently certified by the board to engage in the practice of pharmacy under the direction of a licensed pharmacist and who satisfactorily progresses toward meeting the requirements for licensure as a pharmacist;

(b) A graduate of an approved college or school of pharmacy or a graduate who has established educational equivalency by obtaining a Foreign Pharmacy Graduate Examination Committee (FPGEC) certificate, who is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;

(c) A qualified applicant awaiting examination for licensure as a pharmacist or the results of an examination for licensure as a pharmacist; or

(d) An individual participating in a residency or fellowship program approved by the board for internship credit;

(17) "Pharmacy" means every place where:

(a) Drugs are dispensed under the direction of a pharmacist;

(b) Prescription drug orders are compounded under the direction of a pharmacist; or

(c) A registered pharmacist maintains patient records and other information for the purpose of engaging in the practice of pharmacy, whether or not prescription drug orders are being dispensed;

(18) "Pharmacy technician" means a natural person who works under the immediate supervision, or general supervision if

otherwise provided for by statute or administrative regulation, of a pharmacist for the purpose of assisting a pharmacist with the practice of pharmacy;

(19) "Practice of pharmacy" means interpretation, evaluation, and implementation of medical orders and prescription drug orders; responsibility for dispensing prescription drug orders, including radioactive substances; participation in drug and drug-related device selection, administration of medication in the course of dispensing or maintaining a prescription drug order, and drug evaluation, utilization, or regimen review; maintenance of patient pharmacy records; and provision of patient counseling and those professional acts, professional decisions, or professional services necessary to maintain and manage all areas of a patient's pharmacy-related care, including pharmacy-related primary care as defined in this section;

(20) "Practitioner" has the same meaning given in KRS 217.015***(26)***[~~(23)~~];

(21) "Prescription drug" means a drug which:

(a) Under federal law is required to be labeled with either of the following statements:

1. "Caution: Federal law prohibits dispensing without prescription"; or

2. "Caution: Federal law restricts this drug to use by, or on the order of, a licensed veterinarian"; or

(b) Is required by any applicable federal or state law or administrative regulation to be dispensed only pursuant to a prescription drug order or is restricted to use by practitioners;

(22) "Prescription drug order" means an original or new order from a practitioner for drugs, drug-related devices or treatment for a human or animal, including orders issued through collaborative care agreements. Lawful prescriptions result from a valid practitioner-patient relationship, are intended to address a legitimate medical need, and fall within the prescribing practitioner's scope of professional practice;

(23) "Pharmacy-related primary care" means the pharmacists' activities in patient education, health promotion, assistance in the selection and use of over-the-counter drugs and appliances for the treatment of common diseases and injuries as well as those other activities falling within their statutory scope of practice;

(24) "Society" means the Kentucky Society of Health-Systems Pharmacists;

(25) "Supervision" means the presence of a pharmacist on the premises to which a pharmacy permit is issued, who is responsible, in whole or in part, for the professional activities occurring in the pharmacy; and

(26) "Wholesaler" means any person within the Commonwealth who legally buys drugs for resale or distribution to persons other than patients or consumers.

The Committee Substitute to **HB 115** is as follows:

AN ACT relating to drugs.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 217.015 is amended to read as follows:

For the purposes of KRS 217.005 to 217.215:

(1) The term "secretary" means the secretary of the Cabinet for Human Resources;

(2) The term "cabinet" means the Cabinet for Human Resources or its designee;

(3) The term "person" means an individual, or a firm, partnership, company, corporation, trustee, association, or any public or private entity;

(4) The term "food" means:

(a) Articles used for food or drink for man or other animals;

(b) Chewing gum; and

(c) Articles used for components of any such article;

(5) The term "drug" means:

(a) Articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;

(c) Articles, other than food, intended to affect the structure or any function of the body of man or other animals; and

(d) Articles intended for use as a component of any article specified in this subsection but does not include devices or their components, parts, or accessories;

(6) The term "device", except when used in subsection (12) of this section and in subsection (10) of KRS 217.175, subsection (6) of KRS 217.035, subsection (3) of KRS 217.065, and subsection (3) of KRS 217.095, means instruments,

apparatus and contrivances, including their components, parts and accessories, intended:

(a) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or

(b) To affect the structure or any function of the body of man or other animals;

(7) The term "cosmetic" means:

(a) Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and

(b) Articles intended for use as a component of any such articles, except that such term shall not include soap;

(8) The term "official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them;

(9) The term "label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of KRS 217.005 to 217.215 that any word, statement, or other information appearing on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article, or is easily legible through the outside container or wrapper;

(10) The term "immediate container" shall not include package liners;

(11) The term "labeling" means all labels and other written, printed or graphic matter:

(a) Upon an article or any of its containers or wrappers; or

(b) Accompanying the article;

(12) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under the conditions of use as are customary or usual;

(13) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics;

(14) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use involving prolonged contact with the body;

(15) The term "legend drug" means a drug defined by the Federal Food, Drug and Cosmetic Act, as amended, and under which definition its label is required to bear the statement "Caution: Federal law prohibits dispensing without prescription.";

(16)[~~(15)~~] The term "new drug" means:

(a) Any drug the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or

(b) Any drug the composition of which is such that the drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions;

(17)[~~(16)~~] The term "contaminated with filth" shall apply to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations;

(18)[~~(17)~~] The provisions of KRS 217.005 to 217.215 regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment;

(19)[~~(18)~~] The term "federal act" means the federal Food, Drug and Cosmetic Act (21 U.S.C. Sec. 301 et seq.; 52 Stat. 1040 et seq., or amendments thereto);

(20)[~~(19)~~] The term "flour" shall include and be limited to the foods, commonly known as flour, white flour, wheat flour, plain flour, bromated flour, self-rising flour, self-rising white flour, self-rising wheat flour, phosphated flour, phosphated white flour, and phosphated wheat flour, defined under the federal act;

(21)[~~(20)~~] The term "enriched" as applied to flour, means the addition to flour of vitamins and other nutritional ingredients necessary to make it conform to the definition and standard of "enriched" flour as defined under the federal act;

(22)[~~(21)~~] The terms "bread" and "enriched bread" shall include, and be limited to, the foods commonly known and described as "white bread," "white rolls," "white buns," "enriched white bread," "enriched rolls," and "enriched white buns," as defined under the federal act;

(23)[~~(22)~~] The term "filled milk" means any milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat, except the fat or oil of contained eggs and nuts and the fat or oil of substances used for flavoring purposes only, so that the resulting product is an imitation or semblance of milk, cream, skimmed milk, ice cream mix, ice cream, or frozen desserts, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, whether in bulk or in containers, hermetically sealed or unsealed. This definition shall not mean or include any milk or cream from which no part of the milk or butter fat has been extracted, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has been added any substance rich in vitamins, nor any distinctive proprietary food compound not readily mistaken for milk or cream or for condensed, evaporated, concentrated, powdered, dried, or desiccated milk or cream, if the compound is prepared and designed for the feeding of infants or young children, sick or infirm persons, and customarily used on the order of a physician, and is packed in individual containers bearing a label in bold type that the contents are to be used for those purposes; nor shall this definition prevent the use, blending or compounding of chocolate as a flavor with milk, cream, or skimmed milk, desiccated, whether in bulk or in containers, hermetically sealed or unsealed, to or with which has been added, blended or compounded no other fat or oil other than milk or butter fat;

(24) The term "dispense" means to deliver a drug or device to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery;

(25) The term "dispenser" means a person who lawfully dispenses a drug or device to or for the use of an ultimate user;

(26)[~~(23)~~] The term "practitioner" means medical or osteopathic physicians, dentists, chiropodists, and veterinarians who are licensed under the professional licensing laws of Kentucky to prescribe and administer drugs and devices; it shall also include optometrists when administering or prescribing pharmaceutical agents authorized in subsections (13), (14), and (15) of KRS 320.240, and advanced registered nurse practitioners as authorized in KRS 314.011 and 314.042;

(27)[~~(24)~~] The term "prescription" means a written or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, signed or given or authorized by a medical, dental, chiropody, veterinarian, or optometric practitioner, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(28) The term "prescription blank" means a document that conforms with KRS 217.216 and is intended for prescribing a drug to an ultimate user;

(29) The term "second or subsequent offense" has the same meaning as it does in KRS 218A.010;

(30) The term "traffic" has the same meaning as it does in KRS 218A.010;

(31) The term "ultimate user" has the same meaning as it does in KRS 218A.010;

(32)[~~(25)~~] The term "Meat Inspection Act" means the federal Meat Inspection Act (21 U.S.C. Sec. 71 et seq.; 34 Stat. 1260 et seq., including any amendments thereto);

(33)[~~(26)~~] The term "Poultry Products Inspection Act" means the federal Poultry and Poultry Products Inspection Act; 21 U.S.C. Sec. 451 et seq.; Public Law 85-172; 71 Stat. 441, including any amendments thereto;

(34)[~~(27)~~] The term "Fair Packaging and Labeling Act" means the Fair Packaging and Labeling Act as it relates to foods and cosmetics, 15 U.S.C. Sec. 1451 et seq., and all amendments thereto;

(35)[~~(28)~~] The term "pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" within the meaning of the federal Insecticide, Fungicide and Rodenticide Act and subsequent amendments thereto, and which is used in the production, storage, or transportation of raw agricultural commodities;

(36)[~~(29)~~] The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing;

(37)[~~(30)~~] The term "food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use, if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food to be safe under the conditions of

its intended use; except that the term does not include:

(a) A pesticide chemical in or on a raw agricultural commodity; or

(b) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or

(c) A color additive; or

(d) Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act; the Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq., or the Meat Inspection Act of 1907 and subsequent amendments thereto;

(38)[~~(31)~~] (a) The term "color additive" means a material which:

1. Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

2. When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable, alone or through reaction with other substance, of imparting color thereto; except that the term shall not include any material which has been or hereafter is exempted under the federal act;

(b) The term "color" shall include, but not be limited to black, white, and intermediate grays;

(c) Nothing in paragraph (a)1. of this subsection shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

(39)[~~(32)~~] The term "Environmental Pesticide Control Act of 1972" means the federal Environmental Pesticide Control Act of 1972, Public Law 92-516, and all amendments thereto;

(40)[~~(33)~~] The term "retail food establishment" means any food service establishment, retail food store, or a combination of both within the same establishment;

(41)[~~(34)~~] The term "food service establishment" means any fixed or mobile commercial establishment that engages in the preparation and serving of ready-to-eat foods in portions to the consumer, including, but not limited to: restaurants; coffee shops; cafeterias; short order cafes; luncheonettes; grills; tea rooms; sandwich shops; soda fountains; taverns; bars; cocktail lounges; nightclubs; roadside stands; industrial feeding establishments; private, public or nonprofit organizations or institutions routinely serving food; catering kitchens; commissaries; or similar places in which food is prepared for sale or service on the premises or elsewhere with or without charge. It shall not include food vending machines, establishments serving beverages only in single service or original containers or retail food stores which only cut, slice, and prepare cold-cut sandwiches for individual consumption;

(42)[~~(35)~~] The term "temporary food service establishment" means any food service establishment which operates at a fixed location for a period of time, not to exceed fourteen (14) consecutive days;

(43)[~~(36)~~] The term "retail food store" means any fixed or mobile establishment where food or food products, including prepackaged, labeled sandwiches or other foods to be heated in a microwave or infrared oven at the time of purchase, are offered for sale to the consumer, and intended for off-premises consumption, but shall not include establishments which handle only prepackaged, snack-type, nonpotentially hazardous foods, markets that offer only fresh fruits and vegetables for sale, food service establishments, food and beverage vending machines, vending machine commissaries, or food processing establishments;

(44)[~~(37)~~] The term "salvage distributor" means a person who engages in the business of distributing, peddling, or otherwise trafficking in any salvaged merchandise;

(45)[~~(38)~~] The term "salvage processing plant" means an establishment operated by a person engaged in the business of reconditioning, labeling, relabeling, repackaging, recoopering, sorting, cleaning, culling or who by other means salvages, sells, offers for sale, or distributes for human or animal consumption or use any salvaged food, beverage, including beer, wine and distilled spirits, vitamins, food supplements, dentifices, cosmetics, single-service food containers or utensils, containers and packaging materials used for foods and cosmetics, soda straws, paper napkins, or any other product of a similar nature that has been damaged or contaminated by fire, water, smoke, chemicals, transit, or by any other means;

(46)[~~(39)~~] The term "food processing establishment" means any commercial establishment in which food is manufactured, processed, or packaged for human consumption, but shall not include retail food establishments; and

(47)[~~(40)~~] The term "food storage warehouse" means any establishment in which food is stored for subsequent distribution.

SECTION 2. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of theft of a legend drug when he unlawfully takes or exercises control over a legend drug that is not a controlled substance, belonging to another person, with the intent to deprive him thereof.

(2) Theft of a legend drug is:

(a) For a first offense a Class D felony, if the legend drug has a value of three hundred dollars ($300) or less; or

(b) For a second or subsequent offense, or a value of greater than three hundred dollars ($300), a Class C felony.

SECTION 3. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of theft of a prescription blank when he unlawfully takes or exercises control over a prescription blank belonging to another.

(2) A person is guilty of criminal possession of a prescription blank when, with knowledge that he has no lawful authority to possess a prescription blank, he possesses a prescription blank with the intent to make or utter a forged prescription or sell or transfer the prescription blank to another person for that purpose.

(3) A person is guilty of trafficking in prescription blanks when he knowingly and unlawfully traffics in a prescription blank or a forged prescription for a legend drug.

(4) The knowing, with intent to violate KRS Chapter 217, possession of a prescription blank by a person other than a pharmacist, practitioner, or other person authorized by law to prescribe or dispense a legend drug, a manufacturer, wholesaler, or distributor, or by a person lawfully printing or reproducing prescription blanks, shall be prima facie evidence that the prescription blank was possessed for the purpose of making or uttering a forged prescription or for sale or transfer to another person for that purpose.

(5) Any person who violates any subsection of this section shall be guilty of a Class A misdemeanor for the first offense and a Class D felony for a second or subsequent offense.

SECTION 4. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of forgery of a prescription when, with intent to defraud, deceive, or injure another, he falsely makes, completes, or alters a written instrument which is or purports to be or which is calculated to become or to represent a prescription for a legend drug when completed.

(2) Forgery of a prescription is:

(a) For a first offense, a Class D felony.

(b) For a second or subsequent offense, a Class C felony.

SECTION 5. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of criminal possession of a forged prescription when, with knowledge that it is forged and with intent to defraud, deceive, or injure another, he possesses a forged prescription.

(2) Criminal possession of a forged prescription is:

(a) For a first offense, a Class A misdemeanor.

(b) For second or subsequent offense, a Class D felony.

SECTION 6. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

(1) A pharmacist, practitioner, or other person authorized by law to dispense legend drugs, or an employee of that person, may seize and retain any prescription which he has reasonable suspicion for believing is forged, altered, or possessed in violation of Section 3, 4, or 5 of this Act.

(2) Seizure and retention shall be for a reasonable period of time to make reasonable inquiry as to whether the prescription is forged, altered, or illegally possessed.

(3) If after reasonable inquiry the pharmacist, practitioner, or other person determines that the prescription is forged, altered, or stolen, he shall report the seizure to a law enforcement officer and shall surrender the prescription to the officer upon the request of the officer.

SECTION 7. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

For purposes of Sections 3, 4, and 5 of this Act, the definitions found in KRS 516.010 apply.

SECTION 8. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

(1) A duly licensed manufacturer, distributor, or wholesaler may sell or distribute a legend drug to any of the following:

(a) A manufacturer, wholesaler, or distributor;

(b) A pharmacy;

(c) A practitioner;

(d) The administrator in charge of a hospital, but only for use by or in that hospital; and

(e) A person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes.

(2) A pharmacist may sell or distribute a legend drug:

(a) Pursuant to a prescription that conforms to the requirements of this chapter; or

(b) To a person licensed to administer, dispense, distribute, or possess a legend drug.

(3) A practitioner may:

(a) Administer, dispense, or prescribe a legend drug for a legitimate medical purpose and in the course of professional practice; or

(b) Distribute a legend drug to a person licensed to administer, dispense, distribute, or possess a legend drug.

(4) Possession or control of legend drugs obtained as authorized by this section shall be lawful if it occurred in the regular course of business, occupation, profession, employment, or duty of the possessor.

(5) No person shall traffic in any legend drug except as authorized by this section.

(6) No person shall dispense, prescribe, distribute, or administer any legend drug except as authorized by this section.

(7) No person shall possess any legend drug except as authorized by this section.

(8) Unless another specific penalty is provided in KRS 217.005 to 217.215, any person who violates any provision of subsections (1) to (6) of this section shall be guilty of a Class A misdemeanor for the first offense and a Class D felony for subsequent offenses.

(9) Unless another specific penalty is provided in this Act, any person who violates the provision of subsection (7) of this section shall be guilty of a Class B misdemeanor.

(10) A person to whom or for whose use a legend drug has been prescribed or dispensed may lawfully possess it.

Section 9. KRS 514.030 is amended to read as follows:

(1) *Except as otherwise provided in Section 2 or 15 of this Act,* a person is guilty of theft by unlawful taking or disposition when he unlawfully:

(a) Takes or exercises control over movable property of another with intent to deprive him thereof; or

(b) Obtains immovable property of another or any interest therein with intent to benefit himself or another not entitled thereto.

(2) Theft by unlawful taking or disposition is a Class A misdemeanor unless the value of the property is three hundred dollars ($300) or more, or unless the property is a firearm (regardless of the value of the firearm), in which case it is a Class D felony.

SECTION 10. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

Unless this chapter provides a specific penalty for the same act, the provisions of KRS Chapter 506 shall apply to offenses under KRS 217.005 to 217.215.

SECTION 11. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

(1) All police officers and deputy sheriffs, directly employed full-time by state, county, city, or urban-county governments, the State Police, the Cabinet for Human Resources, the offices of all city, county, and Commonwealth's attorneys, the Office of the Attorney General, and any of their officers and agents, within their respective jurisdictions, shall enforce Sections 2, 3, 4, 5 or 8 of this Act relating to legend drugs and cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to legend drugs.

(2) Designated agents of the Cabinet for Human Resources and the Kentucky Board of Pharmacy are empowered to remove from the files of any pharmacy or other custodian any prescription or other legend drug record upon tendering a receipt. The receipt shall be sufficiently detailed to accurately identify the record and a copy of the records seized shall be returned to the pharmacist within a reasonable amount of time.

Section 12. KRS 218A.010 is amended to read as follows:

As used in this chapter:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) A practitioner or by his authorized agent under his immediate supervision and pursuant to his order; or

(b) The patient or research subject at the direction and in the presence of the practitioner.

(2) "Anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone that promotes muscle growth and includes those substances listed in KRS 218A.090(5) but does not include estrogens, progestins, and anticosteroids.

(3) *"Cabinet" means the Cabinet for Human Resources.*

(4) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V and includes a controlled substance analogue.

(5)[~~(4)~~] (a) "Controlled substance analogue", except as provided in subparagraph (b), means a substance:

1. The chemical structure of which is substantially similar to the structure of a controlled substance in Schedule I or II; and
2. Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or
3. With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.

(b) Such term does not include:

1. Any substance for which there is an approved new drug application;
2. With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent conduct with respect to such substance is pursuant to such exemption; or
3. Any substance to the extent not intended for human consumption before the exemption described in subparagraph 2. of this paragraph takes effect with respect to that substance.

(6)[~~(5)~~] "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(7)[~~(6)~~] "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery.

(8) "Dispenser" means a person who lawfully dispenses a Schedule II, III, IV, or V controlled substance to or for the use of an ultimate user.

(9)[~~(7)~~] "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(10)[~~(8)~~] "Drug" means:

(a) Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(b) Substances intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man or animals;

(c) Substances (other than food) intended to affect the structure or any function of the body of man or animals; and

(d) Substances intended for use as a component of any article specified in this subsection.

It does not include devices or their components, parts, or accessories.

(11)[~~(9)~~] "Immediate precursor" means a substance which is the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(12)[~~(10)~~] "Isomer" means the optical isomer, except as used in KRS 218A.050(3) and 218A.070(1)(d). As used in KRS 218A.050(3), the term "isomer" means the optical, positional, or geometric isomer. As used in KRS 218A.070(1)(d), the term "isomer" means the optical or geometric isomer.

(13)[~~(11)~~] "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include activities:

(a) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(b) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or

(c) By a pharmacist as an incident to his dispensing of a controlled substance in the course of his professional practice.

(14)[~~(12)~~] "Marijuana" means all parts of the plant Cannabis sp., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin or any compound, mixture, or preparation which contains any quantity of these substances.

(15)[~~(13)~~] "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in ***paragraph***[~~subsection (13)~~] (a) of this ***subsection***[~~section~~], but not including the isoquinoline alkaloids of opium;

(c) Opium poppy and poppy straw;

(d) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.

(e) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

(g) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (a) to (f) ***of this subsection***.

(16)[~~(14)~~] "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under KRS 218A.030, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(17)[~~(15)~~] "Opium poppy" means the plant of the species papaver somniferum L., except its seeds.

(18)[~~(16)~~] "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(19)[~~(17)~~] "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(20)[~~(18)~~] "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy.

(21)[~~(19)~~] "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific investigator, optometrist as authorized in KRS 320.240, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

(22) "Prescription" means a written, electronic, or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, signed or given or authorized by a medical, dental, chiropody, veterinarian, or optometric practitioner, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals.

(23) "Prescription blank," with reference to a controlled substance, means a document that meets the requirements of Section 14 of this Act and KRS 217.216.

(24)[~~(20)~~] "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(25)[~~(21)~~] "Second or subsequent offense" means that for the purposes of this chapter an offense is considered as a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter, or under any statute of the United States, or of any state relating to substances classified as controlled substances or counterfeit substances, except that a prior conviction for a nontrafficking offense shall be treated as a prior offense only when the subsequent offense is a nontrafficking offense. For the purposes of this section, a conviction voided under KRS 218A.275 or 218A.276 shall not constitute a conviction under this chapter.

(26)[~~(22)~~] "Sell" means to dispose of a controlled substance to another person for consideration or in furtherance of commercial distribution.

(27)[~~(23)~~] "Tetrahydrocannabinols" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the plant Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

1. Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;
2. Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers;
3. Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers.

(28)[~~(24)~~] "Traffic" means to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, or sell a controlled substance.

(29)[~~(25)~~] "Transfer" means to dispose of a controlled substance to another person without consideration and not in furtherance of commercial distribution.

(30)[~~(26)~~] "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

SECTION 13. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) The Cabinet for Human Resources shall establish an electronic system for monitoring Schedules II, III, IV, and V controlled substances that are dispensed within the Commonwealth by a practitioner or pharmacist or dispensed to an address within the Commonwealth by a pharmacy licensed by the Kentucky Board of Pharmacy.

(2) A practitioner or a pharmacist shall not have to pay a fee or tax specifically dedicated to the operation of the system.

(3) Every dispenser within the Commonwealth or who is licensed by the Kentucky Board of Pharmacy shall report to the Cabinet for Human Resources the data required by this section in a timely manner as prescribed by the cabinet except that reporting shall not be required for:

(a) A drug administered directly to a patient; or

(b) A drug dispensed by a practitioner at a facility licensed by the cabinet provided that the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of forty-eight (48) hours.

(4) Data for each controlled substance that is dispensed shall include but not be limited to the following:

(a) Patient identifier;

(b) Drug dispensed;

(c) Date of dispensing;

(d) Quantity dispensed;

(e) Prescriber; and

(f) Dispenser.

(5) The data shall be provided in the electronic format specified by the Cabinet for Human Resources unless a waiver has been granted by the cabinet to an individual dispenser.

(6) The Cabinet for Human Resources shall be authorized to provide data to:

(a) A designated representative of a board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other person who is authorized to prescribe, administer, or dispense controlled substances and who is involved in a bona fide specific investigation involving a designated person;

(b) A state, federal, or municipal officer whose duty is to enforce the laws of this state or the United States relating to drugs and who is engaged in a bona fide specific investigation involving a designated person;

(c) A state-operated Medicaid program;

(d) A properly convened grand jury pursuant to a subpoena properly issued for the records;

(e) A practitioner or pharmacist who requests information and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide current patient; or

(f) A person who receives data or any report of the system from the cabinet shall not provide it to any other person or entity except by order of a court of competent jurisdiction.

(7) The Cabinet for Human Resources, all law enforcement officers, all officers of the court, and all regulatory agencies and officers, in using the data for investigative or prosecution purposes, shall consider the nature of the prescriber's and dispenser's practice and the condition for which the patient is being treated.

(8) The data and any report obtained therefrom shall not be a public record.

(9) Knowing failure by a dispenser to transmit data to the cabinet as required by subsection (3), (4), or (5) of this section shall be a Class A misdemeanor.

(10) Knowing disclosure of transmitted data to a person not authorized by subsection (6) of this section or authorized by KRS 315.121, or obtaining information under this section not relating to a bona fide specific investigation, shall be a Class D felony.

SECTION 14. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

The Cabinet for Human Resources shall promulgate administrative regulations in accordance with KRS Chapter 13A that establish security requirements for all prescriptions written by practitioners. The administrative regulations shall include a procedure to obtain a waiver for prescription blanks that provide substantially equivalent protection against forgery.

SECTION 15. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of theft of a controlled substance when he unlawfully takes or exercises control over a controlled substance belonging to another person with the intent to deprive him thereof.

(2) Theft of a controlled substance is:

(a) For a first offense a Class D felony if the controlled substance has a value of three hundred dollars ($300) or less.

(b) For a second or subsequent offense, or value greater than three hundred dollars ($300), a Class C felony.

SECTION 16. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of forgery of a prescription when, with intent to defraud, deceive, or injure another, he falsely makes, completes, or alters a written instrument which is or purports to be or which is calculated to become or to represent a prescription for a controlled substance when completed.

(2) Forgery of a prescription is:

(a) For a first offense, a Class D felony.

(b) For a second or subsequent offense, a Class C felony.

SECTION 17. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of criminal possession of a forged prescription when, with knowledge that it is forged and with intent to defraud, deceive, or injure another, he utters or possesses a forged prescription for a controlled substance.

(2) Criminal possession of a forged prescription is:

(a) For a first offense, a Class D felony.

(b) For a second or subsequent offense, a Class C felony.

SECTION 18. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

For purposes of Sections 16 and 17 of this Act, the definitions found in KRS 516.010 apply.

SECTION 19. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of theft of a prescription blank when he unlawfully takes or exercises control over a prescription blank belonging to another.

(2) A person is guilty of criminal possession of a prescription blank when, with knowledge that he has no lawful authority to possess a prescription blank, he possesses a prescription blank with the intent to utter a forged prescription or sell or transfer the prescription blank to another person for that purpose.

(3) A person is guilty of trafficking in prescription blanks when he knowingly and unlawfully traffics in a prescription blank or a forged prescription for a controlled substance.

(4) The knowing, with intent to violate KRS Chapter 218A, possession of a prescription blank by a person other than a pharmacist, practitioner, or other person authorized by law to prescribe or dispense a controlled substance, a manufacturer, wholesaler, or distributor, or by a person lawfully printing or reproducing prescription blanks, shall be prima facie evidence that the prescription blank was possessed for the purpose of uttering a forged prescription or for sale or transfer to another person for that purpose.

(5) Any person who violates any subsection of this section shall be guilty of a Class D felony for the first offense and a Class C felony for a second or subsequent offense.

SECTION 20. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) A pharmacist, practitioner, or other person authorized by law to dispense controlled substances, or an employee of that person, may seize and retain any prescription which he has reasonable suspicion for believing is forged, altered, or deceitful in violation of Section 16, 17, or 22 of this Act.

(2) Seizure and retention shall be for a reasonable period of time to make reasonable inquiry as to whether the prescription is forged, altered, or deceitful.

(3) If after reasonable inquiry the pharmacist, practitioner, or other person determines that the prescription is forged, altered, or deceitful, he shall report the seizure to a law enforcement officer and shall surrender the prescription to the officer upon the request of the officer.

SECTION 21. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

Unless this chapter provides a specific penalty for the same act, the provisions of KRS Chapter 506 shall apply to offenses under this chapter.

Section 22. KRS 218A.140 is amended to read as follows:

(1) (a) No person shall obtain or attempt to obtain a *prescription for a controlled substance by knowingly misrepresenting to, or knowingly withholding information from, a practitioner*[~~controlled substance, or~~

~~procure or attempt to procure the administration of a controlled substance by fraud, deceit, misrepresentation, or subterfuge, or by the forgery or alteration of a prescription, or by the concealment of a material fact, or by the use of a false name or the giving of a false address]~~.

(b) ***No person shall procure or attempt to procure the administration of a controlled substance by knowingly misrepresenting to, or withholding information from, a practitioner.***

(c) No person shall obtain or attempt to obtain a controlled substance or procure or attempt to procure the administration of a controlled substance by the use of a false name or the giving of a false address.

(d) No person shall ***knowingly***~~[willfully]~~ make a false statement regarding any prescription, order, report, or record required by this chapter.

(e)~~[(c)]~~No person shall, for the purpose of obtaining a controlled substance, falsely assume the title of or represent himself to be a manufacturer, wholesaler, distributor, repacker, pharmacist, practitioner, or other authorized person.

(f) In order to obtain a controlled substance, no person shall present a prescription for a controlled substance that was obtained in violation of this chapter

~~[(d) No person shall make or utter any false or forged prescription]~~.

(g)~~[(e)]~~No person shall affix any false or forged label to a package or receptacle containing any controlled substance.

(2) No person shall possess, manufacture, sell, dispense, prescribe, distribute, or administer any counterfeit substance.

(3) Any person who violates any subsection of this section shall be guilty of a Class D felony for a first offense and a Class C felony for subsequent offenses.

Section 23. KRS 218A.170 is amended to read as follows:

(1) A duly licensed manufacturer***, distributor,*** or wholesaler may sell ***or***~~[and]~~ distribute controlled substances, other than samples, to any of the following persons:

(a) To a manufacturer, wholesaler, or pharmacy;

(b) To a practitioner;

(c) To the administrator in charge of a hospital, but only for use by or in that hospital;

(d) To a person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes;

(e) To a person registered pursuant to the federal controlled substances laws.

(2) ***A pharmacist may sell or distribute a controlled substance:***

(a) Pursuant to a prescription that conforms to the requirements of this chapter; or

(b) To a person registered pursuant to the federal controlled substances laws.

(3) A practitioner may:

(a) Administer, dispense, or prescribe a controlled substance only for a legitimate medical purpose and in the course of professional practice; or

(b) Distribute a controlled substance to a person registered pursuant to the federal controlled substance laws.

(4) All sales and distributions shall be in accordance with ***KRS 218A.200 and*** the federal controlled substances laws, including the requirements governing the use of order forms.

(5)~~[(3)]~~ Possession of or control of controlled substances obtained as authorized by this section shall be lawful if in the regular course of business, occupation, profession, employment, or duty of the possessor.

Section 24. KRS 218A.180 is amended to read as follows:

(1) Except when dispensed directly by a practitioner to an ultimate user, no controlled substance in Schedule II may be dispensed without the written prescription of a practitioner. ***No prescription for a controlled substance in Schedule II shall be valid after sixty (60) days from the date issued.*** No ***prescription for a*** controlled substance in Schedule II shall be refilled. All prescriptions for controlled substances classified in Schedule II shall be maintained in a separate prescription file.

(2) Except when dispensed directly by a practitioner to an ultimate user, a controlled substance included in Schedules III, IV, and V, which is a prescription drug, shall not be dispensed without a written***, electronic,*** or oral prescription by a practitioner. ~~[All oral prescriptions shall be dated and signed by the pharmacist. A pharmacist refilling any prescription shall record on the prescription the date, the quantity and his initials. The maintenance of prescription records under the federal controlled substances laws and regulations, containing substantially the same information as specified herein, shall constitute compliance with this subsection.]~~ The prescription shall not be filled or refilled more than six (6) months after the date ***issued***~~[thereof]~~ or be refilled more than five (5) times, unless renewed by the practitioner and a new

prescription, written***, electronic,*** or oral shall be required.

(3) ***(a) To be valid, a prescription for a controlled substance shall be issued only for a legitimate medical purpose by a practitioner acting in the usual course of his professional practice. Responsibility for the proper dispensing of a controlled substance pursuant to a prescription for a legitimate medical purpose is upon the pharmacist who fills the prescription.***

(b) A prescription shall not be issued for a practitioner to obtain a controlled substance for the purpose of general dispensing or administering to patients.

(4) All written prescriptions for controlled substances shall be dated[~~ as of~~] and signed by the practitioner on the date[~~ when~~] issued and shall bear the full name and address of the patient***, drug name, strength, dosage form, quantity prescribed, directions for use,*** and the name, address and registration number of the practitioner.[~~ All prescriptions for controlled substances shall be retained for a period of two (2) years.~~]

(5) All oral or electronic prescriptions shall include the full name and address of the patient, drug name, strength, dosage form, quantity prescribed, directions for use, and the name, address and registration number of the practitioner.

(6) All oral or electronic prescriptions shall be immediately reduced to writing, dated, and signed by the pharmacist. A prescription contained in a computer or other electronic format shall not be considered writing.

(7) A pharmacist refilling any prescription shall record on the prescription or other equivalent record the date, the quantity, and the pharmacist's initials. The maintenance of prescription records under the federal controlled substances laws and regulations containing substantially the same information as specified in this subsection shall constitute compliance with this subsection.

(8)[~~(4)~~] The pharmacist filling a written***, electronic,*** or oral prescription for a controlled substance shall affix to the package a label showing the date of filling, the pharmacy name and address, the serial number of the prescription, the name of the patient, the name of the prescribing practitioner and directions for use and cautionary statements, if any, contained in such prescription or required by law.

(9) Any person who violates any provision of this section shall:

(a) For the first offense, be guilty of a Class A misdemeanor.

(b) For a second or subsequent offense, be guilty of a Class D felony.

Section 25. KRS 218A.200 is amended to read as follows:

(1) Every practitioner who is authorized to administer or professionally use controlled substances, shall keep a record of[~~ such~~] substances received by him, and a record of all[~~ such~~] substances administered, dispensed, or professionally used by him otherwise than by prescription***. Every such record shall be kept for a period of five (5) years***.

(2) Manufacturers and wholesalers shall keep records of all controlled substances compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all controlled substances received and disposed of by them***. Every such record shall be kept for a period of two (2) years***.

(3) Pharmacists shall keep records of all controlled substances received and disposed of by them***. Every such record shall be kept for a period of five (5) years***.

(4) The record of controlled substances received shall in every case show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received. The record of all controlled substances sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered or dispensed, and the kind and quantity.[~~ Every such record shall be kept for a period of two (2) years.~~]

(5) The keeping of a record under the federal controlled substances laws, containing substantially the same information as is specified herein, shall constitute compliance with this section.

(6) A copy of the detailed list of controlled substances lost, destroyed, or stolen shall be forwarded to the Cabinet for Human Resources as soon as practical.

(7) (a) Every manufacturer, distributor, wholesaler, repacker, practitioner, pharmacist, or other person authorized to possess controlled substances shall take an inventory of all controlled substances in his possession at least every two (2) years.

(b) A substance which is added to any schedule of controlled substances and which was not previously listed in any schedule shall be initially inventoried within thirty (30) days of the effective date of the statute or administrative regulation which adds the substance to the provisions of this chapter. Thereafter, the substance shall be included in the inventory required by paragraph (a) of this subsection.

(8) Any person who violates any provision of this section shall be guilty of a Class A misdemeanor for a first offense and a Class D felony for subsequent offenses.

Section 26. KRS 218A.240 is amended to read as follows:

(1) ***All police officers and deputy sheriffs directly employed full-time by state, county, city, or urban-county governments***[~~It is hereby made the duty of all Peace officers within this state~~], the State Police, the Cabinet for Human Resources, their officers and agents, and of all city, county, and Commonwealth's attorneys, and the Attorney General, within their respective jurisdictions, ***shall***[~~to~~] enforce all provisions of this chapter and cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to controlled substances.

(2) For the purpose of enforcing the provisions of this chapter, the designated agents of the Cabinet for Human Resources shall have the full power and authority of peace officers in this state, including the power of arrest and the authority to bear arms, and shall have the power and authority to administer oaths, to enter upon premises at all times for the purpose of making inspections, to seize evidence, to interrogate all persons, to require the production of prescriptions, of books, papers, documents or other evidence, to employ special investigators, and to expend funds for the purpose of obtaining evidence.

(3) The Kentucky Board of Pharmacy, its agents and inspectors, shall have the same powers of inspection and enforcement as the Cabinet for Human Resources.

(4) Designated agents of the Cabinet for Human Resources and the Kentucky Board of Pharmacy are empowered to remove from the files of ***a***[~~any~~] pharmacy or ***the***[~~other~~] custodian ***of records for that pharmacy*** any controlled substance prescription ***or other controlled substance record*** upon tendering a receipt[~~ therefor~~]. ***The receipt shall be sufficiently detailed to accurately identify the record. A receipt for the record shall be a defense to a charge of failure to maintain the record.***

(5) Notwithstanding the existence or pursuit of any other remedy, civil or criminal, any law enforcement authority may maintain, in its own name, an action to restrain or enjoin any violation of this chapter, or to forfeit any property subject to forfeiture under KRS 218A.410, irrespective of whether the owner of the property has been charged with or convicted of any offense under this chapter.

  (a) Any civil action against any person brought pursuant to this section may be instituted in the Circuit Court in any county in which the person resides, in which any property owned by the person and subject to forfeiture is found, or in which the person has violated any provision of this chapter.

  (b) A final judgment rendered in favor of the Commonwealth in any criminal proceeding brought under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought pursuant to this section.

  (c) The prevailing party in any civil proceeding brought pursuant to this section shall recover his costs, including a reasonable attorney's fee.

  (d) Distribution of funds under this section shall be made in the same manner as in KRS 218A.435, except that if the Commonwealth's attorney has not initiated the forfeiture action under this section, his percentage of the funds shall go to the agency initiating the forfeiture action.

(6) [~~It shall be the duty of~~]The Cabinet for Human Resources ***shall***[~~to~~] make or cause to be made examinations of samples secured under the provisions of this chapter to determine whether[~~ or not~~] any provision[~~ thereof~~] has been violated.

Section 27. KRS 315.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Administer" means the direct application of a drug to a patient or research subject by injection, inhalation, or ingestion, whether topically or by any other means;

(2) "Association" means the Kentucky Pharmacists Association;

(3) "Board" means the Kentucky Board of Pharmacy;

(4) "Collaborative care agreement" means a written agreement between a specifically identified individual practitioner and a pharmacist who is specifically identified, whereby the practitioner outlines a plan of cooperative management of a specifically identified individual patient's drug-related health care needs that fall within the practitioner's statutory scope of practice. The agreement shall be limited to specification of the drug-related regimen to be provided and any tests which may be necessarily incident to its provisions; stipulated conditions for initiating, continuing, or discontinuing drug therapy; directions concerning the monitoring of drug therapy and stipulated conditions which warrant modifications to dose, dosage regimen, dosage form, or route of administration;

(5) "Compound" or "compounding" means the preparation or labeling of a drug pursuant to or in anticipation of a valid prescription drug order including, but not limited to, packaging, intravenous admixture or manual combination of drug ingredients. Compounding, as used in this chapter, shall not preclude simple reconstitution, mixing, or modification of drug products prior to administration by nonpharmacists;

(6) "Confidential information" means information which is accessed or maintained by a pharmacist in a patient's record, or

communicated to a patient as part of patient counseling, whether it is preserved on paper, microfilm, magnetic media, electronic media, or any other form;

(7) "Continuing education unit" means ten (10) contact hours of board approved continuing pharmacy education. A "contact hour" means fifty (50) continuous minutes without a break period;

(8) "Dispense" or "dispensing" means to deliver one (1) or more doses of a prescription drug in a suitable container, appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug;

(9) "Drug" means any of the following:

(a) Articles recognized as drugs or drug products in any official compendium or supplement thereto; or

(b) Articles, other than food, intended to affect the structure or function of the body of man or other animals; or

(c) Articles, including radioactive substances, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; or

(d) Articles intended for use as a component of any articles specified in paragraphs (a) to (c) of this subsection;

(10) "Drug regimen review" means retrospective, concurrent, and prospective review by a pharmacist of a patient's drug-related history, including but not limited to, the following areas:

(a) Evaluation of prescription drug orders and patient records for:

1. Known allergies;
2. Rational therapy contraindications;
3. Appropriate dose and route of administration;
4. Appropriate directions for use; or
5. Duplicative therapies.

(b) Evaluation of prescription drug orders and patient records for drug-drug, drug-food, drug-disease, and drug-clinical laboratory interactions;

(c) Evaluation of prescription drug orders and patient records for adverse drug reactions; or

(d) Evaluation of prescription drug orders and patient records for proper utilization and optimal therapeutic outcomes;

(11) "Immediate supervision" means under the physical and visual supervision of a pharmacist;

(12) "Manufacturer" means any person, except a pharmacist compounding in the normal course of professional practice, within the Commonwealth engaged in the commercial production, preparation, propagation, compounding, conversion or processing of a drug, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or both, and includes any packaging or repackaging of a drug or the labeling or relabeling of its container;

(13) "Medical order" means a lawful order of a specifically-identified practitioner for a specifically-identified patient for the patient's health care needs. "Medical order" may or may not include a prescription drug order;

(14) "Nonprescription drugs" means nonnarcotic medicines or drugs which may be sold without a prescription and are prepackaged and labeled for use by the consumer in accordance with the requirements of the statutes and regulations of this state and the federal government;

(15) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy;

(16) "Pharmacist intern" means a natural person who is:

(a) Currently certified by the board to engage in the practice of pharmacy under the direction of a licensed pharmacist and who satisfactorily progresses toward meeting the requirements for licensure as a pharmacist;

(b) A graduate of an approved college or school of pharmacy or a graduate who has established educational equivalency by obtaining a Foreign Pharmacy Graduate Examination Committee (FPGEC) certificate, who is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;

(c) A qualified applicant awaiting examination for licensure as a pharmacist or the results of an examination for licensure as a pharmacist; or

(d) An individual participating in a residency or fellowship program approved by the board for internship credit;

(17) "Pharmacy" means every place where:

(a) Drugs are dispensed under the direction of a pharmacist;

(b) Prescription drug orders are compounded under the direction of a pharmacist; or

(c) A registered pharmacist maintains patient records and other information for the purpose of engaging in the practice of pharmacy, whether or not prescription drug orders are being dispensed;

(18) "Pharmacy technician" means a natural person who works under the immediate supervision, or general supervision if otherwise provided for by statute or administrative regulation, of a pharmacist for the purpose of assisting a pharmacist with the practice of pharmacy;

(19) "Practice of pharmacy" means interpretation, evaluation, and implementation of medical orders and prescription drug orders; responsibility for dispensing prescription drug orders, including radioactive substances; participation in drug and drug-related device selection, administration of medication in the course of dispensing or maintaining a prescription drug order, and drug evaluation, utilization, or regimen review; maintenance of patient pharmacy records; and provision of patient counseling and those professional acts, professional decisions, or professional services necessary to maintain and manage all areas of a patient's pharmacy-related care, including pharmacy-related primary care as defined in this section;

(20) "Practitioner" has the same meaning given in KRS 217.015*(26)*[~~(23)~~];

(21) "Prescription drug" means a drug which:

(a) Under federal law is required to be labeled with either of the following statements:

1. "Caution: Federal law prohibits dispensing without prescription"; or

2. "Caution: Federal law restricts this drug to use by, or on the order of, a licensed veterinarian"; or

(b) Is required by any applicable federal or state law or administrative regulation to be dispensed only pursuant to a prescription drug order or is restricted to use by practitioners;

(22) "Prescription drug order" means an original or new order from a practitioner for drugs, drug-related devices or treatment for a human or animal, including orders issued through collaborative care agreements. Lawful prescriptions result from a valid practitioner-patient relationship, are intended to address a legitimate medical need, and fall within the prescribing practitioner's scope of professional practice;

(23) "Pharmacy-related primary care" means the pharmacists' activities in patient education, health promotion, assistance in the selection and use of over-the-counter drugs and appliances for the treatment of common diseases and injuries as well as those other activities falling within their statutory scope of practice;

(24) "Society" means the Kentucky Society of Health-Systems Pharmacists;

(25) "Supervision" means the presence of a pharmacist on the premises to which a pharmacy permit is issued, who is responsible, in whole or in part, for the professional activities occurring in the pharmacy; and

(26) "Wholesaler" means any person within the Commonwealth who legally buys drugs for resale or distribution to persons other than patients or consumers.

SECTION 28. A NEW SECTION OF KRS CHAPTER 217 IS CREATED TO READ AS FOLLOWS:

The provisions of this chapter shall not apply to common carriers or to warehousemen, while engaged in lawfully transporting or storing legend drugs, or to any of their employees acting within the scope of their employment; or to public officers or their employees in the performance of their official duties requiring possession or control of legend drugs; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties.

HB 312, AN ACT relating to structured settlements.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO READ AS FOLLOWS:

As used in sections 1 to 3 of this Act:

(1) "Annuity issuer" means an insurer that has issued an annuity contract to be used to fund periodic payments under a structured settlement;

(2) "Applicable law" means the laws of the United States, the laws of this state, and the laws of any other jurisdiction:

(a) That is the domicile of the payee or any other party that is a protected party under a structured settlement;

(b) In whose courts a settled claim was pending when a structured settlement was reached; or

(c) Under whose workers' compensation statutes a settled claim for workers' compensation was brought;

(3) "Contractual assignment restrictions" means contract terms prohibiting or restricting transfer of structured settlement payment rights, including any terms contained in an annuity contract, a structured settlement agreement, a qualified assignment agreement or a court order or administrative order approving a structured settlement;

(4) "Dependents" includes a payee's spouse and minor children and all other family members and other persons for whom the payee is legally obligated to provide support, including alimony;

(5) "Favorable tax determination" means a United States Treasury regulation or a ruling by the United States Internal

Revenue Service or other controlling legal authority definitively establishing that the federal income tax treatment of a structured settlement for the parties to the structured settlement agreement and any qualified assignment agreement will be unaffected by the transfer of structured settlement payment rights under the structured settlement;

(6) "Independent professional advice" means advice of an attorney, certified public accountant, certified financial planner, or other professional who:

(a) Is qualified to advise payees and their dependents on the legal, tax, and financial implications of a transfer of structured settlement payment rights;

(b) Is not affiliated in any manner with the transferee of the transfer; and

(c) Whose compensation for rendering advice does not depend directly or indirectly on whether a transfer occurs;

(7) "Payee" means an individual who is receiving tax-free damage payments under a structured settlement and who wants to make a transfer of payment rights under the structured settlement agreement;

(8) "Protected parties" means, with respect to any structured settlement, the payee, the payee's dependents, any beneficiary designated to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party entitled to invoke the benefit of contractual assignment restrictions applicable to the structured settlement, whether as a party to or third-party beneficiary of the annuity contract, the structured settlement agreement, the qualified assignment agreement, or the court or administrative order or other document in which the contractual assignment restrictions appear;

(9) "Qualified assignment agreement" means an agreement providing for a qualified assignment that meets the requirements of the Internal Revenue Code, 26 U.S.C. sec. 130, as amended from time to time;

(10) "Settled claim" means the original tort claim or workers' compensation claim resolved by a structured settlement;

(11) "Structured settlement" means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim;

(12) "Structured settlement agreement" means the agreement, judgment, stipulation or release embodying the terms of a structured settlement, including the rights of the payee to receive periodic payments;

(13) "Structured settlement obligor" means, with respect to any structured settlement, the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement;

(14) "Structured settlement payment rights" means rights to receive periodic payments, including lump sum payments under a structured settlement, whether from the settlement obligor or the annuity issuer, where:

(a) The payee or any other protected party is domiciled in this state;

(b) The settled claim was pending before the courts of this state when the structured settlement was reached; or

(c) The settled claim was a workers' compensation claim brought under the worker's compensation laws of the Commonwealth;

(15) "Transfer" means any sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made for consideration; and

(16) "Transfer agreement" means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee.

SECTION 2. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO READ AS FOLLOWS:

No transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of any transfer of structured settlement rights unless each of the following conditions has been satisfied:

(1) The transfer has been approved in advance in a final order of a court of competent jurisdiction, based on the court's express findings that:

(a) The transfer complies with the requirements of sections 1 to 3 of this Act and will not contravene other applicable law;

(b) Not less than ten (10) days prior to the date on which the payee entered into the transfer agreement, the transferee has provided to the payee and the payee's dependents a disclosure statement in bold type, no smaller than fourteen (14) point, setting forth:

1. The amounts and due dates of the structured settlement payments to be transferred;

2. The aggregate amount of the payments;

3. The discounted present value of the payments, together with the discounted rate or rates used in determining the discounted present value;

4. The gross amount payable to the payee in exchange for the payments;

5. An itemized listing of all brokers' commissions, service charges, application or processing fees, closing costs, filing or administrative charges, legal fees, notary fees and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee;

6. The net amount payable to the payee after the deduction of all commissions, fees, costs, expenses and charges described in subparagraph 5. of this paragraph;

7. The quotient, expressed as a percentage, obtained by dividing the net payment amount by the discounted present value of the payments; and

8. The amount of any penalty and the aggregate amount of any liquidated damages, including penalties, payable by the payee in the event of any breach of the transfer agreement by the payee;

(c) The payee has established that the transfer is necessary to enable the payee, the payee's dependents, or both to avoid imminent financial hardship, and the transfer is not expected to subject the payee, the payee's dependents, or both to undue financial hardship in the future;

(d) The payee and the payee's dependents have received independent professional advice regarding the financial and legal effects and consequences of the transfer; and

(e) The transferee has given written notice of the transferee's name, address and taxpayer identification number to the annuity issuer and the structured settlement obligor and had filed a copy of the notice with the court; and

(2) Each protected party has given its irrevocable written consent to the transfer, including the party's waiver of all rights under applicable contractual transfer restrictions and, in the case of each protected party other than the annuity issuer and the settlement obligor, the party's waiver of all rights with respect to the transferred payments and the party's release of all claims against other protected parties with respect to the transferred payments; provided that if, at the time that the payee and the transferee entered into the transfer agreement, a favorable tax determination was in effect, then no consent of the annuity issuer or the settlement obligor shall be required if all other protected parties consent. The transferee shall:

(a) Be responsible for obtaining all required consents;

(b) File signed originals of all consents with the court from which approval of the transfer is sought under subsection (1) of this section;

(c) Provide signed originals of all consents to the annuity issuer and the settlement obligor; and

(d) Provide copies of all consents to any other protected party that requests them.

SECTION 3. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO READ AS FOLLOWS:

(1) The Circuit Court in the county in which the original action was or could have been filed shall have jurisdiction over any application for approval of a transfer of structured settlement payment rights under Section 2 of this Act.

(2) Not less than twenty (20) days prior to the scheduled hearing on any application for court approval of a transfer of structured settlement payment rights under Section 2 of this Act, the transferee shall file with the court and serve on all protected parties and on the Attorney General a notice of the proposed transfer and the application for its approval, including in the notice:

(a) A copy of the transferee's application to the court;

(b) A copy of the transfer agreement;

(c) A copy of the disclosure statement required under paragraph (b) of subsection (1) of Section 2 of this Act;

(d) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court, by participating in the hearing, or both; and

(e) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, which shall be not less than ten (10) days after service of the transferee's notice, in order to be considered by the court.

(3) The Attorney General shall have standing to raise, appear, and be heard on any matter relating to an application for approval of a transfer of structured settlement payment rights under sections 1 to 3 of this Act.

(4) The provisions of Sections 1 to 3 of this Act may not be waived.

Section 4. The provisions of Sections 1 to 3 of this Act shall apply to any transfer of structured settlement payment rights under a transfer agreement reached on or after the effective date of this Act.

The Committee Substitute to **HB 312** is as follows:

AN ACT relating to structured settlements.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 3 of this Act:

(1) "Annuity issuer" means an insurer that has issued an annuity contract to be used to fund periodic payments under a structured settlement;

(2) "Payee" means an individual who is receiving tax-free damage payments under a structured settlement and who wants to make a transfer of payment rights under the structured settlement agreement;

(3) "Protected parties" means, with respect to any structured settlement, the payee, any named beneficiary designated in the annuity contract or structured settlement to receive payments following the payee's death, or, if the named beneficiary is a minor, the named beneficiary's parent or guardian, the annuity issuer, and the structured settlement obligor;

(4) "Qualified assignment agreement" means an agreement providing for a qualified assignment that meets the requirements of Section 130 of the Internal Revenue Code, 26 U.S.C. sec. 130, as amended from time to time;

(5) "Settled claim" means the original tort claim resolved by a structured settlement;

(6) "Structured settlement" means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim;

(7) "Structured settlement obligor" means, with respect to any structured settlement, the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement;

(8) "Structured settlement payment rights" means rights to receive periodic payments, including lump sum payments under a structured settlement, whether from the settlement obligor or the annuity issuer, where:

  (a) The payee or any other protected party is domiciled in this state; or

  (b) The settled claim was pending before the courts of this state when the structured settlement was reached;

(9) "Transfer" means any sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made for consideration; and

(10) "Transfer agreement" means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee.

SECTION 2. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO READ AS FOLLOWS:

No transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of any transfer of structured settlement payment rights unless the transfer has been approved in advance in an order of a court of competent jurisdiction, based on the court's express findings that:

(1) The transfer complies with the requirements of Sections 1 to 3 of this Act and does not contravene other applicable law;

(2) Not less than ten (10) days prior to the date on which the payee entered into the transfer agreement, the transferee has provided to the payee a disclosure statement in bold type, no smaller than fourteen (14) point, setting forth:

  (a) The amounts and due dates of the structured settlement payments to be transferred;

  (b) The aggregate amount of the payments;

  (c) The discounted present value of the payments, together with the discount rate or rates used in determining the discounted present value;

  (d) The gross amount payable to the payee in exchange for the payments;

  (e) An itemized listing of all brokers' commissions, service charges, application or processing fees, closing costs, filing or administrative charges, legal fees, notary fees and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee; and

  (f) The amount of any penalty and the aggregate amount of any liquidated damages, including penalties, payable by the payee in the event of any breach of the transfer agreement by the payee;

(3) The payee has established that the transfer is necessary to enable the payee to avoid imminent financial hardship;

(4) The transferee has given written notice of the transferee's name, address and taxpayer identification number to the annuity issuer and the structured settlement obligor and had filed a copy of the notice with the court; and

(5) The payee has consented in writing to the transfer.

SECTION 3. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO READ AS FOLLOWS:

(1) The Circuit Court in the county in which the original action was or could have been filed, or the county where the applicant resides, shall have jurisdiction over any application for approval of a transfer of structured settlement payment rights under Section 2 of this Act.

(2) Not less than twenty (20) days prior to the scheduled hearing on any application for court approval of a transfer of structured settlement payment rights under Section 2 of this Act, the payee or transferee shall file with the court and serve on all protected parties a notice of the proposed transfer and the application for its approval, including in the notice:

- ***(a) A copy of the transferee's application to the court;***
- ***(b) A copy of the disclosure statement required under subsection (2) of Section 2 of this Act; and***
- ***(c) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, which shall be not less than ten (10) days after service of the transferee's notice, in order to be considered by the court.***

(3) The provisions of Sections 1 to 3 of this Act may not be waived.

Section 4. The provisions of Sections 1 to 3 of this Act shall apply to any transfer of structured settlement payment rights under a transfer agreement reached on or after the effective date of this Act.

HB 454, AN ACT relating to liens.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 376.250 is amended to read as follows:

(1) When an attested copy of the lien statement and proof of the delivery of an attested copy as provided in KRS 376.240 is delivered to any public authority which has contracted for the construction or improvement of any bridge, public highway***,*** or other public property owned by the state, ***a subdivision or agency thereof,*** or by any ***city,*** county, ***urban-county,*** or ***charter county government***~~[city]~~, the public authority shall endorse on the attested copy the date of its receipt, file the copy and deduct and withhold the amount thereof, plus $1.25 to cover the fee of the county clerk for filing the statement and attesting a copy, from any amount then due the contractor, and if a sufficient amount is not then due the contractor from the next payments which become due.

(2) Unless the contractor, within thirty days from the date of the delivery of the attested copy, files with the public authority a written protest putting in issue the correctness of the amount due the lien claimant or the liability of the fund for payment thereof, the amount withheld shall be paid by the public authority to the lien claimant and charged to the account of the contractor, which payment shall operate as a pro tanto release of the public authority from any claim of the contractor under the contract for the amount so paid. The filing in the county clerk's office of the statement of lien provided for in subsection (2) of KRS 376.230 shall be constructive notice to the contractor of the filing of the claim.

(3) If the contractor files a written protest as provided in subsection (2) of this section, the public authority with whom the protest is filed shall endorse thereon the date of its receipt, and shall not pay over to the lien claimant any of the money withheld from the contractor until authorized to do so by the contractor or until directed to do so by an order or judgment of court.

(4) If suit is not instituted by the lien claimant for the enforcement of the lien and summons in the suit is not served on the public authority or its chairman within thirty days after the filing by the contractor of the protest, then the lien shall automatically be released and the funds withheld pursuant to the filing of the lien statement shall be released and promptly paid to the contractor. If suit is filed and summons served within the time provided, the payment of the funds shall be withheld until ordered to be released or paid over by an order or judgment of the court, and then paid as directed by the order or judgment.

(5) All suits for the enforcement of these liens on public funds shall be instituted in the Circuit Court of the county in which is located the~~[seat of government of the owner of the]~~ property on which the improvement is made***, except where the property is owned by a public university. Where the property is owned by a public university, the suit shall be instituted in the Circuit Court of the county in which is located the main campus of the public university***. This court shall have exclusive jurisdiction for the enforcement of liens asserted against the public funds due the contractors, subject to the same rights of appeal as in other civil cases.

Section 2. KRS 376.260 is amended to read as follows:

(1) Any lien acquired under KRS 376.210 shall be enforced by proper proceedings in equity, to which other lien-holders

shall be made parties. ***If a court action is filed to enforce a lien acquired under Section 3 of this Act and the owner of the property is the state, a subdivision or agency thereof, or any city, county, urban-county, or charter county government, that owner shall be given notice of the court action to enforce the lien, but that owner shall not be required to respond to or participate in the court action.*** The proceedings shall be begun within six (6) months from the filing of the claim in the county clerk's office, except as provided in subsection (4) of KRS 376.250.

(2) If, in any suit brought for the enforcement of a lien, it is shown by evidence that the items embraced in the account were sold and delivered for use on a particular project or public work, that evidence shall make out a prima facie case that those items were used in the performance of the contract.

Section 3. KRS 376.210 is amended to read as follows:

(1) Any person, firm, or corporation who performs labor or furnishes materials or supplies for the construction, maintenance, or improvement of any canal, railroad, bridge, public highway, or other public improvement in this state by contract, express or implied, with the owner thereof or by subcontract thereunder shall have a lien thereon, and upon all the property and the franchises of the owner, except property owned by the state, a subdivision or agency thereof, or by any ***city,*** county***, urban-county,*** or ***charter county government***[~~city~~]. If the property improved is owned by the state or by any subdivision or agency thereof, or by any ***city,*** county***, urban-county,*** or ***charter county government***[~~city~~], the person furnishing the labor, materials, or supplies shall have a lien on the funds due the contractor from the owner of the property improved. Except as provided in KRS 376.195, the lien shall be for the full contract price of the labor, materials, and supplies furnished, and shall be superior to all other liens thereafter created.

(2) Any person undertaking or expecting to furnish labor, materials, or supplies as provided in this section may acquire the lien herein provided by filing in the clerk's office of each county in which he has undertaken to furnish labor, materials, or supplies, except as provided in subsection (3), a statement in writing that he has undertaken and expects to furnish labor, materials, or supplies and the price at which they are to be furnished, and the lien for labor, material, or supplies furnished thereafter shall relate back and take effect from the date of the filing of the statement. In all cases of original construction the liens shall be prior to all liens theretofore or thereafter created on the part so constructed and on no other part.

(3) In all cases where the labor, materials, or supplies are furnished for the improvement of any public highway or other public property owned by the state or by any ***city,*** county***, urban county,*** or ***charter county government***[~~city~~], the statement shall be filed in the county clerk's office of the county in which is located the seat of government of the owner of the property improved, and the lien shall attach only to any unpaid balance due the contractor for the improvement from the time a copy of the statement, attested by the county clerk, is delivered to the owner or the owner's authorized agent with whom the contract for improving the public highway or other public property was made.

HB 537, AN ACT relating to court reporters.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO READ AS FOLLOWS:

(1) Depositions taken in the Commonwealth that are to be used in its courts shall be taken before:

(a) A hearing examiner;

(b) A judge, clerk, commissioner, or official reporter of a court;

(c) A notary public; or

(d) Before other persons and under other circumstances authorized by law.

(2) (a) A deposition shall not be taken by a person who is:

1. A party to the action;

2. A relative, employee, or attorney of one (1) of the parties;

3. A relative or employee of an attorney of one (1) of the parties;

4. Someone with a financial interest in the action or its outcome; or

5. A relative, employee, or attorney of someone with a financial interest in the action or its outcome.

(b) For the purposes of paragraph (a) of this subsection, "employee" includes a person who has a contractual relationship with a party to provide reporting or other court services, and a person who is employed part-time or full-time under contract or otherwise by a person who has a contractual relationship with a party to provide reporting or other court services.

(c) If a deposition is taken by a person described in paragraph (a) of this subsection, then that deposition shall be void.

(3) The provisions of subsections (1) and (2) of this section shall not apply to contracts for court reporting services for

the courts, agencies, or instrumentalities of the United States or the Commonwealth.

(4) Any person who takes a deposition in violation of subsection (2) of this section shall be guilty of a Class B misdemeanor.

The Committee Substitute to **HB 537** is as follows:

AN ACT relating to court reporters.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO READ AS FOLLOWS:

(1) Depositions taken in the Commonwealth that are to be used in its courts shall be taken before:

(a) A hearing examiner;

(b) A judge, clerk, commissioner, or official reporter of a court;

(c) A notary public; or

(d) Before other persons and under other circumstances authorized by law.

(2) (a) A deposition shall not be taken by a person who is:

1. A party to the action;

2. A relative, employee, or attorney of one (1) of the parties;

3. Someone with a financial interest in the action or its outcome; or

4. A relative, employee, or attorney of someone with a financial interest in the action or its outcome.

(b) For the purposes of paragraph (a) of this subsection, "employee" includes a person who has a contractual relationship with a person or entity interested in the outcome of the litigation, including anyone who may ultimately be responsible for payment to provide reporting or other court services, and a person who is employed part-time or full-time under contract or otherwise by a person who has a contractual relationship with a party to provide reporting or other court services.

(c) If a deposition is taken by a person described in paragraph (a) of this subsection, then that deposition shall be void.

(3) The provisions of subsections (1) and (2) of this section shall not apply to contracts for court reporting services for the courts, agencies, or instrumentalities of the United States or the Commonwealth.

(4) Any person who takes a deposition in violation of subsection (2) of this section shall be guilty of a Class B misdemeanor.

HB 563, AN ACT relating to sexual offenses.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 510.110 is amended to read as follows:

(1) A person is guilty of sexual abuse in the first degree when:

(a) He subjects another person to sexual contact by forcible compulsion; or

(b) He subjects another person to sexual contact who is incapable of consent because he:

1. Is physically helpless; or

2. Is less than twelve (12) years old.

(2) Sexual abuse in the first degree is a Class D felony ***unless there is penetration of the sex organs or anus of one person by a body part other than the mouth or penis of another person, in which case it is a Class C felony***.

Section 2. KRS 510.120 is amended to read as follows:

(1) A person is guilty of sexual abuse in the second degree when:

(a) He subjects another person to sexual contact who is incapable of consent because he is mentally retarded or mentally incapacitated; or

(b) He subjects another person who is less than fourteen (14) years old to sexual contact.

(2) Sexual abuse in the second degree is a Class A misdemeanor ***unless there is penetration of the sex organs or anus of one person by a body part other than the mouth or penis of another person, in which case it is a Class D felony***.

Section 3. KRS 510.130 is amended to read as follows:

(1) A person is guilty of sexual abuse in the third degree when:

(a) He subjects another person to sexual contact without the latter's consent.

(b) In any prosecution under this section, it is a defense that:

1. The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and

2. The other person was at least fourteen (14) years old; and

3. The actor was less than five (5) years older than the other person.

(2) Sexual abuse in the third degree is a Class B misdemeanor ***unless there is penetration of the sex organs or anus of one person by a body part other than the mouth or penis of another person, in which case it is a Class A misdemeanor***.

HB 623, AN ACT relating to employee criminal background checks.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 216.789 is amended to read as follows:

(1) No nursing facility***, or facility either contracted or operated by the Department for Mental Health and Mental Retardation Services of the Cabinet for Human Resources,*** shall knowingly employ a person in a position which involves providing direct services to a nursing facility resident if that person has been convicted of a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or a sexual crime.

(2) A facility may employ persons convicted of or pleading guilty to an offense classified as a misdemeanor if the crime is not related to abuse, neglect, or exploitation~~[of an adult]~~.

(3) Each~~[nursing]~~ facility shall request all conviction information from the Justice Cabinet for any applicant for employment pursuant to KRS 216.793.

(4) The~~[nursing]~~ facility may temporarily employ an applicant pending the receipt of the conviction information.

The Committee Substitute to **HB 623** is as follows:

AN ACT relating to employee criminal background checks.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 216.793 is amended to read as follows:

(1) Each application form provided by the employer***, or each application form provided by a facility either contracted or operated by the Department for Mental Health and Mental Retardation Services of the Cabinet for Human Resources,*** to the applicant for initial employment in a nursing facility or in a position funded by the Department for Social Services of the Cabinet for Human Resources and which involves providing direct services to senior citizens shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."

(2) Any request for criminal records of an applicant as provided under subsection (1) of this section shall be on a form ***or through a process*** approved by the Justice Cabinet. The Justice Cabinet may charge a fee to be paid by the applicant ***or state agency*** in an amount no greater than the actual cost of processing the request and shall not exceed five dollars ($5) per application.

HB 638, AN ACT relating to bankruptcy.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 427.150 is amended to read as follows:

(1) To the extent reasonably necessary for the support of an individual and his dependents in addition to property totally exempt under subsection (2) of this section, that individual shall be entitled to exemption of money or property received and rights to receive money or property for alimony, support, or separate maintenance.

(2) An individual shall be entitled to exemption of the following property:

(a) An award under a crime victim's reparation law;

(b) A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(c) A payment, not to exceed seven thousand five hundred dollars ($7,500), on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent;

(d) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(e) Assets held, payments made and amounts payable under pensions exempt pursuant to KRS 61.690, 161.700, 427.120 and 427.125; or

(f) The right or interest of a person in an individual retirement account or annuity, deferred compensation account, tax sheltered annuity, simplified employee pension, pension, profit-sharing, stock bonus, or other retirement plan described in the Internal Revenue Code of 1986, ***or Section 408 or 408A of the Internal Revenue Code,*** as amended which qualifies for the deferral of income tax until the date benefits are distributed. This exemption shall also apply to the operation of the Federal Bankruptcy Code, as permitted by Section 522 of Title 11 of the United States Code, 11 U.S.C. 522. This exemption shall not apply to any amounts contributed to an individual retirement account or annuity, deferred compensation account, a pension, profit-sharing, stock bonus, or other qualified retirement plan or annuity if the contribution occurs within one hundred twenty (120) days before the debtor files for bankruptcy. This exemption shall not apply to the right or interest of a person in an individual retirement account or annuity, deferred compensation account, pension, profit-sharing, stock bonus, or other retirement plan to the extent that that right or interest is subject to any of the following:

1. An order of a court for payment of maintenance;
2. An order of a court for payment of child support.

SB 207, AN ACT relating to underage drinking.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby created the "Malt Beverage Educational Fund" which shall provide moneys on a matching basis for educational information and materials that deter or eliminate underage drinking. The fund shall consist of moneys generated from one percent (1%) of the excise tax collected from the sale and distribution of malt beverages under KRS 243.720 and one percent (1%) of the wholesale tax collected from distributors of malt beverages under KRS 243.884.

(2) The "Malt Beverage Educational Fund" shall be established in the State Treasury as a trust and revolving account under KRS 45.253. Moneys in the account shall be distributed by the State Treasurer to the Malt Beverage Educational Corporation, a nonprofit organization that is organized under the laws of this state, upon the authorization of the secretary of the Cabinet for Human Resources. The moneys shall be awarded to the corporation solely to fund educational programs to deter or eliminate underage drinking.

(3) The secretary of the Cabinet for Human Resources shall authorize that moneys from the fund be disbursed to the corporation upon the secretary's receipt of a certification from the corporation showing the moneys the corporation has received from malt beverage distributors and other private sources since the last certification. The moneys disbursed from the fund shall be equal to the contributions that the corporation has received from its members and other private sources during that period. The moneys in the fund shall be disbursed in accordance with a schedule established by the secretary, and shall be disbursed until the moneys in the fund are exhausted or until the moneys in the fund lapse in accordance with subsection (4) of this section, whichever comes first.

(4) Moneys that are credited to the fund and not issued to the corporation shall lapse at the end of the fiscal year and shall be returned to the general fund.

(5) As a condition of receiving the governmental funds, the corporation's board of directors shall include the following among its directors:

(a) The Governor or his or her designee;

(b) The Attorney General or his or her designee;

(c) The President of the Senate or his or her designee;

(d) The Speaker of the House or his or her designee;

(e) The secretary of the Cabinet for Human Resources or his or her designee; and

(f) The commissioner of the Department of Alcoholic Beverage Control or his or her designee.

(6) All expenditures of moneys from the fund shall be approved by a majority of those persons set out in subsection (5)(a) to (f) of this section. If the moneys from the fund are not expended in their entirety, any moneys that remain unused by the corporation at the end of the fiscal year shall be returned to the general fund.

(7) Any moneys from the fund that are not expended shall be returned to the general fund upon the dissolution of the

corporation.

Section 2. KRS 243.890 is amended to read as follows:

Except as provided in Section 1 of this Act, receipts derived from taxes assessed and collected under the provisions of this chapter shall be appropriated for general fund purposes.

Section 3. If the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by the 1998 Regular Session of the General Assembly, the reference to the Cabinet for Human Resources appearing in subsections (2), (3), and (5) of Section 1 of this Act shall be codified as the Cabinet for Health Services.

The House Committee Amendment No. 1 to **SB 207** is as follows:

On page 2, between lines 18 and 19, insert a new subsection to read as follows:

"***(8) Any high school in the Commonwealth of Kentucky that was registered with the Department of Education as of July 1, 1997, may make an application to the Malt Beverage Education Corporation by February 28 of each year and shall be granted a minimum of five hundred dollars ($500) annually from the funds contributed by the Malt Beverage Educational Fund for the single purpose of supporting "Project Graduation" events.***".

The Committee on Agriculture and Small Business reported **HB 658** and **HB 680** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 658, AN ACT relating to farm safety, and making an appropriation therefor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

In order to educate the citizens of the Commonwealth on the significance and importance of farm safety, the department shall assist counties in implementing farm safety programs by making grants when funds are available to eligible county organizations to assist the organizations in promoting their farm safety programs.

SECTION 2. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

(1) For a county organization to be eligible for funding, the following requirements shall be met:

(a) The organization shall be incorporated as nonprofit under KRS Chapter 273; and

(b) The organization shall submit a business plan to the department detailing how the corporation will operate and how it intends to incorporate a farm safety plan in its overall farm safety program.

(2) If the county organization's business plan is approved by the department, and if funding is available, the department shall distribute a grant of one thousand dollars ($1,000) to the organization.

(3) The county organization shall make an annual written report to the department regarding the activities of the organization's farm safety program and the disposition of the grant money.

SECTION 3. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

The commissioner may promulgate administrative regulations to carry out the provisions of Sections 1 to 3 of this Act.

Section 4. There is appropriated one hundred twenty thousand dollars ($120,000) to the Department of Agriculture to help fund county organization farm safety programs. No county may receive more than one thousand dollars ($1,000) from this appropriation.

HB 680, AN ACT relating to sales and use tax exemptions for agriculture.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 139.480 is amended to read as follows:

Any other provision of this chapter to the contrary notwithstanding, the terms "sale at retail," "retail sale," "use," "storage," and "consumption," as used in this chapter, shall not include the sale, use, storage, or other consumption of:

(1) Locomotives or rolling stock, including materials for the construction, repair, or modification thereof, or fuel or supplies for the direct operation of locomotives and trains, used or to be used in interstate commerce;

(2) Coal for the manufacture of electricity;

(3) All energy or energy-producing fuels used in the course of manufacturing, processing, mining, or refining to the extent that the cost of the energy or energy-producing fuels used exceeds three percent (3%) of the cost of production. Cost of production shall be computed on the basis of plant facilities which shall mean all permanent structures affixed to real

property at one (1) location;

(4) Livestock of a kind the products of which ordinarily constitute food for human consumption, provided the sales are made for breeding or dairy purposes and by or to a person regularly engaged in the business of farming;

(5) Poultry for use in breeding or egg production;

(6) Farm work stock for use in farming operations;

(7) Seeds, the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business, and commercial fertilizer to be applied on land, the products from which are to be used for food for human consumption or are to be sold in the regular course of business; provided such sales are made to farmers who are regularly engaged in the occupation of tilling and cultivating the soil for the production of crops as a business, or who are regularly engaged in the occupation of raising and feeding livestock or poultry or producing milk for sale; and provided further that tangible personal property so sold is to be used only by those persons designated above who are so purchasing;

(8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be used in the production of crops as a business, or in the raising and feeding of livestock or poultry, the products of which ordinarily constitute food for human consumption;

(9) Feed, including pre-mixes and feed additives, for livestock or poultry of a kind the products of which ordinarily constitute food for human consumption;

(10) ***Baling twine and baling wire for the baling of hay and straw;***

(11) Machinery for new and expanded industry;

(12)[~~(11)~~] Farm machinery. As used in this section, the term "farm machinery" means machinery used exclusively and directly in the occupation of tilling the soil for the production of crops as a business, or in the occupation of raising and feeding livestock or poultry or of producing milk for sale. The term "farm machinery," as used in this section includes machinery, attachments, and replacements therefor, repair parts, and replacement parts which are used or manufactured for use on, or in the operation of farm machinery and which are necessary to the operation of the machinery, and are customarily so used; but this exemption shall not include automobiles, trucks, trailers, and truck-trailer combinations;

(13)[~~(12)~~] Property which has been certified as a pollution control facility as defined in KRS 224.01-300, and all materials, supplies, and repair and replacement parts purchased for use in the operation or maintenance of the facilities used specifically in the steel-making process. The exemption provided in this subsection for materials, supplies~~,~~ and repair and replacement parts purchased for use in the operation of pollution control facilities shall be effective for sales made through June 30, 1994;

(14)[~~(13)~~] Tombstones and other memorial grave markers;

(15)[~~(14)~~] On-farm facilities used exclusively for grain or soybean storing, drying, processing, or handling. The exemption applies to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;

(16)[~~(15)~~] On-farm facilities used exclusively for raising chickens or livestock. The exemption shall apply to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply, but not be limited to, vent board equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities.

(17)[~~(16)~~] Gasoline, special fuels, and liquefied petroleum gas used to operate or propel stationary engines or tractors for agricultural purposes. As used in this subsection:

(a) "Gasoline" is defined as in KRS 138.210(4);

(b) "Special fuels" is defined as in KRS 138.560(3);

(c) "Liquefied petroleum gas" is defined as in KRS 234.100(1); and

(d) "Agricultural purposes" is defined as in KRS 138.343(4);

(18)[~~(17)~~] Textbooks, including related workbooks and other course materials, purchased for use in a course of study conducted by an institution which qualifies as a nonprofit educational institution under KRS 139.495. The term "course materials" means only those items specifically required of all students for a particular course but shall not include notebooks, paper, pencils, calculators, tape recorders, or similar student aids;

(19)[~~(18)~~] Any property which has been certified as an alcohol production facility as defined in KRS 247.910;

(20)[~~(19)~~] Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property or passengers for hire. Nominal intrastate use

shall not subject the property to the taxes imposed by this chapter;

(21)[~~(20)~~] Any property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;

(22)[~~(21)~~] Any property to be incorporated into the construction, rebuilding, modification, or expansion of a blast furnace or any of its components or appurtenant equipment or structures. The exemption provided in this subsection shall be effective for sales made through June 30, 1994;

(23)[~~(22)~~] Beginning on October 1, 1986, food or food products purchased for human consumption with food coupons issued by the United States Department of Agriculture pursuant to the Food Stamp Act of 1977, as amended, and required to be exempted by the Food Security Act of 1985 in order for the Commonwealth to continue participation in the federal food stamp program;

(24)[~~(23)~~] Machinery or equipment purchased or leased by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes;

(25)[~~(24)~~] Ratite birds and eggs to be used in an agricultural pursuit for the breeding and production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-products, and the following items used in this agricultural pursuit:

(a) Feed and feed additives;

(b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;

(c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to incubation systems, egg processing equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;

(26)[~~(25)~~] Embryos and semen that are used in the reproduction of livestock, if the products of these embryos and semen ordinarily constitute food for human consumption, and if the sale is made to a person engaged in the business of farming. The exemption provided in this subsection shall be effective for sales made through July 31, 2000; and

(27)[~~(26)~~] Llamas and alpacas to be used as beasts of burden or in an agricultural pursuit for the breeding and production of hides, breeding stock, fiber and wool products, meat, and llama and alpaca by-products, and the following items used in this pursuit:

(a) Feed and feed additives;

(b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;

(c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to waterer and feeding systems, ventilation systems, and alarm systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities.

The exemption provided in this subsection shall be effective for sales made through July 31, 2000.

Floor Amendments (Continued)

Floor Amendment No. 2 to **HB 414**, by Representative Gooch:

On page 6, after line 4 and before line 5 by inserting the following:

"***(6) All licensed viatical settlement providers transacting business in Kentucky must have the viator's medical condition reviewed by a qualified third-party physician or physician firm. Qualification shall be met with the approval of Standard and Poors, Moody's, or any other reviewing entity approved by the commissioner.***"

Floor Amendment No. 15 to the Committee Substitute No. 2 to **HB 455**, by Representative Riner:

On page 145, between lines 14 and 15, to insert the following:

"SECTION 121. A NEW SECTION OF KRS CHAPTER 197 IS CREATED TO READ AS FOLLOWS:

Subject to restrictions for violations of rules, any inmate of a facility operated by or under contract to the department who requests religious publications or other religious instructional materials may receive them provided:

(1) They have been purchased by or donated to the inmate; or

(2) Donated to the institution for use by inmates; and

(3) Do not constitute a threat to the security of the institution.

SECTION 122. A NEW SECTION OF KRS CHAPTER 441 IS CREATED TO READ AS FOLLOWS:

Subject to restrictions for violations of rules, an inmate of a facility operated by or under contract to a local jail who requests religious publications or other religious instructional materials may receive them provided:

(1) They have been purchased by or donated to the inmate; or

(2) Donated to the institution for use by inmates; and

(3) Do not constitute a treat to the security of the institution."; and

To renumber the ensuing sections accordingly.

Motions, Petitions and Communications (Continued)

Representative Mason moved the adoption of the following **HR 90**:

HR 90, A RESOLUTION adjourning the House of Representatives in honor of the East Kentucky Youth Leadership Program.

WHEREAS, the youth of eastern Kentucky represent our most precious resource; and

WHEREAS, we recognize the need to engage our young people in the civic life of our community and state; and

WHEREAS, we believe in the ability of our young citizens to play an important role in contributing to the governance of our community and state;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. The House of Representatives is proud to recognize and honor the East Kentucky Youth Leadership Program, and we wish to these young people success in all future endeavors.

Section 2. When the House of Representatives adjourns this day, it does so in honor of the East Kentucky Youth Leadership Program.

Section 3. The Clerk of the House of Representatives is hereby directed to transmit 12 copies of this Resolution to Representative Paul Mason for distribution to the members of the East Kentucky Youth Leadership Program.

There being no objection **HR 90** was adopted.

Floor Amendments (Continued)

Floor Amendment No. 14 to the Committee Substitute No. 2 to **HB 455**, by Representative Riner:

On page 145, between lines 14 and 15, to insert the following:

"SECTION 121. A NEW SECTION OF KRS CHAPTER 197 IS CREATED TO READ AS FOLLOWS:

(1) Each inmate under the jurisdiction of the Department of Corrections who is between the ages of eighteen (18) and twenty-one (21) years , meets the criteria under KRS 157.200 and the Federal Individuals with Disabilities Act as amended, who does not have a high school diploma or who has not passed the general educational development (GED) test shall be enrolled in an educational program designed to provide that inmate with a high school diploma or to enable passage of the general educational development (GED) test.

(2) An inmate subject to subsection (1) of this section shall not be allowed to participate in any prison industries program or prison employment program until he or she successfully completes the requirements for a high school diploma or passes the general educational development (GED) test.

(3) The Department of Corrections shall provide an educational program for inmates specified in subsection (1) of this section and shall offer both day and night classes. The department shall adopt policies and procedures for the programs to encourage successful completion by the students, including professional development for teachers related to working with students with disabilities.

(4) The Department of Corrections shall receive reimbursement from the local school district of the inmate's residence at the time of incarceration under the provisions of KRS 157.360. The local school district where the institution is located shall be deemed the district of residence for out-of-state inmates. The department may seek outside grants and funding to assist in defraying the costs of operating an expanded educational program for persons specified in subsection (1) of this section.

Section 122. KRS 157.350 is amended to read as follows:

Each district which meets the following requirements shall be eligible to share in the distribution of funds from the fund to support education excellence in Kentucky:

(1) Employs and compensates all teachers for not less than one hundred eighty-five (185) days. The Kentucky Board of Education, upon recommendation of the chief state school officer, shall prescribe procedures by which this requirement may be reduced during any year for any district which employs teachers for less than one hundred and eighty-five (185) days, in which case the eligibility of a district for participation in the public school fund shall be in proportion to the length of time teachers actually are employed;

(2) Operates all schools for a term as provided in KRS 158.070 and administrative regulations of the Kentucky Board of Education. If the school term is less than one hundred eighty-five (185) days for any reason not approved by the Kentucky Board of Education on recommendation of the chief state school officer, the eligibility of a district for participation in the public school fund shall be in proportion to the length of term the schools actually operate;

(3) Compensates all teachers on the basis of a single salary schedule and in conformity with the provisions of KRS 157.310 to 157.440;

(4) ***(a) Except as provided in paragraph (b) of this subsection,*** includes no nonresident pupils in its average daily attendance, except by written agreement with the district of the pupils' legal residence. If an agreement cannot be reached, either board may appeal to the chief state school officer for settlement of the agreement. The chief state school officer shall have thirty (30) days to establish the terms of agreement. Either board may appeal the chief state school officer's decision to the Kentucky Board of Education. The Kentucky Board of Education shall have sixty (60) days to approve or amend the agreement of the chief state school officer. In consideration of these appeals, the chief state school officer and the Kentucky Board of Education shall give preference to the best interest of the individual student. This subsection does not apply to those pupils enrolled in an approved class conducted in a hospital; ***and***

(b) Inmates under the jurisdiction of the Department of Corrections under Section 121 of this Act shall be included in average daily attendance. The Department of Education and the Department of Corrections shall cooperate in designing reporting, accounting, and billing procedures to determine the average daily attendance;

(5) Any secondary school which maintains a basketball team for boys for other than intramural purposes, shall maintain the same program for girls;

(6) Any school district which fails to comply with subsection (5) shall be prohibited from participating in varsity competition in any sport for one (1) year. Determination of failure to comply shall be made by the Department of Education after a hearing requested by any person within the school district. The hearing shall be conducted in accordance with KRS Chapter 13B. A district under this subsection shall, at the hearing, have an opportunity to show inability to comply."; and

To renumber the subsequent sections accordingly.

Floor Amendment No. 16 to the Committee Substitute No. 2 to **HB 455**, by Representative Riner:

On page 145, between lines 14 and 15, by inserting the following:

SECTION 121. A NEW SECTION OF KRS CHAPTER 197 IS CREATED TO READ AS FOLLOWS:

(1) Each facility operated by the Department of Corrections or under contract to the department shall maintain reports of all grievances by inmates during a calendar year. A grievance report shall be an open public record and made available to any person who requests to see the file at the site as long as the inmate has signed a waiver of confidentiality.

(2) Each grievance report shall contain the date the grievance was filed, the nature of the grievance, the name of the individual filing the grievance as well as the name of the person preparing the report, the residence, the county, actions taken by the facility, and the date the report was filed. The report shall be signed by an administrator or officer of the facility.

(3) With the written permission of the inmate, a photo copy of the file may be made and the content may be released to the public. The facility may require a ten cent ($0.10) per page copying fee.

(4) All grievance reports may be destroyed after December 31 of the following year.

SECTION 122. A NEW SECTION OF KRS CHAPTER 441 IS CREATED TO READ AS FOLLOWS:

(1) Each jail shall maintain reports of all grievances by inmates during a calendar year. A grievance report shall be an open public record and made available to any person who requests to see the file at the site as long as the inmate has signed a waiver of confidentiality.

(2) Each grievance report shall contain the date the grievance was filed, the nature of the grievance, the name of the

individual filing the grievance as well as the name of the person preparing the report, the residence, the county, actions taken by the facility, and the date the report was filed. The report shall be signed by an administrator or officer of the facility.

(3) With the written permission of the inmate, a photo copy of the file may be made and the content may be released to the public. The facility may require a ten cent ($0.10) per page copying fee.

(4) All grievance reports may be destroyed after December 31 of the following year.; and

By renumbering subsequent sections accordingly.

Floor Amendment No. 17 to **HB 455** to the Committee Substitute No. 2, by Representative Riner:

On page 145, between lines 14 and 15, by inserting the following:

SECTION 121: A NEW SECTION OF KRS CHAPTER 197 IS CREATED TO READ AS FOLLOWS:

(1) The administrator for each facility operated by the Department of Corrections or under contract to the department is encouraged to work with local religious leaders to provide a voluntary chaplain program.

(2) An inmate shall be allowed at least one (1) visit per week by a minister, priest, or rabbi of the inmate's choice.

SECTION 122. A NEW SECTION OF KRS CHAPTER 441 IS CREATED TO READ AS FOLLOWS:

(1) Each local jailer is encouraged to work with local religious leaders to provide a voluntary chaplain program.

(2) An inmate shall be allowed at least one (1) visit per week by a minister, priest, or rabbi of the inmate's choice.; and

By renumbering subsequent sections accordingly.

Motions, Petitions and Communications (Continued)

Representative Baugh moved the adoption of the following **Legislative Citation No. 118**. Agreed.

The House of Representatives of the Commonwealth of Kentucky does hereby adjourn this legislative day in loving memory of Roy B. Herndon. The House of Representatives joins Representative Sheldon Baugh in expressing its deepest sympathy to all who share in the great loss on the passing of this devoted son of the late William W. and Mary Anna Edwards Herndon; beloved husband of the late Bevie Nell Herndon; adored father of two sons, Kevin Herndon and Drexel Herndon; devoted brother of Margaret Lennon; and cherished grandfather of Emily, Cory and Sydney Marie. A man who contributed greatly to his community, he was a businessman and retired Russellville Vocational School teacher, who also served as a deacon and trustee at the Post Oak Baptist Church. He was a veteran of World War II, during which time he was taken as a prisoner of war while serving in the U. S. Army. We are honored on this day to remember Roy B. Herndon and to express our deepest condolences to his family and friends. **Legislative Citation No. 118** was adopted without objection.

Representative Baugh moved that the vote by which **HB 13** was reassigned to Health and Welfare be reconsidered and inquired if the motion was in order. The Speaker ruled that the motion that the vote by which **HB 13** was reassigned to Health and Welfare be reconsidered was in order. Representative Marzian moved that the motion that the vote by which **HB 13** was reassigned to Health and Welfare be reconsidered be tabled. The motion that the vote by which **HB 13** was reassigned to Health and Welfare be reconsidered be tabled was rejected. (See February 26, 1998 roll call to reconsider reassignment of **HB 13** - Appendix.)

The motion that the vote by which **HB 13** was reassigned to Health and Welfare be reconsidered was adopted. (See February 26, 1998 roll call on Motion to Reconsider **HB 13** - Appendix.)

Representative Ford moved that **HB 13** be reassigned to Judiciary. The motion that **HB 13** be reassigned to Judiciary was adopted. (See February 26, 1998 roll call on Reassignment of **HB 13** - Appendix.)

Representative Wilkey moved that Floor Amendment No. 6 to **HB 327** be withdrawn. Agreed.

Representative Maricle moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Maricle moved that he be recorded as voting "nay" on **HB 323**. Agreed.

Representative Wilkey moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Wilkey moved that his vote be changed from "nay" to "yea" on the motion that the vote by which **HB 13** was reassigned to Health and Welfare be reconsidered. Agreed.

Representative Alexander moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Alexander moved that he be recorded as voting "yea" on **HB 189** and **HB 205**. Agreed.

Representative Nesler moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Nesler moved that he be recorded as voting "yea" on **HB 171**. Agreed.

Representative Bowling moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Bowling moved that he be recorded as voting "yea" on **HB 1**. Agreed.

Representative Crall moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Crall moved that he be recorded as voting "yea" on **HB 84** and **HB 50**. Agreed.

Representative Hogancamp moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Hogancamp moved that her vote be changed from "yea" to "nay" on **HB 193**. Agreed.

Representative J. Arnold moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative J. Arnold moved that he be recorded as voting "yea" on **HB 205**. Agreed.

Representative P. Clark moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative P. Clark moved that his vote be changed from "nay" to "yea" on **HB 332**. Agreed.

Representative Wilkey moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Wilkey moved that he be recorded as voting "yea" on **HB 451**. Agreed. Representative Wilkey moved that he be recorded as voting "nay" on **HB 323**. Agreed.

Representative R. Adams moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative R. Adams moved that his vote be changed from "yea" to "nay" on **HB 189**. Agreed.

Representative L. Clark moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative L. Clark moved that he be recorded as voting "yea" on **HB 195**. Agreed.

Representative Crenshaw moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Crenshaw moved that he be recorded as voting "yea" on **HB 121, HB 380, HB 587, HB 127, HB 542, HB 493, HCR 8, HCR 12, HCR 21, HCR 22, HCR 23, HCR 24, HCR 25, HCR 26, HCR 27, HCR 28, HCR 29, HCR 30, HCR 41, SB 20,** and **SB 169**. Agreed.

The following members filed requests to have their names added as co-sponsors of Bills under rules previously suspended: **HB 211**, Representative Hoover; **HB 434**, Representatives Hoffman, Hatcher; **HB 491**, Representative Walton; **HB 651**, Representative Marcotte; **HB 678**, Representatives Rader, Bowling, Newsome, Stewart, Gooch; **HB 720**, Representative Reinhardt; **HB 734, HB 735**, Representative Jenkins.

The following member filed a request to have his name withdrawn as co-sponsor of a Bill under rules previously suspended: **HB 709**, Representative L. Clark.

Announcements

The following meetings were announced:

Health and Welfare, 45 minutes upon adjournment.

Budget Review Subcommittee on Human Resources, Room 129, upon adjournment.

Jefferson County Delegation, Room 111, upon adjournment.

Adjournment

Representative Stumbo moved that the House adjourn until 10:00 a.m., February 27, 1998.

On the roll call the vote was **Yeas 78**--R. Adams, Adkins, Allen, Anderson, A. Arnold, J. Arnold, Ballard, Baugh, Bowling, Bratcher, Brown, Bruce, D. Butler, D. D. Butler, Callahan, Cave, L. Clark, J. Clarke, Coleman, Collins, Colter, Cox, Crenshaw, Crimm, Curd, Damron, DeWeese, Ford, Gee, Geveden, Gooch, D. Graham, G. Graham, Haydon, Hoffman, Hogancamp, Hoover, Horlander, Johns, Kerr, Lee, Lindsay, Long, Marzian, Mason, McKee, Miller, Moberly, Murgatroyd, Napier, Newsome, Nunn, Palumbo, Polston, Pope, Rader, Rasche, Reinhardt, Richards, Riggs, Riner, Scott, Siler, Simpson, Sims, Stacy, Stein, Stine, Stumbo, Thomas, Treesh, Turner, Walton, Wayne, Wilkey, Worthington, Yonts, Zimmerman. **Nays 5**--P. Clark, Crall, Hatcher, Nesler, Stewart.

The motion to adjourn was adopted.

FRIDAY, FEBRUARY 27, 1998

THIRTY-FIFTH LEGISLATIVE DAY

The House was called to order by Speaker Richards.

Prayer by Reverend Quinton Scholtz, Middletown United Methodist Church, Middletown.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives J. Adams, Deskins, and Lovell.

Representative Ballard moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative Ballard moved that the reading of the Journal of February 26, 1998, be dispensed with and the same approved. Agreed.

Representative Ballard moved that the Rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Ballard moved that all properly filed co-sponsor requests be approved. Agreed.

Report On Enrolled Bills

HB 58, HB 106, HB 201, HB 202, HB 245, HB 287, HB 383, HCR 9, HCR 10, HCR 32, HCR 45, and **HCR 46** delivered to the Senate and signed by the President. Delivered to the Governor on February 27, 1998 at 9:21 a.m.

Senate Message

Announcing passage of **SB 41**. (Time: 10:05 a.m.)

Report On Enrolled Bills

The Committee on Enrollment reported that **SB 155** and **SCR 2** have been examined and found correctly enrolled. Said Bill and Resolution were read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -10:10 a.m.)

Introduction of Bills and Resolutions

HB 755, by Representatives Stein, Jenkins, Johns and Marzian: AN ACT relating to crimes and punishments.

HB 756, by Representatives Crenshaw, Burch, Mason, Hoffman and Jordan: AN ACT relating to child care assistance account.

HB 757, by Representatives Vincent, Weaver, Anderson, Stumbo, Adkins, Stacy, and Gee: AN ACT relating to alcoholic beverages.

HB 758, by Representative Bratcher: AN ACT proposing to create new Section 234a of the Constitution of Kentucky relating to term limitations for elected public officers.

HB 759, by Representative Yonts: AN ACT relating to the construction of school bus turnaround areas on public roads.

HB 760, by Representative Gray: AN ACT relating to labor-management negotiations.

HB 761, by Representative P. Clark: AN ACT relating to sales and use tax and declaring an emergency.

HB 762, by Representatives Kerr, Treesh, Callahan, R. Adams, Murgatroyd, Zimmerman, Marcotte, Reinhardt, Stine, and P. Clark: AN ACT relating to revenue and taxation.

HB 763, by Representative Gooch: AN ACT proposing amendments to Sections 110, 111, 112, 115, 116, and 121 of the Constitution of Kentucky relating to the Court of Justice .

Floor Amendments

Floor Amendment No. 18 to the Committee Substitute No. 2 to **HB 455**, by Representative Yonts:

On page 29, line 21, after "***sentence.***" to insert the following:

"***A sex offender who does not complete the sex offender treatment program for any reason shall serve his entire sentence without benefit of good time, parole, or other form of early release.***"; and

On page 145, between lines 14 and 15, to insert the following language:

"Section 121. KRS 197.170 is amended to read as follows:

(1) The wardens of the state penitentiaries upon the release of any prisoner or inmate from confinement, shall immediately notify the Circuit Court, the Commonwealth's attorney of the district, the county attorney and sheriff of the county, the chief of police of the city and county, to which the inmate is released, and any victim, as defined in KRS 421.500, who has requested that he be notified on release of a particular inmate who victimized him and who has forwarded a current address and telephone number to the Department of Corrections, giving the residence of the person released and the name of the person to whom he was released. The provisions of KRS Chapter 202A notwithstanding, the Department of Corrections may release to the public the information that a petition to involuntarily hospitalize a prisoner has been filed concerning any inmate who is scheduled to be released from custody.

(2) If the Circuit Court notified pursuant to subsection (1) of this section is a court other than the court which sentenced the inmate, the warden shall also notify the sentencing court.

(3) Notices received by sheriffs and chiefs of police shall be posted in a conspicuous location where personnel employed by the department may see it. ***Notices posted pursuant to this subsection shall remain posted for not less than seven (7) days.***"; and

To renumber the ensuing sections accordingly; and

On page 146, line 2, after the number "24" to insert a comma "," and delete the word "and"; and

On page 146 , line 2, after the number "25" to insert ", 70, and 121".

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills and Resolution:

Appropriations and Revenue: **HB 751, HB 752**

Banking and Insurance: **HB 739**

Counties and Special Districts: **HB 748**

Education: **HB 745, HB 749**

Health and Welfare: **HB 750**

Judiciary: **HB 736, HB 753, HB 754**

Labor and Industry: **HB 742**

Licensing and Occupations: **HB 738**

Natural Resources and Environment: **HB 737, HR 101**

State Government: **HB 743, HB 744**

Transportation: **HB 740, HB 741, HB 746, HB 747**

The Clerk reported that the Committee on Committees has referred the following Resolutions:

House Floor: **HR 99, HR 100**

Floor Amendments (Continued)

Floor Amendment No. 1 to **HB 632**, by Representative Long:

On page 19, at line 3, after "***proficiency***" by inserting "***shall be***"

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills have been posted for Committee consideration:

Licensing and Occupations: **HB 694, HB 703**

Report of Committees

The Committee on Health and Welfare reported **HB 456,** with Committee Substitute attached thereto, **HB 471,** with Committee Substitute and Committee Amendment attached thereto, **HB 591,** with Committee Substitute attached thereto, **HB 637,** with Committee Substitute attached thereto, and **HCR 79,** with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 456, AN ACT relating to hearing screening tests for infants.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

(1) The Cabinet for Human Resources shall establish an Infant Hearing Screening Program for the detection, diagnosis, and treatment of infants who are deaf or hard-of-hearing. The Infant Hearing Screening Program shall require that all infants in Kentucky be offered a hearing screening test in the birthing hospital, birthing center, or in the hospital from which the baby is discharged to home, except as provided in subsection (2) of this section. The test shall take place before the baby is discharged to the care of the parent or guardian.

(2) Nothing contained in this section shall be construed to require the testing of any child whose parents object to the hearing test based on their religious or other tenets.

(3) The cabinet shall also require the administering unit to inform a parent or guardian of the newborn and the child's primary care physician of an infant's failure to pass the test, or if an infant is not successfully tested. This notification shall occur prior to discharge whenever possible, or at most within ten (10) days following discharge. The administering unit so informing the parent and physician shall provide information regarding appropriate follow up for a screening failure or a missed screening.

(4) (a) The cabinet shall require each administering unit to submit its protocol for newborn hearing screening, including:

1. Training and supervision of personnel by a licensed audiologist;

2. Test protocol;

3. Follow-up procedures;

4. Quality assurance; and

5. Program statistics.

(b) Each protocol shall be submitted:

1. At the onset of the program;

2. Following one (1) full year of operation;

3. Prior to any significant changes in protocol; and

4. At intervals specified by the cabinet for approval and review as recommended by the advisory panel.

(5) The cost of providing the newborn hearing screening test shall be a covered benefit reimbursable by all health insurers, except for supplemental policies that only provide coverage for specific diseases, such as hospital indemnity, Medicare supplement, or other supplemental policies. In the absence of a third party payor, the charges for the newborn hearing screening test shall be paid by the Commonwealth.

(6) An infant whose hearing screening test result indicates the need for diagnostic audiological examination shall be offered the examination at a center approved by the cabinet. These centers shall maintain suitable audiological support and medical and educational referral practices in order to receive approval. The cost of these follow-up diagnostic examinations shall be borne by the Commonwealth for any child under thirty-six (36) months of age, when and only when the child's medical care is not covered by a health insurance plan.

(7) The cabinet shall provide educational materials to parents, pediatricians, and the general public regarding the advisability and availability of early identification and habilitation for infants who are deaf or hard-of-hearing. Included in these materials shall be information that hearing loss in infants may be acquired or progressive and that follow-up hearing tests are indicated in the event of suspicion of hearing loss or known indicators for progressive loss, even when the newborn hearing screening test has not detected any hearing loss.

(8) Infants identified as being deaf or hard-of-hearing shall be offered appropriate programs of early intervention.

(9) The cabinet shall initiate activities with the advice of the Infant Hearing Screening Advisory Panel to make recommendations regarding the following:

(a) The validity and cost of screening procedures;

(b) Setting standards for appropriate screening methodology based on updated technological developments;

(c) Methods of recording results and follow up from the screening program; and

(d) Facilitating interaction of professions and agencies which participate in follow up.

SECTION 2. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

(1) The Cabinet for Human Resources shall create an Infant Hearing Screening Advisory Panel for the purpose of acting in an advisory capacity to the cabinet regarding the hearing screening program.

(2) The advisory panel shall meet at least two (2) times per year, be provided support services by the cabinet, be chaired by an individual elected by the advisory committee members, shall not collect a per diem compensation, and shall be composed of the following members appointed by the director of the appropriate state-wide organizations:

(a) A representative of the health insurance industry;

(b) A pediatrician or family practitioner;

(c) An otolaryngologist;

(d) A neonatologist;

(e) A nurse representing newborn nurseries;

(f) Two (2) audiologists;

(g) A teacher of the deaf and hard-of-hearing;

(h) A representative of the state Early Intervention Program;

(i) A representative of the cabinet;

(j) A parent of children who are deaf or hard-of-hearing; and

(k) A deaf or hard-of-hearing adult as designated by the Kentucky Commission for the Deaf and Hard-of-Hearing.

Section 3. If the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by this 1998 Regular Session of the General Assembly, the reference to the Department Cabinet for Human Resources appearing in Sections 1 and 2 of this Act shall be codified as the Cabinet for Health Services.

The Committee Substitute to **HB 456** is as follows:

AN ACT relating to hearing screening tests for infants.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

(1) The Cabinet for Human Resources shall establish an Infant Hearing Screening Program for the detection, diagnosis, and treatment of infants who are deaf or hard-of-hearing. The Infant Hearing Screening Program shall require that all hospitals that operate an obstetrics service offer a hearing screening test to infants born at the hospital, except as provided in subsection (2) of this section. The test shall take place before the baby is discharged to the care of the parent or guardian.

(2) Nothing contained in this section shall be construed to require the testing of any child whose parents object to the hearing test based on their religious or other tenets.

(3) The cabinet shall also require the administering unit to inform a parent or guardian of the newborn and the child's primary care physician of an infant's failure to pass the test, or if an infant is not successfully tested. This notification shall occur prior to discharge whenever possible, or at most within ten (10) days following discharge. The administering unit so informing the parent and physician shall provide information regarding appropriate follow up for a screening failure or a missed screening.

(4) The cabinet shall require each administering unit to:

(a) Assure that tests are administered by trained personnel;

(b) Maintain program statistics; and

(c) Maintain a quality assurance program.

(5) The cost of providing the newborn hearing screening test shall be a covered benefit reimbursable by all health insurers, except for supplemental policies that only provide coverage for specific diseases, such as hospital

indemnity, Medicare supplement, or other supplemental policies. In the absence of a third party payor, the charges for the newborn hearing screening test shall be paid by the Commonwealth.

(6) An infant whose hearing screening test result indicates the need for diagnostic audiological examination shall be offered the examination at a center approved by the cabinet. These centers shall maintain suitable audiological support and medical and educational referral practices in order to receive approval. The cost of these follow-up diagnostic examinations shall be borne by the Commonwealth for any child under thirty-six (36) months of age, when and only when the child's medical care is not covered by a health insurance plan.

(7) The cabinet shall provide educational materials to parents, pediatricians, and the general public regarding the advisability and availability of early identification and habilitation for infants who are deaf or hard-of-hearing. Included in these materials shall be information that hearing loss in infants may be acquired or progressive and that follow-up hearing tests are indicated in the event of suspicion of hearing loss or known indicators for progressive loss, even when the newborn hearing screening test has not detected any hearing loss.

(8) Infants identified as being deaf or hard-of-hearing shall be offered appropriate programs of early intervention.

(9) The cabinet shall initiate activities with the advice of the Infant Hearing Screening Advisory Panel to make recommendations regarding the following:

(a) The validity and cost of screening procedures;

(b) Setting standards for appropriate screening methodology based on updated technological developments;

(c) Methods of recording results and follow up from the screening program; and

(d) Facilitating interaction of professions and agencies which participate in follow up.

SECTION 2. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

(1) The Cabinet for Human Resources shall create an Infant Hearing Screening Advisory Panel for the purpose of acting in an advisory capacity to the cabinet regarding the hearing screening program.

(2) The advisory panel shall meet at least two (2) times per year, be provided support services by the cabinet, be chaired by an individual elected by the advisory committee members, shall not collect a per diem compensation, and shall be composed of the following members appointed by the director of the appropriate state-wide organizations:

(a) A representative of the health insurance industry;

(b) A pediatrician or family practitioner;

(c) An otolaryngologist;

(d) A neonatologist;

(e) A nurse representing newborn nurseries;

(f) Two (2) audiologists;

(g) A teacher of the deaf and hard-of-hearing;

(h) A representative of the state Early Intervention Program;

(i) A representative of the cabinet;

(j) A parent of children who are deaf or hard-of-hearing; and

(k) A deaf or hard-of-hearing adult as designated by the Kentucky Commission for the Deaf and Hard-of-Hearing.

Section 3. If the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by this 1998 Regular Session of the General Assembly, the reference to the Department Cabinet for Human Resources appearing in Sections 1 and 2 of this Act shall be codified as the Cabinet for Health Services.

HB 471, AN ACT relating to dogs and cats, providing funding therefor, and making an appropriation therefor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 139 IS CREATED TO READ AS FOLLOWS:

(1) As used with respect to the pet foods surtax imposed by subsection (2) of this section, "dog and cat food" means any product manufactured and marketed for consumption by dogs or cats.

(2) In addition to the sales tax imposed by KRS 139.200, a pet foods surtax is hereby imposed upon all retailers at the rate of one percent (1%) of the gross receipts of any retailer derived from retail sales and sales at retail of dog and cat food after July 31, 1998.

(3) (a) Fifty percent (50%) of the amounts derived from the levy and collection of the pet foods surtax imposed by this section shall be deposited into the animal control and care fund in the State Treasury, as created by

Section 9 of this Act; and

(b) Fifty percent (50%) of the amounts derived from the levy and collection of the pet foods surtax imposed by this section shall be deposited into the animal shelter trust fund in the State Treasury, as created by Section 10 of this Act.

(4) The surtax imposed by this section is levied for the purpose of providing funds to develop and sustain animal control and care programs in the counties of the Commonwealth and to promote and support activities and standards relating to the control and care of dogs, cats, and other animals kept as pets in the Commonwealth.

(5) The pet foods surtax imposed by this section shall expire December 31, 2028.

Section 2. KRS 139.020 is amended to read as follows:

Except as provided in subsection (3) of Section 1 of this Act, any and all amounts derived from the levy and collection of the taxes levied by this chapter shall be appropriated and used as follows:

(1) Upon issuance and sale from time to time of bonds providing funds for purposes of paying the bonus to veterans as proposed by the General Assembly under KRS 40.005, and ratified by the electorate on November 3, 1959, there shall first be set aside out of each month's receipts ***the***[~~such~~] proportionate part of the next maturing principal of, and interest on, all[~~ such~~] bonds as may then be outstanding as will provide for the payment of principal and interest when due.

(2) Monthly receipts in excess of the amounts necessary to make[~~ such~~] provisions for the payment of the principal of and interest on all[~~ such~~] outstanding bonds shall[~~ to the extent of such excess~~] be credited to the general fund.

Section 3. KRS 139.050 is amended to read as follows:

(1) "Gross receipts" means the total amount of the sale, lease, or rental price[~~, as the case may be,~~] of "retail sales," or "sales at retail," valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(a) The cost of the property sold. However, in accordance with[~~ rules and~~] administrative regulations ***promulgated by***[~~as~~] the cabinet[~~ may prescribe~~], a deduction may be taken if the retailer has purchased property for some purpose other than resale, has reimbursed his vendor for tax which the vendor is required to pay to the state, or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. If a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property;

(b) The cost of the materials used, labor or service cost, interest paid, losses, or any other expense;

(c) The cost of transportation of the property prior to its sale to the purchaser.

(2) The total amount of the sale or lease or rental price includes all of the following:

(a) Any services that are a part of the sale;

(b) All receipts, cash, credits, and property of any kind;

(c) Any amount for which credit is allowed by the seller to the purchaser, other than credit for property traded when the property so traded is of like kind and character to the property purchased and the property traded is held for resale.

(3) "Gross receipts" do not include any of the following:

(a) Cash discounts allowed and taken on sales (provided that premium or trading stamps shall not be considered as cash discounts);

(b) Sale price of property returned by customers when the full sale price is refunded either in cash or credit***.*** [~~; but~~]This exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned;

(c) The price received for labor or services used in installing or applying the property sold;

(d) The amount of any tax (not including, however, any manufacturer's excise or import duty) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer;

(e) Sales of gasoline and special fuels subjected to tax under KRS Chapter 138;

(f) The sales price of any motor vehicle as defined by KRS 138.450 which is registered for use on the public highways and upon which any applicable tax levied under KRS 138.460 has been paid; or, the sales price of vehicles defined under KRS 189.010(12) and 189.010(17);

(g) Sales of distilled spirits, wine, and malt beverages not consumed on the premises licensed for their sale under the provisions of KRS Chapter 243.

(4) For purposes of the sales tax ***and the pet foods surtax***, if the retailer establishes to the satisfaction of the cabinet that ***these taxes have***[~~the sales tax has~~] been added to the total amount of the sale price and ***have***[~~has~~] not been absorbed by

the retailer, the total amount of the sale price shall be deemed to be the amount received exclusive of the ***taxes***[~~tax~~] imposed.

Section 4. KRS 139.220 is amended to read as follows:

It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the ***taxes***[~~tax~~] levied by KRS 139.200 ***and Section 1 of this Act,*** or any part thereof***,*** will be assumed or absorbed by the retailer or that ***they***[~~it~~] will not be added to the selling price of the property sold or that if added ***they***[~~it~~] or any part ***of them***[~~thereof~~] will be refunded.

Section 5. KRS 139.230 is amended to read as follows:

(1) The cabinet is authorized to prepare suitable brackets of prices for the collection of the taxes imposed by this chapter in order to eliminate fractions of one cent ($0.01),[~~ and~~] so that the aggregate collections of taxes by a retailer, so far as may be practicable, shall be equal to six percent (6%) of gross receipts or sales price ***of retail sales of other than dog and cat food***[~~, as the case may be~~].

(2) The aggregate collections of taxes by a retailer, so far as may be practicable, shall be equal to seven percent (7%) of gross receipts or sales price of retail sales of dog and cat food, through December 31, 2028. After December 31, 2028, the tax on dog and cat food shall be the same as that imposed by subsection (1) of this section.

Section 6. KRS 139.560 is amended to read as follows:

(1) ***(a)*** For the purposes of the sales tax, the return shall show the gross receipts of the seller during the preceding reporting period.

(b) For purposes of the pet foods surtax, the retailer's sales tax return shall also show the gross receipts of the seller attributable to dog and cat food during the preceding reporting period. This provision shall expire December 31, 2028.

(c) For purposes of the use tax, in case of a return filed by a retailer, the return shall show the total sales price of the property sold by him, the storage, use***,*** or consumption of which property became subject to the use tax during the preceding reporting period.

(2) In case of a return filed by a purchaser, the return shall show the total sales price of the property purchased by him, the storage, use***,*** or consumption of which became subject to the use tax during the preceding reporting period.

(3) The return shall also show the amount of the taxes for the period covered by the return and[~~ such~~] other information as the cabinet deems necessary for the proper administration of this chapter.

Section 7. KRS 139.570 is amended to read as follows:

To reimburse himself for the cost of collecting and remitting the ***sales and use taxes***[~~tax~~], the taxpayer shall deduct on each return one and three-quarters percent (1.75%) of the first one thousand dollars ($1,000) of tax due and one percent (1%) of the tax due in excess of one thousand dollars ($1,000), provided the amount due is not delinquent at the time of payment.

SECTION 8. A NEW SECTION OF KRS 258.095 TO 258.365 IS CREATED TO READ AS FOLLOWS:

(1) The Animal Control Advisory Board is hereby created for the purposes of making recommendations to the commissioner relating to evaluating applications for and reviewing disbursements from the animal control and care fund, establishing shelter standards, creating training programs, and other duties relating to animal control and care as the commissioner may deem appropriate.

(2) The advisory board shall be attached to the Kentucky Department of Agriculture for administrative purposes.

(3) The advisory board shall be composed of the following members appointed by the Governor as specified:

(a) Two (2) members selected from a list of three (3) submitted by the Kentucky Animal Control Association;

(b) Two (2) members selected from a list of three (3) submitted by the Kentucky Veterinary Medical Association;

(c) Two (2) members selected from a list of three (3) submitted by the Kentucky Farm Bureau;

(d) Two (2) members selected from a list of three (3) submitted by the Kentucky Association of Counties; and

(e) Two (2) members from the Commonwealth at large.

(4) Appointed members shall serve for a term of four (4) years. Vacancies shall be filled in the same manner as the original appointment for the unexpired portion of the term.

(5) Members of the advisory board shall receive fifty dollars ($50) per day for attendance at meetings and shall be entitled to reimbursement for expenses incurred in the performance of their duties.

(6) The advisory board shall elect one (1) of its members to serve as chair for a term of two (2) years.

(7) The advisory board shall meet on or about the first day of August each year to review the animal control and care fund and make recommendations to the commissioner concerning disbursements from the fund. Additional meetings may be called by the chair or by a majority of the advisory board.

(8) The commissioner may alter or reject any recommendation or action of the advisory board. If a recommendation or action is altered or rejected, the commissioner shall advise the members of the advisory board in writing of the reasons for the alteration or rejection.

SECTION 9. A NEW SECTION OF KRS 258.095 TO 258.365 IS CREATED TO READ AS FOLLOWS:

(1) The "Animal Control and Care Fund" is hereby created as a special fund in the State Treasury. Fifty percent (50%) of the receipts from the pet foods surtax imposed by Section 1 of this Act shall be deposited into this fund. The fund may also receive state appropriations, gifts, grants from public and private sources, and federal funds. Any unallotted or unencumbered balances in this fund shall be invested as provided for in KRS 42.500(9). Income earned from the investments shall be credited to the fund. Any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year, and moneys in this fund shall be continuously appropriated only for the purposes specified in this section. A general statement that all continuing appropriations are repealed, discontinued, or suspended shall not operate to repeal, discontinue, or suspend this fund or to repeal this section.

(2) Moneys shall be allocated for distribution from the fund as follows:

(a) Fifty percent (50%) of the fund balance shall be allocated annually for distribution to eligible counties. Each eligible county's allotment shall be based on the percentage that each county's population bears to the state's population, as determined by the latest July 1 county population estimate released annually by the United States Census Bureau. To be eligible for an annual allotment, a county shall have an established animal control and care program meeting the requirements provided in subsection (3) of this section, or an approved plan to establish an animal control and care program as provided in subsection (4) of this section. Before distributions based on population are made from the fund, each eligible county shall receive five thousand dollars ($5,000), providing the balance is sufficient. If the fund balance is not sufficient to distribute five thousand dollars ($5,000) to each eligible county, each eligible county shall receive an equal amount; and

(b) Fifty percent (50%) of the fund balance shall be transferred annually to the Department of Agriculture. This money shall be used by the Animal Control Advisory Board for board expenses, for the creation and support of statewide programs related to animal control and care, and for training dog wardens and animal control officers. "Statewide programs" includes, but is not limited to, the reimbursement of costs for preexposure rabies vaccinations for all animal control and care workers through local health departments. Based on recommendations of the Animal Control Advisory Board, any moneys not expended under this paragraph may be distributed annually as grants to counties with an established animal control and care program meeting the requirements of subsection (3) of this section or approved plan to establish an animal control and care program under subsection (4) of this section.

(3) As used in this section, "animal control and care program" means a program in which the county:

(a) Employs a dog warden or an animal control officer who is a high school graduate and has completed the training requirements set forth by the Animal Control Advisory Board; and

(b) Maintains a dog pound or animal shelter, or contracts with an adjoining county, to provide services that:

1. Segregate male and female animals in runs and holding areas;

2. Provide separate runs or holding areas for ill or injured animals;

3. Provide quarantine for dogs and cats presented to the shelter by an animal owner or a local health department, the cost of quarantine to be borne by the animal owner or the local health department at the shelter's regular housing costs and fees. Quarantined dogs and cats shall be held in isolation for observation of symptoms of rabies for a period of ten (10) days from the date the dog or cat bit or scratched a person. If the dog or cat dies or is euthanized while in quarantine, it shall be submitted to the local health department for testing for the presence of the rabies virus. The cost of the testing shall be borne by the animal owner or the local health department;

4. Provide holding areas with protection from the weather, including heated quarters during cold weather;

5. Provide runs and cages built of materials which can be readily cleaned and disinfected, including floors made of an impervious material or a minimum of three (3) inches of gravel;

6. Provide access to the public for no less than twenty-four (24) hours in one (1) week, with the hours that the facility is open to the public posted in a visible location;

7. Employ euthanasia methods recommended by the American Veterinary Medical Association; and

8. Provide other minimum standards as developed by the Animal Control Advisory Board and approved by the commissioner.

(4) To be eligible for moneys distributed under paragraph (a) of subsection (2) of this section, counties shall submit documentation to the Animal Control Advisory Board, on a form prescribed by the Department of Agriculture, of an

established animal control and care program or an approved plan to establish an animal control and care program. Counties submitting plans proposing to establish an animal control and care program for approval by the Animal Control Advisory Board shall comply with the requirements of:

(a) Paragraph (a) of subsection (3) of this section within twelve (12) months of the date the documentation is submitted; and

(b) Paragraph (b) of subsection (3) of this section within twenty-four (24) months of the date the documentation is submitted.

(5) To be eligible for any moneys distributed as grants to counties under paragraph (b) of subsection (2) of this section, counties shall submit an application to the commissioner, on a form prescribed by the Department of Agriculture, by July 15 of each year. Moneys shall be used for construction, equipment, educational supplies, and other uses or programs approved by the advisory board, but shall not be used to increase wages of dog wardens or other personnel. Counties receiving money from the Department of Agriculture shall comply with the terms of the plan or program. If the terms of the plan or program are not complied with, the county shall refund the money to the Department of Agriculture.

(6) The commissioner shall promulgate administrative regulations that relate to the animal control and care fund provisions of this section.

SECTION 10. A NEW SECTION OF KRS CHAPTER 258.095 TO 258.365 IS CREATED TO READ AS FOLLOWS:

(1) The "Animal Shelter Trust Fund" is hereby established and created as a special fund in the State Treasury. Fifty percent (50%) of the receipts from the pet foods surtax imposed by Section 1 of this Act shall be deposited into this fund. The fund may also receive state appropriations, gifts, grants from private and public sources, and federal funds. Any unallotted or unencumbered balances in the trust fund shall be invested as provided for in KRS 42.500(9). Income earned from the investments shall be credited to the trust fund. Any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year. A general statement that all continuing appropriations are repealed, discontinued, or suspended shall not operate to repeal, discontinue, or suspend this fund or repeal this section.

(2) Moneys shall be allocated for distribution from the trust fund as follows:

(a) Fifty percent (50%) of the interest on the fund shall be transferred annually to the animal control and care fund created by Section 9 of this Act; and

(b) Fifty percent (50%) of the interest on the fund shall remain in the trust fund for the purpose of accruing interest.

Section 11. Notwithstanding subsection (4) of Section 8 of this Act, initial appointments to the Animal Control Advisory Board shall be made by the Governor in such a way that:

(1) Two members are appointed for one-year terms; two members are appointed for two-year terms; three members are appointed for three-year terms; and three members are appointed for four-year terms; and

(2) No two members appointed from the same paragraph of subsection (3) of Section 8 of this Act shall have terms of the same number of years.

Section 12. The moneys allocated for distribution by Section 9 of this Act are hereby appropriated for the 1998-2000 biennium in the manner set forth in that section.

The Committee Substitute to **HB 471** is as follows:

AN ACT relating to dogs and cats, providing funding therefor, and making an appropriation therefor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS 258.095 TO 258.365 IS CREATED TO READ AS FOLLOWS:

(1) The Animal Control Advisory Board is hereby created for the purposes of making recommendations to the commissioner relating to evaluating applications for and reviewing disbursements from the animal control and care fund, establishing shelter standards, creating training programs, and other duties relating to animal control and care in the counties of the Commonwealth.

(2) The advisory board shall be attached to the Kentucky Department of Agriculture for administrative purposes.

(3) The advisory board shall be composed of the following members appointed by the Governor as specified:

(a) Two (2) members selected from a list of three (3) submitted by the Kentucky Animal Control Association;

(b) Two (2) members selected from a list of three (3) submitted by the Kentucky Veterinary Medical Association;

(c) Two (2) members selected from a list of three (3) submitted by the Kentucky Farm Bureau;

(d) Two (2) members selected from a list of three (3) submitted by the Kentucky Association of Counties;

(e) Two (2) members selected from a list of three (3) submitted by the Kentucky Houndsmen Association; and

(f) Two (2) members selected from a list of three (3) submitted by the Kentucky League of Cities.

(4) Appointed members shall serve for a term of four (4) years. Vacancies shall be filled in the same manner as the original appointment for the unexpired portion of the term.

(5) Members of the advisory board shall receive one hundred dollars ($100) per day for attendance at meetings and shall be entitled to reimbursement for expenses incurred for travel. No per diem or travel expenses shall be paid except for meetings of the full advisory board.

(6) The advisory board shall elect one (1) of its members to serve as chair for a term of two (2) years.

(7) The advisory board shall meet quarterly.

(8) The commissioner shall carry out the recommendations of the advisory board.

SECTION 2. A NEW SECTION OF KRS 258.095 TO 258.365 IS CREATED TO READ AS FOLLOWS:

(1) The "Animal Control and Care Fund" is hereby created as a special fund in the State Treasury. The fund may also receive gifts, grants from public and private sources, and federal funds. Any unalloted or unencumbered balances in this fund shall be invested as provided for in KRS 42.500(9). Income earned from the investments shall be credited to the fund. Any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year, and moneys in this fund shall be continuously appropriated only for the purposes specified in this section.

(2) Moneys shall be allocated for distribution from the fund as follows:

(a) Fifty percent (50%) of the fund balance shall be allocated annually for distribution to eligible counties. Each eligible county shall receive an equal allotment from the fund. To be eligible for an annual allotment, a county shall have an established animal control and care program meeting the requirements provided in subsection (3) of this section, or an approved plan to establish an animal control and care program as provided in subsection (4) of this section; and

(b) Fifty percent (50%) of the fund balance shall be transferred annually to the Department of Agriculture. This money shall be used by the Animal Control Advisory Board for board expenses, for the creation and support of statewide programs related to animal control and care, and for training dog wardens and animal control officers. "Statewide programs" includes, but is not limited to, the reimbursement of costs for preexposure rabies vaccinations for all animal control and care workers through local health departments. Based on recommendations of the Animal Control Advisory Board, any moneys not expended under this paragraph may be distributed annually as grants to counties with an established animal control and care program meeting the requirements of subsection (3) of this section or approved plan to establish an animal control and care program under subsection (4) of this section.

(3) As used in this section, "animal control and care program" means a program in which the county:

(a) Employs a dog warden or an animal control officer as required by KRS 258.195, who is a high school graduate and has completed the training requirements set forth by the Animal Control Advisory Board; and

(b) Maintains a dog pound or animal shelter, or contracts with an adjoining county, to provide services that:

1. Segregate male and female animals in runs and holding areas;

2. Provide separate runs or holding areas for ill or injured animals;

3. Provide quarantine for dogs and cats presented to the shelter by an animal owner or a local health department, the cost of quarantine to be borne by the animal owner or the local health department at the shelter's regular housing costs and fees. Quarantined dogs and cats shall be held in isolation for observation of symptoms of rabies for a period of ten (10) days from the date the dog or cat bit or scratched a person. If the dog or cat dies or is euthanized while in quarantine, it shall be submitted to the local health department for testing for the presence of the rabies virus. The cost of the testing shall be borne by the animal owner or the local health department;

4. Provide holding areas with protection from the weather, including heated quarters during cold weather;

5. Provide runs and cages built of materials which can be readily cleaned and disinfected, including floors made of an impervious material or a minimum of three (3) inches of gravel;

6. Provide access to the public for no less than twenty-four (24) hours in one (1) week, with the hours that the facility is open to the public posted in a visible location;

7. Employ euthanasia methods recommended by the American Veterinary Medical Association; and

8. Provide other minimum standards as developed by the Animal Control Advisory Board and approved by the commissioner.

(4) To be eligible for moneys distributed under paragraph (a) of subsection (2) of this section, counties shall submit documentation to the Animal Control Advisory Board, on a form prescribed by the Department of Agriculture, of an established animal control and care program or an approved plan to establish an animal control and care program. Counties submitting plans proposing to establish an animal control and care program for approval by the Animal Control Advisory Board shall comply with the requirements of:

(a) Paragraph (a) of subsection (3) of this section within twelve (12) months of the date the documentation is submitted; and

(b) Paragraph (b) of subsection (3) of this section within twenty-four (24) months of the date the documentation is submitted.

(5) To be eligible for any moneys distributed as grants to counties under paragraph (b) of subsection (2) of this section, counties shall submit an application to the commissioner, on a form prescribed by the Department of Agriculture, by July 15 of each year. Moneys shall be used for construction, equipment, educational supplies, and other uses or programs approved by the advisory board, but shall not be used to increase wages of dog wardens or other personnel. Counties receiving money from the Department of Agriculture shall comply with the terms of the plan or program. If the terms of the plan or program are not complied with, the county shall refund the money to the Department of Agriculture.

(6) The commissioner shall promulgate administrative regulations that relate to the animal control and care fund provisions of this section.

SECTION 3. A NEW SECTION OF KRS CHAPTER 258.095 TO 258.365 IS CREATED TO READ AS FOLLOWS:

(1) The "Animal Shelter Trust Fund" is hereby established and created as a special fund in the State Treasury. The fund may also receive state appropriations, gifts, grants from private and public sources, and federal funds. Any unalloted or unencumbered balances in the trust fund shall be invested as provided for in KRS 42.500(9). Income earned from the investments shall be credited to the trust fund. Any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year.

(2) Moneys shall be allocated for distribution from the trust fund as follows:

(a) Fifty percent (50%) of the interest on the fund shall be transferred annually to the animal control and care fund created by Section 2 of this Act; and

(b) Fifty percent (50%) of the interest on the fund shall remain in the trust fund for the purpose of accruing interest.

Section 4. Notwithstanding subsection (4) of Section 1 of this Act, initial appointments to the Animal Control Advisory Board shall be made by the Governor in such a way that:

(1) Three members are appointed for one-year terms; three members are appointed for two-year terms; three members are appointed for three-year terms; and three members are appointed for four-year terms; and

(2) No two members appointed from the same paragraph of subsection (3) of Section 1 of this Act shall have terms of the same number of years.

Section 5. There is appropriated out of the General Fund of the State Treasury for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the sum of $10.00, and for the fiscal year beginning July 1, 1999, and ending June 10, 2000, the sum of $10.00 to effectuate the purposes of this Act. In each fiscal year, fifty percent of the amount appropriated by this section shall be deposited into the animal control and care fund created by Section 2 of this Act, and fifty percent of the amount appropriated by this section shall be deposited into the animal shelter trust fund created by Section 3 of this Act.

The Committee Amendment No. 1 Title to **HB 471** is as follows:

By amending the title to read as follows:

"AN ACT relating to animal control and making an appropriation therefor."

HB 591, AN ACT relating to patient safety.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

All health care facilities and services licensed under this chapter shall develop comprehensive quality assurance or improvement standards adequate to identify, evaluate, and remedy problems related to the quality of health care facilities *and services. These standards shall be made available upon request to the public during regular business hours and shall include:*

(1) An ongoing written internal quality assurance or improvement program;

(2) Specific, written guidelines for quality care studies and monitoring;

(3) Performance and clinical outcomes-based criteria;

(4) Procedures for remedial action to correct quality problems, including written procedures for taking appropriate corrective action;

(5) A plan for data gathering and assessment;

(6) A peer review process; and

(7) A summary of process outcomes and follow-up actions related to the overall quality improvement program for the health care facility or service.

SECTION 2. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

All health care facilities and services licensed under this chapter shall include in their policies and procedures a care delivery model based on patient needs which includes but is not limited to:

(1) Defined roles and responsibilities of licensed and unlicensed health care personnel;

(2) A staffing plan that specifies staffing levels of licensed and unlicensed personnel required to safely and consistently meet the performance and clinical outcomes-based standards as outlined in the facility's or service's quality improvement plan;

(3) A staffing model that is developed and implemented in an interdisciplinary and collaborative manner;

(4) A policy and method that incorporates at least four (4) components in an ongoing assessment done by the registered nurse of the severity of the patient's disease, patient condition, level of impairment or disability, and the specific unit patient census to meet the needs of the individual patient in a timely manner; and

(5) A staffing model that supports the delivery of patient care services with an appropriate mix of licensed health care personnel that will allow them to practice according to their legal scope of practice, professional standards of practice, and facility and service policies.

SECTION 3. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

(1) Any agent or employee of a health care facility or service licensed under this chapter who knows or has reasonable cause to believe that the quality of care of a patient, patient safety, or the health care facility's or service's safety is in jeopardy shall make an oral or written report of the problem to the health care facility or service, and may make it to any appropriate private, public, state, or federal agency.

(2) Any individual in an administrative or supervisory capacity at the health care facility or service who receives a report under subsection (1) of this section shall investigate the problem, take appropriate action, and provide a response to the individual reporting the problem within seven (7) working days.

(3) No health care facility or service licensed under this chapter shall by policy, contract, procedure, or other formal or informal means subject to reprisal, or directly or indirectly use, or threaten to use, any authority or influence, in any manner whatsoever, which tends to discourage, restrain, suppress, dissuade, deter, prevent, interfere with, coerce, or discriminate against any agent or employee who in good faith reports, discloses, divulges, or otherwise brings to the attention of the health care facility or service the circumstances or facts to form the basis of a report under subsection (1) or (2) of this section. No health care facility or service shall require any agent or employee to give notice prior to making a report, disclosure, or divulgence under subsection (1) or (2) of this section.

(4) All reports, investigations, and action taken subject to this chapter shall be conducted in a manner that protects and maintains the confidentiality of patients and personnel and preserves the integrity of data, information, and medical records.

(5) All health care facilities and services licensed under this chapter shall, as a condition of licensure, abide by the terms of Section 1 of this Act and this section.

(6) No agent or employee of a health care facility or service shall file a report under subsection (1) or (2) of this section in bad faith and shall have a reasonable basis for filing a report.

SECTION 4. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

(1) All health care facilities and services licensed under this chapter shall require all persons, including students, who examine, observe, or treat a patient or resident of the health care facility or service to wear identification which readily identifies, at a minimum, the person's first name, licensure credential, and position title or department.

(2) The identification shall be of a size and type and appropriately displayed so that it may be easily detected and read.

The Committee Substitute to **HB 591** is as follows:

AN ACT relating to patient safety.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

All health care facilities and services licensed under this chapter, with the exception of personal care homes, family care homes, and boarding homes, shall develop comprehensive quality assurance or improvement standards adequate to identify, evaluate, and remedy problems related to the quality of health care facilities and services. These standards shall be made available upon request to the public during regular business hours and shall include:

(1) An ongoing written internal quality assurance or improvement program;

(2) Specific, written guidelines for quality care studies and monitoring;

(3) Performance and clinical outcomes-based criteria;

(4) Procedures for remedial action to correct quality problems, including written procedures for taking appropriate corrective action;

(5) A plan for data gathering and assessment;

(6) A peer review process; and

(7) A summary of process outcomes and follow-up actions related to the overall quality improvement program for the health care facility or service.

Current federal or state regulations which address quality assurance and quality improvement requirements for nursing facilities, intermediate care facilities, and skilled care facilities shall suffice for compliance with the standards in this section.

SECTION 2. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

All health care facilities and services licensed under this chapter shall include in their policies and procedures a care delivery model based on patient needs which includes but is not limited to:

(1) Defined roles and responsibilities of licensed and unlicensed health care personnel;

(2) A staffing plan that specifies staffing levels of licensed and unlicensed personnel required to safely and consistently meet the performance and clinical outcomes-based standards as outlined in the facility's or service's quality improvement plan;

(3) A staffing model that is developed and implemented in an interdisciplinary and collaborative manner;

(4) A policy and method that incorporates at least four (4) components in an ongoing assessment done by the registered nurse of the severity of the patient's disease, patient condition, level of impairment or disability, and the specific unit patient census to meet the needs of the individual patient in a timely manner; and

(5) A staffing model that supports the delivery of patient care services with an appropriate mix of licensed health care personnel that will allow them to practice according to their legal scope of practice, and for nurses, the professional standards of practice referenced in KRS Chapter 314, and facility and service policies.

If a nursing facility, intermediate care facility, or skilled care facility meets the most current state or federal regulations which address safe and consistent staffing levels of licensed and unlicensed personnel, those shall suffice for compliance with the standards in this section.

SECTION 3. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

(1) Any agent or employee of a health care facility or service licensed under this chapter who knows or has reasonable cause to believe that the quality of care of a patient, patient safety, or the health care facility's or service's safety is in jeopardy shall make an oral or written report of the problem to the health care facility or service, and may make it to any appropriate private, public, state, or federal agency.

(2) Any individual in an administrative or supervisory capacity at the health care facility or service who receives a report under subsection (1) of this section shall investigate the problem, take appropriate action, and provide a response to the individual reporting the problem within seven (7) working days.

(3) No health care facility or service licensed under this chapter shall by policy, contract, procedure, or other formal or informal means subject to reprisal, or directly or indirectly use, or threaten to use, any authority or influence, in any manner whatsoever, which tends to discourage, restrain, suppress, dissuade, deter, prevent, interfere with, coerce, or discriminate against any agent or employee who in good faith reports, discloses, divulges, or otherwise brings to the attention of the health care facility or service the circumstances or facts to form the basis of a report under subsections (1) or (2) of this section. No health care facility or service shall require any agent or employee to give notice prior to making a report, disclosure, or divulgence under subsections (1) or (2) of this section.

(4) All reports, investigations, and action taken subject to this chapter shall be conducted in a manner that protects and maintains the confidentiality of patients and personnel and preserves the integrity of data, information, and medical records.

(5) All health care facilities and services licensed under this chapter shall, as a condition of licensure, abide by the terms of Section 1 of this Act and this section.

(6) No agent or employee of a health care facility or service shall file a report under subsection (1) or (2) of this section in bad faith and shall have a reasonable basis for filing a report.

SECTION 4. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

(1) All health care facilities and services licensed under this chapter shall require all persons, including students, who examine, observe, or treat a patient or resident of the health care facility or service to wear identification which readily identifies, at a minimum, the person's first name, licensure credential, and position title or department.

(2) The identification shall be of a size and type and appropriately displayed so that it may be easily detected and read.

HB 637, AN ACT relating to the practice of nursing.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 314.011 is amended to read as follows:

As used in KRS 314.011 to 314.161 and KRS 314.991, unless the context thereof requires otherwise:

(1) "Board" shall mean Kentucky Board of Nursing.

(2) "Delegation" means directing a competent person to perform a selected nursing activity or task in a selected situation under the nurse's supervision and pursuant to administrative regulations promulgated by the board in accordance with the provisions of KRS Chapter 13A.

(3) "Nurse" shall mean a person licensed under the provisions of this chapter as a registered nurse or as a licensed practical nurse.

(4) "Nursing process" means the investigative approach to nursing practice utilizing a method of problem-solving by means of:

  (a) Nursing diagnosis, a systematic investigation of a health concern, and an analysis of the data collected in order to arrive at an identifiable problem; and

  (b) Planning, implementation, and evaluation based on nationally-accepted standards of nursing practice.

(5) "Registered nurse" shall mean one who is licensed under the provisions of this chapter to engage in registered nursing practice.

(6) "Registered nursing practice" shall mean the performance of acts requiring substantial specialized knowledge, judgment, and nursing skill based upon the principles of psychological, biological, physical, and social sciences in the application of the nursing process in:

  (a) The care, counsel, and health teaching of the ill, injured, or infirm.

  (b) The maintenance of health or prevention of illness of others.

  (c) The administration of medication and treatment as prescribed by a physician, dentist, or advanced registered nurse practitioner and as further authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally-accepted organizations of registered nurses. Components of medication administration include, but are not limited to:

    1. Preparing and giving medications in the prescribed dosage, route, and frequency;
    2. Observing, recording, and reporting desired effects, untoward reactions, and side effects of drug therapy;
    3. Intervening when emergency care is required as a result of drug therapy;
    4. Recognizing accepted prescribing limits and reporting deviations to the prescribing individual;
    5. Recognizing drug incompatibilities and reporting interactions or potential interactions to the prescribing individual; and
    6. Instructing an individual regarding medications.

  (d) The supervision, teaching of, and delegation to other personnel in the performance of activities relating to nursing care.

  (e) The performance of other nursing acts which are authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally-accepted organizations of registered nurses.

(7) "Advanced registered nurse practitioner" shall mean one who is registered and designated to engage in advanced registered nursing practice including, but not limited to, the nurse anesthetist, nurse midwife, ***clinical nurse specialist,*** and nurse practitioner pursuant to KRS 314.042.

(8) "Advanced registered nursing practice" shall mean the performance of additional acts by registered nurses who have gained added knowledge and skills through an organized postbasic program of study and clinical experience and who are certified by the American Nurses' Association or other nationally-established organizations or agencies recognized by the board to certify registered nurses for advanced nursing practice. The additional acts shall, subject to approval of the board, include, but not be limited to, prescribing treatment, drugs, devices, and ordering diagnostic tests. Advanced registered nurse practitioners who engage in these additional acts shall be authorized to issue prescriptions for nonscheduled legend drugs as defined in KRS 217.905, under the conditions set forth in KRS 314.042. Nothing in this chapter shall be construed as requiring an advanced registered nurse practitioner designated by the board as a nurse anesthetist to obtain prescriptive authority pursuant to this chapter or any other provision of law in order to deliver anesthesia care. The performance of these additional acts shall be consistent with the certifying organization or agencies' scopes and standards of practice recognized by the board by administrative regulation.

(9) "Licensed practical nurse" shall mean one who is licensed under the provisions of this chapter to engage in licensed practical nursing practice.

(10) "Licensed practical nursing practice" shall mean the performance of acts requiring knowledge and skill such as are taught or acquired in approved schools for practical nursing in:

(a) The observing and caring for the ill, injured, or infirm under the direction of a registered nurse, a licensed physician, or dentist.

(b) The giving of counsel and applying procedures to safeguard life and health, as defined and authorized by the board.

(c) The administration of medication or treatment as authorized by a physician, dentist, or advanced registered nurse practitioner and as further authorized or limited by the board which is consistent with the National Federation of Licensed Practical Nurses or with Standards of Practice established by nationally-accepted organizations of licensed practical nurses.

(d) Teaching, supervising, and delegating except as limited by the board.

(e) The performance of other nursing acts which are authorized or limited by the board and which are consistent with the National Federation of Practical Nurses' Standards of Practice or with Standards of Practice established by nationally-accepted organizations of licensed practical nurses.

(11) "School of nursing" shall mean a nursing education program preparing persons for licensure as a registered nurse or a practical nurse.

(12) "Continuing education" shall mean offerings beyond the basic nursing program that present specific content planned and evaluated to meet competency based behavioral objectives which develop new skills and upgrade knowledge.

(13) "Nursing assistance" shall mean the performance of delegated nursing acts by unlicensed nursing personnel for compensation under supervision of a nurse.

(14) "Sexual assault nurse examiner" shall mean a registered nurse who has completed the required education and clinical experience and been credentialed by the board as provided under KRS 314.142 to conduct forensic examinations of victims of sexual offenses under the medical protocol issued by the State Medical Examiner pursuant to KRS 216B.400(2).

(15) "Competency" shall mean the application of knowledge and skills related to caring, critical thinking, communication, and clinical intervention expected for the nurse's practice role within the context of the public's health, welfare, and safety.

(16) "Credential" shall mean a current license, registration, or certificate issued by the board permitting the practice of nursing.

Section 2. KRS 314.041 is amended to read as follows:

(1) An applicant for a license to practice as a registered nurse shall file with the board a written application for a license and submit evidence, verified by oath***:***~~[,]~~

(a) That the applicant has completed~~[at least an approved four (4) year high school course of study or the equivalent thereof; has completed]~~ the basic curriculum for preparing registered nurses in an approved school of nursing and ***has completed requirements for graduation***~~[holds a diploma]~~ therefrom;

(b) Has fulfilled the requirements of KRS 214.615(1); and

(c) Is able to understandably speak and write the English language and to read the English language with comprehension.

(2) An applicant shall be required to pass an examination in any subjects as the board may ***determine***[~~prescribe. Each written examination may be supplemented by an oral or practical examination~~]. Application for licensure by examination shall be received by the board at such time as ***determined***[~~prescribed~~] by regulation by the board.

(3) Upon successfully completing all requirements for licensure, the board ***may***[~~shall~~] issue to the applicant a license to practice nursing as a registered nurse***, if in the opinion of the board the applicant is qualified to practice as a registered nurse in this state***.

(4) The board may issue a license to practice nursing as a registered nurse to any applicant who has passed the examination prescribed by the board or its equivalent and been licensed as a registered nurse under the laws of another state, territory, or foreign country, if in the opinion of the board the applicant is qualified to practice ***as a registered nurse***[~~professional nursing~~] in this state.

(5) The applicant for licensure to practice as a registered nurse shall pay a licensure application fee, and examination fees if applicable, as set forth in a regulation by the board promulgated pursuant to the provisions of KRS Chapter 13A.

(6) Any person who holds a license to practice as a registered nurse in this state shall have the right to use the title "registered nurse" and the abbreviation "R.N." No other person shall assume the title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using the same is a registered nurse. No person shall practice as a registered nurse unless licensed under this section.

(7) Those persons previously licensed by the board and not engaged in the practice of nursing in the Commonwealth of Kentucky, but desiring to maintain the right to use the title "R.N." may apply and be granted inactive status by the board in accordance with regulations promulgated by the board. Inactive status shall be renewed ***in accordance with administrative regulations promulgated by the board in accordance with KRS Chapter 13A***[~~at least biennially~~] and those persons granted inactive status shall not be governed by the continuing education provisions contained in this chapter. A registered nurse on inactive status may petition the board for a renewal of a license to actively practice and shall complete the requirements as established in KRS Chapter 314 and by regulation of the board.

(8) Any person heretofore licensed as a registered nurse under the licensing laws of this state who has allowed the license to lapse by failure to renew may apply for reinstatement of the license under the provisions of this chapter.

(9) A license to practice registered nursing may be limited by the board in accordance with regulations promulgated by the board and as defined in this chapter.

Section 3. KRS 314.042 is amended to read as follows:

(1) An applicant for registration and designation to practice as an advanced registered nurse practitioner shall file with the board a written application for registration and designation and submit evidence, verified by oath, that the applicant has completed an organized postbasic program of study and clinical experience acceptable to the board; has fulfilled the requirements of KRS 214.615(1); is certified by a nationally-established organization or agency recognized by the board to certify registered nurses for advanced nursing practice; and is able to understandably speak and write the English language and to read the English language with comprehension.

(2) The board may issue a registration to practice advanced registered nursing to an applicant who holds a current active registered nurse license issued by the board and meets the qualifications of subsection (1) of this section. An advanced registered nurse practitioner shall be designated by the board as a nurse anesthetist, nurse midwife, nurse practitioner, ***clinical nurse specialist,*** or any other designation as determined by the board.

(3) The applicant for registration and designation or renewal thereof to practice as an advanced registered nurse practitioner shall pay a fee to the board as set forth in regulation by the board.

(4) An advanced registered nurse practitioner shall maintain a current active registered nurse license issued by the board and maintain current certification by the appropriate national organization or agency recognized by the board.

(5) Any person who holds a registration and designation to practice as an advanced registered nurse practitioner in this state shall have the right to use the title "advanced registered nurse practitioner" and the abbreviation "ARNP." No other person shall assume the title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using the same is an advanced registered nurse practitioner. No person shall practice as an advanced registered nurse practitioner unless registered under this section.

(6) Any person heretofore registered as an advanced registered nurse practitioner under the provisions of this chapter who has allowed the registration to lapse may be reinstated on payment of current fee and by meeting the provisions of this chapter and regulations promulgated by the board pursuant to the provisions of KRS Chapter 13A.

(7) The board may authorize a person to practice as an advanced registered nurse practitioner temporarily and pursuant to applicable regulations promulgated by the board pursuant to the provisions of KRS Chapter 13A if the person is awaiting the results of the national certifying examination for the first time or is awaiting licensure by endorsement. A person awaiting the results of the national certifying examination shall use the title "ARNP Applicant" or "ARNP App."

(8) Before an advanced registered nurse practitioner engages in the prescribing of nonscheduled legend drugs as authorized by KRS 314.011(8), the advanced registered nurse practitioner shall enter into a written collaborative practice agreement

with a physician that defines the scope of the prescriptive authority.

(9) Nothing in this chapter shall be construed as requiring an advanced registered nurse practitioner designated by the board as a nurse anesthetist to enter into a collaborative practice agreement with a physician, pursuant to this chapter or any other provision of law, in order to deliver anesthesia care.

Section 4. KRS 314.051 is amended to read as follows:

(1) An applicant for a license to practice as a licensed practical nurse shall file with the board a written application for a license verified by oath, that the applicant:

(a)[~~ Has completed at least an approved four (4) year high school course of study or its equivalent;~~

~~(b)~~] Has fulfilled the requirements of KRS 214.615(1);

(b)[~~(c)~~]Has completed the required educational program in practical nursing at an approved school of nursing and ***has completed requirements for graduation***[~~holds a diploma or certificate~~] therefrom; and

(c)[~~(d)~~]Is able to understandably speak and write the English language and to read the English language with comprehension.

(2) The applicant for licensure to practice as a licensed practical nurse shall pay a licensure application fee, and examination fees if applicable, as set forth in a regulation by the board.

(3) An applicant shall be required to pass an examination in any subjects the board may determine.[~~ Each written examination may be supplemented by an oral or practical examination.~~] Application for licensure by examination shall be received by the board at the time as ***determined***[~~prescribed~~] by regulation by the board.

(4) Upon successfully completing all requirements for licensure, the board ***may***[~~shall~~] issue to the applicant a license to practice as a licensed practical nurse***, if in the opinion of the board, the applicant is qualified to practice as a licensed practical nurse in this state***.

(5) The board may issue a license to practice as a licensed practical nurse to any applicant who has passed the examination prescribed by the board or its equivalent, and has been licensed or registered as a licensed practical nurse or a person licensed to perform similar services under a different title, under the laws of another state, territory or foreign country if, in the opinion of the board, the applicant meets the requirements for a licensed practical nurse in this state.

(6) Any person who holds a license to practice as a licensed practical nurse in this state shall have the right to use the title "licensed practical nurse" and the abbreviation "L.P.N." No other person shall assume the title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using the same is a licensed practical nurse. No person shall practice as a licensed practical nurse unless licensed under this chapter.

(7) Those persons previously licensed by the board and not engaged in the practice of nursing in the Commonwealth of Kentucky, but desiring to maintain the right to use the title "L.P.N." may apply and be granted inactive status by the board in accordance with regulations promulgated by the board. Inactive status shall be renewed ***in accordance with administrative regulations promulgated by the board in accordance with KRS Chapter 13A***[~~at least biennially~~] and those persons granted inactive status shall not be governed by the continuing education provisions contained in this chapter. A licensed practical nurse on inactive status may petition the board for a renewal of a license to actively practice and shall complete the requirements as established in this chapter and by regulation of the board.

(8) Any person heretofore licensed as a practical nurse under the licensing laws of this state who has allowed the license to lapse by failure to renew may apply for reinstatement of the license under the provisions of this chapter.

(9) A license to practice practical nursing may be limited by the board in accordance with regulations promulgated by the board and as defined in this chapter.

Section 5. KRS 314.061 is amended to read as follows:

(1) Every ***credential***[~~license~~] issued by the board shall have the seal of the board affixed. A ***holder of a credential***[~~licensee~~] shall[~~ sign his license,~~] retain it in ***the holder's***[~~his~~] possession, and be prepared to exhibit ***it***[~~his license or board certification of licensure~~] upon demand by an employer or anyone to whom the ***holder of the credential***[~~licensee~~] offers nursing services, or any board or staff member of the Kentucky Board of Nursing.

(2) Failure or refusal to produce a license or certification thereof upon demand shall be prima facie evidence that no such license exists.

Section 6. KRS 314.073 is amended to read as follows:

(1) [~~Except for the first licensure renewal following the issuance of an original license by the board, ~~]As a prerequisite for license renewal, all individuals licensed under provisions of this chapter shall be required to document[~~ the completion of~~] continuing ***competency***[~~education requirements not to exceed thirty (30) contact hours in a given licensure period~~] as prescribed in regulations promulgated by the board.[~~ A "contact hour" is defined as fifty (50) minutes of an approved, organized learning experience.~~]

(2) [~~Contact hours required to satisfy ~~]The continuing ***competency***[~~education~~] requirement shall be ***documented***[~~completed~~]

and reported in accordance with[~~ board~~] requirements set[~~ forth~~] by ***the board in administrative*** regulation ***promulgated in accordance with KRS Chapter 13A***.

(3) The board shall approve providers[~~ of continuing education~~]. The approval may include recognition of providers approved by national organizations and state boards of nursing with comparable standards. Standards for[~~ these~~] approvals shall be set by the board in administrative regulations promulgated in accordance with the provisions of KRS Chapter 13A.

(4) The board shall work cooperatively with professional nursing organizations, approved nursing schools, and other potential sources of continuing ***competency***[~~education~~] programs[~~ to assure that adequate continuing education offerings are available statewide~~]. The board may enter into contractual agreements to implement the provisions of this section.

(5) The board shall be responsible for notifying applicants for licensure and licensees applying for license renewal, of continuing ***competency***[~~education~~] requirements.

(6) The continuing education shall include the completion of the course described in KRS 214.610(1).

(7) In order to offset administrative costs incurred in the implementation of the mandatory continuing ***competency***[~~education~~] requirements, the board may charge reasonable fees as established by regulation in accordance with the provisions of KRS Chapter 13A.

(8) The continuing ***competency***[~~education~~] requirements shall include at least five (5) contact hours in pharmacology ***continuing education*** for any person registered as an advanced registered nurse practitioner.

(9) The board may continue to require thirty (30) contact hours of continuing education as the competency validation.

Section 7. KRS 314.085 is amended to read as follows:

(1) If the board has reasonable cause to believe that any licensee; applicant for licensure by examination, endorsement, reinstatement, or change of status; or holder of a temporary work permit is unable to practice with reasonable skill and safety or has abused alcohol or drugs, it may require the person to submit to a mental or physical examination by a physician or psychologist it designated. Upon the failure of the person to submit to a mental or physical examination, unless due to circumstances beyond the person's control, the board may initiate an action for immediate temporary suspension pursuant to KRS 314.089 ***or deny the application*** until the person submits to the required examination.

(2) Every licensee; applicant for licensure by examination, endorsement, reinstatement, or change of status; or holder of a temporary work permit shall be deemed to have given consent to submit to a mental or physical examination when so directed in writing by the board. The direction to submit to an examination shall contain the basis of the board's reasonable cause to believe that the person is unable to practice with reasonable skill and safety, or has abused alcohol or drugs. The person shall be deemed to have waived all objections to the admissibility of the examining physician's or psychologist's testimony or examination reports on the ground of privileged communication.

(3) The licensee; applicant for licensure by examination, endorsement, reinstatement, or change of status; or holder of a temporary work permit shall bear the cost of any mental or physical examination ordered by the board.

Section 8. KRS 314.111 is amended to read as follows:

(1) An institution desiring to conduct a school of nursing shall apply to the board and submit evidence that it is prepared to carry out the minimum approved basic curriculum in nursing and that it is prepared to fulfill other requirements of standards which are established by KRS 314.011 to 314.161 and KRS 314.991 and the administrative regulations promulgated by the board. No person shall operate a nursing education program or school of nursing without complying with the provisions of this section.

(2) A survey of the institution and its proposed education program shall be made by the executive director or an authorized employee of the board who shall submit a written report of the survey to the board. If in the opinion of the board the requirements for an approved nursing education program or school of nursing are met it shall approve the school.

(3) [~~Periodic surveys of all schools of nursing shall be made under the supervision of the board. Written reports of such surveys shall be submitted to the board. ~~]If the board determines that any approved school of nursing is not maintaining the standards required by the statutes and the administrative regulations of the board, notice thereof in writing specifying their deficiencies shall be immediately given to the school. A school which fails to correct these conditions to the satisfaction of the board within a reasonable time shall be discontinued after an administrative hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

Section 9. KRS 314.131 is amended to read as follows:

(1) The board shall meet at least annually and shall elect from its members a president, a president-elect, and ***any other officers it deems necessary***[~~a secretary~~]. A majority of the board including one (1) officer shall constitute a quorum at any meeting. The board is authorized to promulgate administrative regulations not inconsistent with the law and subject to the provisions of KRS Chapter 13A, as may be necessary to enable it to carry into effect the provisions of this chapter.

(2) The board shall approve ***programs***[~~curricula and standards for schools~~] of nursing[~~ and courses preparing persons for licensure~~] and shall monitor ***compliance with*** standards for nurse competency under this chapter. It shall[~~ provide for~~]

~~surveys of schools and courses at any time as may be necessary, approve schools and courses meeting the requirements of this chapter and of the board, evaluate and approve courses for affiliation,~~] and examine, license, and renew the license of duly-qualified applicants; determine notice of place and time of licensure examinations; approve providers of continuing education; administer continuing education requirements; issue advisory opinions ***or declaratory rulings*** dealing with the practice of nursing; register and designate those persons qualified to engage in advanced nursing practice; and it shall conduct administrative hearings in accordance with KRS Chapter 13B upon charges calling for discipline of a licensee and cause the prosecution of all persons violating any provisions of this chapter. It shall keep a record of all its proceedings and make an annual report to the Governor.

(3) The board shall develop specific guidelines to follow upon receipt of an allegation of sexual misconduct by a nurse licensed by the board. The guidelines shall include investigation, inquiry, and hearing procedures which ensure that the process does not revictimize the alleged victim or cause harm if a nurse is falsely accused.

(4) The board and investigators hired by the board shall receive training on the dynamics of sexual misconduct of professionals, including the nature of this abuse of authority, characteristics of the offender, the impact on the victim, the possibility and the impact of false accusations, investigative procedure in sex offense cases, and effective intervention with victims and offenders.

(5) The board shall employ a qualified person to serve as executive director to the board, and shall fix the compensation and define the duties of the executive director. It may employ other persons as may be necessary to carry on the work of the board.

(6) The executive director shall have at least the qualifications for board members, and a master's degree in nursing or equivalent and shall have had at least two (2) years of experience in nursing administration immediately preceding the time of appointment.

(7) Each member of the board shall receive, in addition to traveling, hotel, and other necessary expenses, one hundred dollars ($100) for each day the member is actually engaged in the discharge of official duties.

(8) The board may, in its discretion, purchase liability insurance for board and staff members against acts performed in good faith discharge of duties.

(9) The board may, by administrative regulation issued pursuant to the provisions of KRS Chapter 13A, determine which disciplinary action records may be expunged. Any records which are expunged shall be exempt from disclosure under the Kentucky Open Records Law, KRS 61.870 to 61.884. The board shall not report its disciplinary actions for any purpose other than statistical.

(10) The board may reimburse any person appointed by direction of the board to any committee, subcommittee, or task force created by the board for the member's travel and subsistence expenses as set forth by the board in administrative regulations promulgated in accordance with KRS Chapter 13A.

Section 10. KRS 314.142 is amended to read as follows:

(1) The Kentucky Board of Nursing shall promulgate administrative regulations pursuant to KRS Chapter 13A to create a Sexual Assault Nurse Examiner Program. These administrative regulations shall address, at a minimum:

(a) Educational requirements for sexual assault nurse examiners and statewide standards for provision of the education;

(b) The application process through which registered nurses who submit documentation of required education and clinical experience and who remit the designated application fee may apply to the board to be credentialed as a "Sexual Assault Nurse Examiner";

(c) Continuing education requirements for maintenance of the sexual assault nurse examiner credential; and

(d) Methods of monitoring overall program implementation.

(2) For the purpose of providing recommendations to the Kentucky Board of Nursing on the development and implementation of the Sexual Assault Nurse Examiner Program, there is hereby created a[~~ fourteen (14) member~~] Sexual Assault Nurse Examiner Advisory Council. The following members shall serve on the council by virtue of their office: the executive director of the Kentucky Board of Nursing or the executive director's designee; the executive director of the Kentucky Hospital Association or the executive director's designee; the state medical examiner or the examiner's designee; the secretary of the Cabinet for Human Resources or the secretary's designee; the president of the ***Kentucky Association of Sexual Assault Programs***[~~Statewide Association of Rape Crisis Centers~~] or the president's designee; the commissioner of the Department for Health Services of the Cabinet for Human Resources or the commissioner's designee; the chair of the ***Kentucky Association of Baccalaureate and Higher Degree Nursing Programs***[~~Council on Postsecondary Education~~] or the chair's designee; the director of the Victim's Advocacy Division of the Office of the Attorney General or the director's designee; the director of the Prosecutors Advisory Council of the Office of the Attorney General or the director's designee; and the director of the Kentucky State Police Crime Lab or the director's designee. Two (2) members shall be registered nurses with forensic experience appointed by the Governor from a list of three (3) names recommended by the Kentucky Nurses Association. ***One (1) member shall be a physician with forensic***

experience appointed by the Governor from a list of three (3) names recommended by the Kentucky Medical Association. Two (2) members with a demonstrated interest and experience in victims' services shall be appointed by the Governor to serve as at-large members. Of the at-large members, one (1) shall be appointed from a list of three (3) names recommended by the Kentucky Board of Nursing and one (1) from a list of three (3) names recommended by the Cabinet for Human Resources.

(3) Members shall serve at the pleasure of the appointing authority but shall not serve longer than four (4) years without reappointment.

(4) The chair of the advisory council shall be elected by a majority vote of council members.

(5) Each member of the council may be reimbursed for necessary expenses incurred in attending its meetings from funds available through the collection of fees required under subsection (1) of this section.

(6) Any person in this state who holds a credential as a Sexual Assault Nurse Examiner as defined in subsection (14) of Section 1 of this Act shall have the right to use the title "Sexual Assault Nurse Examiner" and the abbreviation "SANE". No other person shall assume the title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using the same is a Sexual Assault Nurse Examiner.

SECTION 11. A NEW SECTION OF KRS CHAPTER 314 IS CREATED TO READ AS FOLLOWS:

Any person licensed or credentialed by the board who provides direct care to patients shall, while on duty, wear an insignia or badge identifying the license or credential issued to the person by the board. The board may promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section.

Section 12. KRS 314.031 is amended to read as follows:

(1) It shall be unlawful for any person to call or hold herself or himself out as or use the title of nurse or to practice or offer to practice as a nurse unless licensed under the provisions of this chapter.

(2) It shall be unlawful for any person to operate or to offer to operate or to represent or advertise the operation of a school of nursing unless the school of nursing has been approved under the provisions of this chapter.

(3) It shall be unlawful for any person knowingly to employ a nurse unless the nurse is licensed under the provisions of this chapter.

(4) It shall be unlawful for any nurse, employer of nurses, or any person having knowledge of facts to refrain from reporting to the board a nurse who:

  (a) Has been convicted of a misdemeanor or felony which involved acts that bear directly on the qualifications or ability of the applicant or licensee to practice nursing; or

  (b) Is suspected of fraud or deceit in procuring or attempting to procure a license to practice nursing; or

  (c)) Is suspected of negligently or willfully acting in a manner inconsistent with the practice of nursing; or

  (d) Is suspected of being unfit or incompetent to practice nursing by reason of negligence or other causes including, but not limited to, being unable to practice nursing with reasonable skill or safety; or

  (e) Is suspected of[~~ willfully or repeatedly~~] violating any provisions of this chapter; or

  (f)[~~(c)~~] Has a license to practice as a nurse denied, limited, suspended, probated,[~~ or~~] revoked***, or otherwise disciplined*** in another jurisdiction on grounds sufficient to cause a license to be denied, limited, suspended, probated,[~~ or~~] revoked***, or otherwise disciplined*** in this Commonwealth; or

  (g)[~~(d)~~] Is practicing nursing without a current active license or valid temporary work permit issued by the board; ***or***

  (h) Is suspected of abusing, misusing or misappropriating any drugs placed in the custody of the nurse for administration, or for the use of others; or

  (i) Is suspected of falsifying or in a negligent manner making incorrect entries or failing to make essential entries on essential records.

Section 13. KRS 314.091 is amended to read as follows:

(1) The board shall have power to ***reprimand,*** deny, limit, revoke, probate, or suspend any license ***or credential*** to practice nursing issued by the board or applied for in accordance with this chapter, or to otherwise discipline a licensee, ***credential holder or applicant,*** or to deny admission to the licensure examination, or to require evidence of evaluation and therapy upon proof that the person:

  (a) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing;

  (b) Has been convicted of a misdemeanor or felony which involved acts that bear directly on the qualifications or ability of the applicant or licensee to practice nursing;

  (c) Has been convicted of a misdemeanor offense under KRS Chapter 510 involving a patient, or a felony offense under KRS Chapter 510, 530.064, or 531.310, or has been found by the board to have had sexual contact as defined in KRS 510.010(7) with a patient while the patient was under the care of the nurse;

(d) Has negligently or willfully acted in a manner inconsistent with the practice of nursing;

(e) Is unfit or incompetent to practice nursing by reason of negligence or other causes, including but not limited to, being unable to practice nursing with reasonable skill or safety;

(f) Abuses use of controlled substances***, prescription medications, or alcohol;***[~~ or~~]

(g) Has misused or misappropriated any drugs placed in the custody of the nurse for ***administration***[~~medication~~], or ***for*** use of others;

(h)[~~(g)~~] Has falsified or in a[~~ repeatedly~~] negligent manner made incorrect entries or failed to make essential entries on essential records;

(i)[~~(h)~~] Has a license ***or credential*** to practice as a nurse denied, limited, suspended, probated, revoked, or otherwise disciplined in another jurisdiction on grounds sufficient to cause a license to be denied, limited, suspended, probated, revoked, or otherwise disciplined in this Commonwealth; or

(j)[~~(i)~~] Has[~~ willfully or repeatedly~~] violated any of the provisions of this chapter***;***[~~ or~~]

(k) Has violated any lawful order or directive previously entered by the board***;***[~~,~~] or

(l) Has violated any administrative regulation promulgated by the board.

(2) All hearings[~~ for denial, limitation, probation, suspension, or revocation of the license of a registered or practical nurse~~] shall be conducted in accordance with KRS Chapter 13B. A suspended or revoked license ***or credential*** may be reinstated at the discretion of the board, and in accordance with regulations promulgated by the board.

(3) The executive director may issue subpoenas to compel the attendance of witnesses and the production of documents in the conduct of an investigation. The subpoenas may be enforced by the Circuit Court as for contempt. Any order or subpoena of the court requiring the attendance and testimony of witnesses and the production of documentary evidence may be enforced and shall be valid anywhere in this state.

(4) At all hearings on request of the board the Attorney General of this state or one (1) of the assistant attorneys general designated by the Attorney General shall appear and represent the board.

(5) A final order of the board shall be by majority vote thereof.

(6) Any person adversely affected by any final order of the board may obtain a review thereof by filing a written petition for review with the Circuit Court of the county in which the board's offices are located in accordance with KRS Chapter 13B.

(7) If the board substantiates that sexual contact occurred between a nurse and a patient while the patient was under the care of or in a professional relationship with the nurse, the nurse's license ***or credential*** may be revoked or suspended with mandatory treatment of the nurse as prescribed by the board. The board may require the nurse to pay a specified amount for mental health services for the patient which are needed as a result of the sexual contact.

Section 14. KRS 314.101 is amended to read as follows:

(1) This chapter does not prohibit: the furnishing of nursing assistance in an emergency; the practice of nursing which is incidental to the program of study by individuals enrolled in nursing education programs and refresher courses approved by the board or in graduate programs in nursing; the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of his or her official duties; or the practice of any currently licensed nurse of another state whose responsibilities include transporting patients into, out of, or through this state.

(2) Nothing in this chapter shall be construed as prohibiting care of the sick with or without compensation or personal profit when done in connection with the practice of the religious tenets of any recognized or established church by adherents thereof as long as they do not engage in the practice of nursing as defined in this chapter.

(3) Nothing in this chapter shall limit, preclude, or otherwise restrict the practices of other licensed personnel in carrying out their duties under the terms of their licenses.

(4) A temporary work permit may be issued by the board to persons who have completed the requirements for, applied for, and paid the fee for licensure by examination or endorsement. Temporary work permits shall be issued only for the length of time required to process applications for endorsement or, in the case of applications for licensure by examination, for no longer than six (6) months from the first day of the month following completion of the program of nursing requirements, and shall not be renewed. No temporary work permit shall be issued to an applicant who has failed the licensure examination.

(5) The board may summarily withdraw a temporary work permit upon determination that the person does not meet the requirements for licensure or has disciplinary action pending against the person's license in this or another jurisdiction.

(6) A new graduate who holds a temporary work permit shall have the right to use the title "registered nurse applicant" and the abbreviation "RN App" or "licensed practical nurse applicant" and the abbreviation "LPN App" according to the type of permit issued.

(7) Any nurse educated outside the United States who has passed the state board test pool examination or its equivalent as determined by the board~~[or who has passed the commission on graduates of foreign nursing schools examination]~~ may be issued a temporary work permit.

SECTION 15. A NEW SECTION OF KRS CHAPTER 314 IS CREATED TO READ AS FOLLOWS:

The board of nursing shall require a background investigation of each applicant for a license by means of fingerprint checks by the Kentucky State Police and the Federal Bureau of Investigation.

Section 16. KRS 314.025 is amended to read as follows:

(1) There is hereby created the Kentucky nursing incentive scholarship fund.

(2) It is the intent of the General Assembly of the Commonwealth of Kentucky to address the nursing workforce needs throughout the Commonwealth; further it is the intent of the General Assembly to give preference for these scholarships to financially needy residents, registered nurses pursuing graduate nursing education, and licensed practical nurses of the Commonwealth. ***The fund may also issue grants for nursing workforce competency development.***

SECTION 17. A NEW SECTION OF KRS CHAPTER 314 IS CREATED TO READ AS FOLLOWS:

(1) The board may, on petition by any interested person, issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any statute, administrative regulation, decision, order, or other written statement of law or policy within the jurisdiction of the board.

(2) A declaratory ruling shall be binding on the board and all parties to the proceedings on the statement of facts alleged.

(3) The board may not retroactively change a declaratory ruling, but nothing in this section shall prevent the board from prospectively changing a declaratory ruling.

(4) The board shall issue an administrative regulation promulgated in accordance with KRS Chapter 13A on procedures for submission, consideration, and disposition of a petition for a declaratory ruling.

(5) A declaratory ruling of the board may be appealed to the Circuit Court of the county in which the board's offices are located within thirty (30) days of the date of the final ruling by the board.

Section 18. In the event the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by this 1998 Regular Session of the General Assembly, the provisions of Section 10 naming the Secretary of the Cabinet for Human Resources to the Sexual Assault Nurse Examiner Advisory Council shall be codified as one (1) representative of the Cabinet for Families and Children and one (1) representative of the Cabinet for Health Services. The total number of Council members shall be adjusted accordingly.

The Committee Substitute to **HB 637** is as follows:

AN ACT relating to the practice of nursing.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 314.011 is amended to read as follows:

As used in KRS 314.011 to 314.161 and KRS 314.991, unless the context thereof requires otherwise:

(1) "Board" shall mean Kentucky Board of Nursing.

(2) "Delegation" means directing a competent person to perform a selected nursing activity or task in a selected situation under the nurse's supervision and pursuant to administrative regulations promulgated by the board in accordance with the provisions of KRS Chapter 13A.

(3) "Nurse" shall mean a person licensed under the provisions of this chapter as a registered nurse or as a licensed practical nurse.

(4) "Nursing process" means the investigative approach to nursing practice utilizing a method of problem-solving by means of:

(a) Nursing diagnosis, a systematic investigation of a health concern, and an analysis of the data collected in order to arrive at an identifiable problem; and

(b) Planning, implementation, and evaluation based on nationally-accepted standards of nursing practice.

(5) "Registered nurse" shall mean one who is licensed under the provisions of this chapter to engage in registered nursing practice.

(6) "Registered nursing practice" shall mean the performance of acts requiring substantial specialized knowledge, judgment, and nursing skill based upon the principles of psychological, biological, physical, and social sciences in the application of the nursing process in:

(a) The care, counsel, and health teaching of the ill, injured, or infirm.

(b) The maintenance of health or prevention of illness of others.

(c) The administration of medication and treatment as prescribed by a physician, dentist, or advanced registered nurse practitioner and as further authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally-accepted organizations of registered nurses. Components of medication administration include, but are not limited to:

1. Preparing and giving medications in the prescribed dosage, route, and frequency;
2. Observing, recording, and reporting desired effects, untoward reactions, and side effects of drug therapy;
3. Intervening when emergency care is required as a result of drug therapy;
4. Recognizing accepted prescribing limits and reporting deviations to the prescribing individual;
5. Recognizing drug incompatibilities and reporting interactions or potential interactions to the prescribing individual; and
6. Instructing an individual regarding medications.

(d) The supervision, teaching of, and delegation to other personnel in the performance of activities relating to nursing care.

(e) The performance of other nursing acts which are authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally-accepted organizations of registered nurses.

(7) "Advanced registered nurse practitioner" shall mean one who is registered and designated to engage in advanced registered nursing practice including, but not limited to, the nurse anesthetist, nurse midwife, ***clinical nurse specialist,*** and nurse practitioner pursuant to KRS 314.042.

(8) "Advanced registered nursing practice" shall mean the performance of additional acts by registered nurses who have gained added knowledge and skills through an organized postbasic program of study and clinical experience and who are certified by the American Nurses' Association or other nationally-established organizations or agencies recognized by the board to certify registered nurses for advanced nursing practice. The additional acts shall, subject to approval of the board, include, but not be limited to, prescribing treatment, drugs, devices, and ordering diagnostic tests. Advanced registered nurse practitioners who engage in these additional acts shall be authorized to issue prescriptions for nonscheduled legend drugs as defined in KRS 217.905, under the conditions set forth in KRS 314.042. Nothing in this chapter shall be construed as requiring an advanced registered nurse practitioner designated by the board as a nurse anesthetist to obtain prescriptive authority pursuant to this chapter or any other provision of law in order to deliver anesthesia care. The performance of these additional acts shall be consistent with the certifying organization or agencies' scopes and standards of practice recognized by the board by administrative regulation.

(9) "Licensed practical nurse" shall mean one who is licensed under the provisions of this chapter to engage in licensed practical nursing practice.

(10) "Licensed practical nursing practice" shall mean the performance of acts requiring knowledge and skill such as are taught or acquired in approved schools for practical nursing in:

(a) The observing and caring for the ill, injured, or infirm under the direction of a registered nurse, a licensed physician, or dentist.

(b) The giving of counsel and applying procedures to safeguard life and health, as defined and authorized by the board.

(c) The administration of medication or treatment as authorized by a physician, dentist, or advanced registered nurse practitioner and as further authorized or limited by the board which is consistent with the National Federation of Licensed Practical Nurses or with Standards of Practice established by nationally-accepted organizations of licensed practical nurses.

(d) Teaching, supervising, and delegating except as limited by the board.

(e) The performance of other nursing acts which are authorized or limited by the board and which are consistent with the National Federation of Practical Nurses' Standards of Practice or with Standards of Practice established by nationally-accepted organizations of licensed practical nurses.

(11) "School of nursing" shall mean a nursing education program preparing persons for licensure as a registered nurse or a practical nurse.

(12) "Continuing education" shall mean offerings beyond the basic nursing program that present specific content planned and evaluated to meet competency based behavioral objectives which develop new skills and upgrade knowledge.

(13) "Nursing assistance" shall mean the performance of delegated nursing acts by unlicensed nursing personnel for compensation under supervision of a nurse.

(14) "Sexual assault nurse examiner" shall mean a registered nurse who has completed the required education and clinical experience and been credentialed by the board as provided under KRS 314.142 to conduct forensic examinations of victims of sexual offenses under the medical protocol issued by the State Medical Examiner pursuant to KRS 216B.400(2).

(15) "Competency" shall mean the application of knowledge and skills related to caring, critical thinking, communication, and clinical intervention expected for the nurse's practice role within the context of the public's health, welfare, and safety.

(16) "Credential" shall mean a current license, registration, or certificate issued by the board permitting the practice of nursing.

Section 2. KRS 314.041 is amended to read as follows:

(1) An applicant for a license to practice as a registered nurse shall file with the board a written application for a license and submit evidence, verified by oath***:***[~~,~~]

(a) That the applicant has completed[~~ at least an approved four (4) year high school course of study or the equivalent thereof; has completed~~] the basic curriculum for preparing registered nurses in an approved school of nursing and ***has completed requirements for graduation***[~~holds a diploma~~] therefrom;

(b) Has fulfilled the requirements of KRS 214.615(1); and

(c) Is able to understandably speak and write the English language and to read the English language with comprehension.

(2) An applicant shall be required to pass an examination in any subjects as the board may ***determine***[~~prescribe. Each written examination may be supplemented by an oral or practical examination~~]. Application for licensure by examination shall be received by the board at such time as ***determined***[~~prescribed~~] by regulation by the board.

(3) Upon successfully completing all requirements for licensure, the board ***may***[~~shall~~] issue to the applicant a license to practice nursing as a registered nurse***, if in the opinion of the board the applicant is qualified to practice as a registered nurse in this state***.

(4) The board may issue a license to practice nursing as a registered nurse to any applicant who has passed the examination prescribed by the board or its equivalent and been licensed as a registered nurse under the laws of another state, territory, or foreign country, if in the opinion of the board the applicant is qualified to practice ***as a registered nurse***[~~professional nursing~~] in this state.

(5) The applicant for licensure to practice as a registered nurse shall pay a licensure application fee, and examination fees if applicable, as set forth in a regulation by the board promulgated pursuant to the provisions of KRS Chapter 13A.

(6) Any person who holds a license to practice as a registered nurse in this state shall have the right to use the title "registered nurse" and the abbreviation "R.N." No other person shall assume the title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using the same is a registered nurse. No person shall practice as a registered nurse unless licensed under this section.

(7) Those persons previously licensed by the board and not engaged in the practice of nursing in the Commonwealth of Kentucky, but desiring to maintain the right to use the title "R.N." may apply and be granted inactive status by the board in accordance with regulations promulgated by the board. Inactive status shall be renewed ***in accordance with administrative regulations promulgated by the board in accordance with KRS Chapter 13A***[~~at least biennially~~] and those persons granted inactive status shall not be governed by the continuing education provisions contained in this chapter. A registered nurse on inactive status may petition the board for a renewal of a license to actively practice and shall complete the requirements as established in KRS Chapter 314 and by regulation of the board.

(8) Any person heretofore licensed as a registered nurse under the licensing laws of this state who has allowed the license to lapse by failure to renew may apply for reinstatement of the license under the provisions of this chapter.

(9) A license to practice registered nursing may be limited by the board in accordance with regulations promulgated by the board and as defined in this chapter.

Section 3. KRS 314.042 is amended to read as follows:

(1) An applicant for registration and designation to practice as an advanced registered nurse practitioner shall file with the board a written application for registration and designation and submit evidence, verified by oath, that the applicant has completed an organized postbasic program of study and clinical experience acceptable to the board; has fulfilled the requirements of KRS 214.615(1); is certified by a nationally-established organization or agency recognized by the board to certify registered nurses for advanced nursing practice; and is able to understandably speak and write the English language and to read the English language with comprehension.

(2) The board may issue a registration to practice advanced registered nursing to an applicant who holds a current active registered nurse license issued by the board and meets the qualifications of subsection (1) of this section. An advanced registered nurse practitioner shall be designated by the board as a nurse anesthetist, nurse midwife, nurse practitioner,

clinical nurse specialist, or any other designation as determined by the board.

(3) The applicant for registration and designation or renewal thereof to practice as an advanced registered nurse practitioner shall pay a fee to the board as set forth in regulation by the board.

(4) An advanced registered nurse practitioner shall maintain a current active registered nurse license issued by the board and maintain current certification by the appropriate national organization or agency recognized by the board.

(5) Any person who holds a registration and designation to practice as an advanced registered nurse practitioner in this state shall have the right to use the title "advanced registered nurse practitioner" and the abbreviation "ARNP." No other person shall assume the title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using the same is an advanced registered nurse practitioner. No person shall practice as an advanced registered nurse practitioner unless registered under this section.

(6) Any person heretofore registered as an advanced registered nurse practitioner under the provisions of this chapter who has allowed the registration to lapse may be reinstated on payment of current fee and by meeting the provisions of this chapter and regulations promulgated by the board pursuant to the provisions of KRS Chapter 13A.

(7) The board may authorize a person to practice as an advanced registered nurse practitioner temporarily and pursuant to applicable regulations promulgated by the board pursuant to the provisions of KRS Chapter 13A if the person is awaiting the results of the national certifying examination for the first time or is awaiting licensure by endorsement. A person awaiting the results of the national certifying examination shall use the title "ARNP Applicant" or "ARNP App."

(8) Before an advanced registered nurse practitioner engages in the prescribing of nonscheduled legend drugs as authorized by KRS 314.011(8), the advanced registered nurse practitioner shall enter into a written collaborative practice agreement with a physician that defines the scope of the prescriptive authority.

(9) Nothing in this chapter shall be construed as requiring an advanced registered nurse practitioner designated by the board as a nurse anesthetist to enter into a collaborative practice agreement with a physician, pursuant to this chapter or any other provision of law, in order to deliver anesthesia care.

Section 4. KRS 314.051 is amended to read as follows:

(1) An applicant for a license to practice as a licensed practical nurse shall file with the board a written application for a license verified by oath, that the applicant:

(a)[~~ Has completed at least an approved four (4) year high school course of study or its equivalent;~~

~~(b)~~] Has fulfilled the requirements of KRS 214.615(1);

(b)[~~(c)~~]Has completed the required educational program in practical nursing at an approved school of nursing and ***has completed requirements for graduation***[~~holds a diploma or certificate~~] therefrom; and

(c)[~~(d)~~]Is able to understandably speak and write the English language and to read the English language with comprehension.

(2) The applicant for licensure to practice as a licensed practical nurse shall pay a licensure application fee, and examination fees if applicable, as set forth in a regulation by the board.

(3) An applicant shall be required to pass an examination in any subjects the board may determine.[~~ Each written examination may be supplemented by an oral or practical examination.~~] Application for licensure by examination shall be received by the board at the time as ***determined***[~~prescribed~~] by regulation by the board.

(4) Upon successfully completing all requirements for licensure, the board ***may***[~~shall~~] issue to the applicant a license to practice as a licensed practical nurse***, if in the opinion of the board, the applicant is qualified to practice as a licensed practical nurse in this state***.

(5) The board may issue a license to practice as a licensed practical nurse to any applicant who has passed the examination prescribed by the board or its equivalent, and has been licensed or registered as a licensed practical nurse or a person licensed to perform similar services under a different title, under the laws of another state, territory or foreign country if, in the opinion of the board, the applicant meets the requirements for a licensed practical nurse in this state.

(6) Any person who holds a license to practice as a licensed practical nurse in this state shall have the right to use the title "licensed practical nurse" and the abbreviation "L.P.N." No other person shall assume the title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using the same is a licensed practical nurse. No person shall practice as a licensed practical nurse unless licensed under this chapter.

(7) Those persons previously licensed by the board and not engaged in the practice of nursing in the Commonwealth of Kentucky, but desiring to maintain the right to use the title "L.P.N." may apply and be granted inactive status by the board in accordance with regulations promulgated by the board. Inactive status shall be renewed ***in accordance with administrative regulations promulgated by the board in accordance with KRS Chapter 13A***[~~at least biennially~~] and those persons granted inactive status shall not be governed by the continuing education provisions contained in this chapter. A licensed practical nurse on inactive status may petition the board for a renewal of a license to actively practice

and shall complete the requirements as established in this chapter and by regulation of the board.

(8) Any person heretofore licensed as a practical nurse under the licensing laws of this state who has allowed the license to lapse by failure to renew may apply for reinstatement of the license under the provisions of this chapter.

(9) A license to practice practical nursing may be limited by the board in accordance with regulations promulgated by the board and as defined in this chapter.

Section 5. KRS 314.061 is amended to read as follows:

(1) Every ***credential***~~[license]~~ issued by the board shall have the seal of the board affixed. A ***holder of a credential***~~[licensee]~~ shall~~[sign his license,]~~ retain it in ***the holder's***~~[his]~~ possession, and be prepared to exhibit ***it***~~[his license or board certification of licensure]~~ upon demand by an employer or anyone to whom the ***holder of the credential***~~[licensee]~~ offers nursing services, or any board or staff member of the Kentucky Board of Nursing.

(2) Failure or refusal to produce a license or certification thereof upon demand shall be prima facie evidence that no such license exists.

Section 6. KRS 314.073 is amended to read as follows:

(1) ~~[Except for the first licensure renewal following the issuance of an original license by the board,]~~As a prerequisite for license renewal, all individuals licensed under provisions of this chapter shall be required to document~~[the completion of]~~ continuing ***competency***~~[education requirements not to exceed thirty (30) contact hours in a given licensure period]~~ as prescribed in regulations promulgated by the board.~~[A "contact hour" is defined as fifty (50) minutes of an approved, organized learning experience.]~~

(2) ~~[Contact hours required to satisfy]~~The continuing ***competency***~~[education]~~ requirement shall be ***documented***~~[completed]~~ and reported in accordance with~~[board]~~ requirements set~~[forth]~~ by ***the board in administrative*** regulation ***promulgated in accordance with KRS Chapter 13A***.

(3) The board shall approve providers~~[of continuing education]~~. The approval may include recognition of providers approved by national organizations and state boards of nursing with comparable standards. Standards for~~[these]~~ approvals shall be set by the board in administrative regulations promulgated in accordance with the provisions of KRS Chapter 13A.

(4) The board shall work cooperatively ***in promulgating administrative regulations*** with professional nursing organizations, approved nursing schools, and other potential sources of continuing ***competency***~~[education]~~ programs~~[to assure that adequate continuing education offerings are available statewide]~~. The board may enter into contractual agreements to implement the provisions of this section.

(5) The board shall be responsible for notifying applicants for licensure and licensees applying for license renewal, of continuing ***competency***~~[education]~~ requirements.

(6) The continuing education shall include the completion of the course described in KRS 214.610(1).

(7) In order to offset administrative costs incurred in the implementation of the mandatory continuing ***competency***~~[education]~~ requirements, the board may charge reasonable fees as established by regulation in accordance with the provisions of KRS Chapter 13A.

(8) The continuing ***competency***~~[education]~~ requirements shall include at least five (5) contact hours in pharmacology ***continuing education*** for any person registered as an advanced registered nurse practitioner.

(9) The board may continue to require thirty (30) contact hours of continuing education as the competency validation.

Section 7. KRS 314.085 is amended to read as follows:

(1) If the board has reasonable cause to believe that any licensee; applicant for licensure by examination, endorsement, reinstatement, or change of status; or holder of a temporary work permit is unable to practice with reasonable skill and safety or has abused alcohol or drugs, it may require the person to submit to a mental or physical examination by a physician or psychologist it designated. Upon the failure of the person to submit to a mental or physical examination, unless due to circumstances beyond the person's control, the board may initiate an action for immediate temporary suspension pursuant to KRS 314.089 ***or deny the application*** until the person submits to the required examination.

(2) Every licensee; applicant for licensure by examination, endorsement, reinstatement, or change of status; or holder of a temporary work permit shall be deemed to have given consent to submit to a mental or physical examination when so directed in writing by the board. The direction to submit to an examination shall contain the basis of the board's reasonable cause to believe that the person is unable to practice with reasonable skill and safety, or has abused alcohol or drugs. The person shall be deemed to have waived all objections to the admissibility of the examining physician's or psychologist's testimony or examination reports on the ground of privileged communication.

(3) The licensee; applicant for licensure by examination, endorsement, reinstatement, or change of status; or holder of a temporary work permit shall bear the cost of any mental or physical examination ordered by the board.

Section 8. KRS 314.111 is amended to read as follows:

(1) An institution desiring to conduct a school of nursing shall apply to the board and submit evidence that it is prepared to carry out the minimum approved basic curriculum in nursing and that it is prepared to fulfill other requirements of standards which are established by KRS 314.011 to 314.161 and KRS 314.991 and the administrative regulations promulgated by the board. No person shall operate a nursing education program or school of nursing without complying with the provisions of this section.

(2) A survey of the institution and its proposed education program shall be made by the executive director or an authorized employee of the board who shall submit a written report of the survey to the board. If in the opinion of the board the requirements for an approved nursing education program or school of nursing are met it shall approve the school.

(3) ~~[Periodic surveys of all schools of nursing shall be made under the supervision of the board. Written reports of such surveys shall be submitted to the board.]~~If the board determines that any approved school of nursing is not maintaining the standards required by the statutes and the administrative regulations of the board, notice thereof in writing specifying their deficiencies shall be immediately given to the school. A school which fails to correct these conditions to the satisfaction of the board within a reasonable time shall be discontinued after an administrative hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

Section 9. KRS 314.131 is amended to read as follows:

(1) The board shall meet at least annually and shall elect from its members a president, a president-elect, and ***any other officers it deems necessary***~~[a secretary]~~. A majority of the board including one (1) officer shall constitute a quorum at any meeting. The board is authorized to promulgate administrative regulations not inconsistent with the law and subject to the provisions of KRS Chapter 13A, as may be necessary to enable it to carry into effect the provisions of this chapter.

(2) The board shall approve ***programs***~~[curricula and standards for schools]~~ of nursing~~[and courses preparing persons for licensure]~~ and shall monitor ***compliance with*** standards for nurse competency under this chapter. It shall~~[provide for surveys of schools and courses at any time as may be necessary, approve schools and courses meeting the requirements of this chapter and of the board, evaluate and approve courses for affiliation,]~~ and examine, license, and renew the license of duly-qualified applicants; determine notice of place and time of licensure examinations; approve providers of continuing education; administer continuing education requirements; issue advisory opinions ***or declaratory rulings*** dealing with the practice of nursing; register and designate those persons qualified to engage in advanced nursing practice; and it shall conduct administrative hearings in accordance with KRS Chapter 13B upon charges calling for discipline of a licensee and cause the prosecution of all persons violating any provisions of this chapter. It shall keep a record of all its proceedings and make an annual report to the Governor.

(3) The board shall develop specific guidelines to follow upon receipt of an allegation of sexual misconduct by a nurse licensed by the board. The guidelines shall include investigation, inquiry, and hearing procedures which ensure that the process does not revictimize the alleged victim or cause harm if a nurse is falsely accused.

(4) The board and investigators hired by the board shall receive training on the dynamics of sexual misconduct of professionals, including the nature of this abuse of authority, characteristics of the offender, the impact on the victim, the possibility and the impact of false accusations, investigative procedure in sex offense cases, and effective intervention with victims and offenders.

(5) The board shall employ a qualified person to serve as executive director to the board, and shall fix the compensation and define the duties of the executive director. It may employ other persons as may be necessary to carry on the work of the board.

(6) The executive director shall have at least the qualifications for board members, and a master's degree in nursing or equivalent and shall have had at least two (2) years of experience in nursing administration immediately preceding the time of appointment.

(7) Each member of the board shall receive, in addition to traveling, hotel, and other necessary expenses, one hundred dollars ($100) for each day the member is actually engaged in the discharge of official duties.

(8) The board may, in its discretion, purchase liability insurance for board and staff members against acts performed in good faith discharge of duties.

(9) The board may, by administrative regulation issued pursuant to the provisions of KRS Chapter 13A, determine which disciplinary action records may be expunged. Any records which are expunged shall be exempt from disclosure under the Kentucky Open Records Law, KRS 61.870 to 61.884. The board shall not report its disciplinary actions for any purpose other than statistical.

(10) The board may reimburse any person appointed by direction of the board to any committee, subcommittee, or task force created by the board for the member's travel and subsistence expenses as set forth by the board in administrative regulations promulgated in accordance with KRS Chapter 13A.

Section 10. KRS 314.142 is amended to read as follows:

(1) The Kentucky Board of Nursing shall promulgate administrative regulations pursuant to KRS Chapter 13A to create a Sexual Assault Nurse Examiner Program. These administrative regulations shall address, at a minimum:

(a) Educational requirements for sexual assault nurse examiners and statewide standards for provision of the education;

(b) The application process through which registered nurses who submit documentation of required education and clinical experience and who remit the designated application fee may apply to the board to be credentialed as a "Sexual Assault Nurse Examiner";

(c) Continuing education requirements for maintenance of the sexual assault nurse examiner credential; and

(d) Methods of monitoring overall program implementation.

(2) For the purpose of providing recommendations to the Kentucky Board of Nursing on the development and implementation of the Sexual Assault Nurse Examiner Program, there is hereby created a[~~ fourteen (14) member~~] Sexual Assault Nurse Examiner Advisory Council. The following members shall serve on the council by virtue of their office: the executive director of the Kentucky Board of Nursing or the executive director's designee; the executive director of the Kentucky Hospital Association or the executive director's designee; the state medical examiner or the examiner's designee; the secretary of the Cabinet for Human Resources or the secretary's designee; the president of the ***Kentucky Association of Sexual Assault Programs***[~~Statewide Association of Rape Crisis Centers~~] or the president's designee; the commissioner of the Department for Health Services of the Cabinet for Human Resources or the commissioner's designee; the chair of the ***Kentucky Association of Baccalaureate and Higher Degree Nursing Programs***[~~Council on Postsecondary Education~~] or the chair's designee; the director of the Victim's Advocacy Division of the Office of the Attorney General or the director's designee; the director of the Prosecutors Advisory Council of the Office of the Attorney General or the director's designee; and the director of the Kentucky State Police Crime Lab or the director's designee. Two (2) members shall be registered nurses with forensic experience appointed by the Governor from a list of three (3) names recommended by the Kentucky Nurses Association. ***One (1) member shall be a physician with forensic experience appointed by the Governor from a list of three (3) names recommended by the Kentucky Medical Association.*** Two (2) members with a demonstrated interest and experience in victims' services shall be appointed by the Governor to serve as at-large members. Of the at-large members, one (1) shall be appointed from a list of three (3) names recommended by the Kentucky Board of Nursing and one (1) from a list of three (3) names recommended by the Cabinet for Human Resources.

(3) Members shall serve at the pleasure of the appointing authority but shall not serve longer than four (4) years without reappointment.

(4) The chair of the advisory council shall be elected by a majority vote of council members.

(5) Each member of the council may be reimbursed for necessary expenses incurred in attending its meetings from funds available through the collection of fees required under subsection (1) of this section.

(6) Any person in this state who holds a credential as a Sexual Assault Nurse Examiner as defined in subsection (14) of Section 1 of this Act shall have the right to use the title "Sexual Assault Nurse Examiner" and the abbreviation "SANE". No other person shall assume the title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using the same is a Sexual Assault Nurse Examiner.

SECTION 11. A NEW SECTION OF KRS CHAPTER 314 IS CREATED TO READ AS FOLLOWS:

Any person licensed or credentialed by the board who provides direct care to patients shall, while on duty, wear an insignia or badge identifying the license or credential issued to the person by the board. The board may promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section.

Section 12. KRS 314.031 is amended to read as follows:

(1) It shall be unlawful for any person to call or hold herself or himself out as or use the title of nurse or to practice or offer to practice as a nurse unless licensed under the provisions of this chapter.

(2) It shall be unlawful for any person to operate or to offer to operate or to represent or advertise the operation of a school of nursing unless the school of nursing has been approved under the provisions of this chapter.

(3) It shall be unlawful for any person knowingly to employ a nurse unless the nurse is licensed under the provisions of this chapter.

(4) It shall be unlawful for any nurse, employer of nurses, or any person having knowledge of facts to refrain from reporting to the board a nurse who:

(a) Has been convicted of a misdemeanor or felony which involved acts that bear directly on the qualifications or ability of the applicant or licensee to practice nursing; or

(b) Is suspected of fraud or deceit in procuring or attempting to procure a license to practice nursing***;*** or

(c)) Is suspected of negligently or willfully acting in a manner inconsistent with the practice of nursing***;*** or

(d) Is suspected of being unfit or incompetent to practice nursing by reason of negligence or other causes including, but not limited to, being unable to practice nursing with reasonable skill or safety***;*** or

(e) ***Is suspected*** of[~~ willfully or repeatedly~~] violating any provisions of this chapter; or

(f)[~~(c)~~] Has a license to practice as a nurse denied, limited, suspended, probated,[~~ or~~] revoked***, or otherwise disciplined*** in another jurisdiction on grounds sufficient to cause a license to be denied, limited, suspended, probated,[~~ or~~] revoked***, or otherwise disciplined*** in this Commonwealth; or

(g)[~~(d)~~] Is practicing nursing without a current active license or valid temporary work permit issued by the board***; or***

(h) ***Is suspected of abusing, misusing or misappropriating any drugs placed in the custody of the nurse for administration, or for the use of others; or***

(i) ***Is suspected of falsifying or in a negligent manner making incorrect entries or failing to make essential entries on essential records***.

Section 13. KRS 314.091 is amended to read as follows:

(1) The board shall have power to ***reprimand,*** deny, limit, revoke, probate, or suspend any license ***or credential*** to practice nursing issued by the board or applied for in accordance with this chapter, or to otherwise discipline a licensee, ***credential holder or applicant,*** or to deny admission to the licensure examination, or to require evidence of evaluation and therapy upon proof that the person:

(a) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing;

(b) Has been convicted of a misdemeanor or felony which involved acts that bear directly on the qualifications or ability of the applicant or licensee to practice nursing;

(c) Has been convicted of a misdemeanor offense under KRS Chapter 510 involving a patient, or a felony offense under KRS Chapter 510, 530.064, or 531.310, or has been found by the board to have had sexual contact as defined in KRS 510.010(7) with a patient while the patient was under the care of the nurse;

(d) Has negligently or willfully acted in a manner inconsistent with the practice of nursing;

(e) Is unfit or incompetent to practice nursing by reason of negligence or other causes, including but not limited to, being unable to practice nursing with reasonable skill or safety;

(f) Abuses use of controlled substances***, prescription medications, or alcohol;***[~~ or~~]

(g) Has misused or misappropriated any drugs placed in the custody of the nurse for ***administration***[~~medication~~], or ***for*** use of others;

(h)[~~(g)~~] Has falsified or in a[~~ repeatedly~~] negligent manner made incorrect entries or failed to make essential entries on essential records;

(i)[~~(h)~~] Has a license ***or credential*** to practice as a nurse denied, limited, suspended, probated, revoked, or otherwise disciplined in another jurisdiction on grounds sufficient to cause a license to be denied, limited, suspended, probated, revoked, or otherwise disciplined in this Commonwealth; or

(j)[~~(i)~~] Has[~~ willfully or repeatedly~~] violated any of the provisions of this chapter***;***[~~ or~~]

(k) ***Has*** violated any lawful order or directive previously entered by the board***;***[~~,~~] or

(l) ***Has violated*** any administrative regulation promulgated by the board.

(2) All hearings[~~ for denial, limitation, probation, suspension, or revocation of the license of a registered or practical nurse~~] shall be conducted in accordance with KRS Chapter 13B. A suspended or revoked license ***or credential*** may be reinstated at the discretion of the board, and in accordance with regulations promulgated by the board.

(3) The executive director may issue subpoenas to compel the attendance of witnesses and the production of documents in the conduct of an investigation. The subpoenas may be enforced by the Circuit Court as for contempt. Any order or subpoena of the court requiring the attendance and testimony of witnesses and the production of documentary evidence may be enforced and shall be valid anywhere in this state.

(4) At all hearings on request of the board the Attorney General of this state or one (1) of the assistant attorneys general designated by the Attorney General shall appear and represent the board.

(5) A final order of the board shall be by majority vote thereof.

(6) Any person adversely affected by any final order of the board may obtain a review thereof by filing a written petition for review with the Circuit Court of the county in which the board's offices are located in accordance with KRS Chapter 13B.

(7) If the board substantiates that sexual contact occurred between a nurse and a patient while the patient was under the care of or in a professional relationship with the nurse, the nurse's license ***or credential*** may be revoked or suspended with mandatory treatment of the nurse as prescribed by the board. The board may require the nurse to pay a specified amount for mental health services for the patient which are needed as a result of the sexual contact.

Section 14. KRS 314.101 is amended to read as follows:

(1) This chapter does not prohibit: the furnishing of nursing assistance in an emergency; the practice of nursing which is incidental to the program of study by individuals enrolled in nursing education programs and refresher courses approved by the board or in graduate programs in nursing; the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of his or her official duties; or the practice of any currently licensed nurse of another state whose responsibilities include transporting patients into, out of, or through this state.

(2) Nothing in this chapter shall be construed as prohibiting care of the sick with or without compensation or personal profit when done in connection with the practice of the religious tenets of any recognized or established church by adherents thereof as long as they do not engage in the practice of nursing as defined in this chapter.

(3) Nothing in this chapter shall limit, preclude, or otherwise restrict the practices of other licensed personnel in carrying out their duties under the terms of their licenses.

(4) A temporary work permit may be issued by the board to persons who have completed the requirements for, applied for, and paid the fee for licensure by examination or endorsement. Temporary work permits shall be issued only for the length of time required to process applications for endorsement or, in the case of applications for licensure by examination, for no longer than six (6) months from the first day of the month following completion of the program of nursing requirements, and shall not be renewed. No temporary work permit shall be issued to an applicant who has failed the licensure examination.

(5) The board may summarily withdraw a temporary work permit upon determination that the person does not meet the requirements for licensure or has disciplinary action pending against the person's license in this or another jurisdiction.

(6) A new graduate who holds a temporary work permit shall have the right to use the title "registered nurse applicant" and the abbreviation "RN App" or "licensed practical nurse applicant" and the abbreviation "LPN App" according to the type of permit issued.

(7) Any nurse educated outside the United States who has passed the state board test pool examination or its equivalent as determined by the board[~~ or who has passed the commission on graduates of foreign nursing schools examination~~] may be issued a temporary work permit.

SECTION 15. A NEW SECTION OF KRS CHAPTER 314 IS CREATED TO READ AS FOLLOWS:

The board of nursing shall require a background investigation of each applicant for a license by means of fingerprint checks by the Kentucky State Police and the Federal Bureau of Investigation.

Section 16. KRS 314.025 is amended to read as follows:

(1) There is hereby created the Kentucky nursing incentive scholarship fund.

(2) It is the intent of the General Assembly of the Commonwealth of Kentucky to address the nursing workforce needs throughout the Commonwealth; further it is the intent of the General Assembly to give preference for these scholarships to financially needy residents, registered nurses pursuing graduate nursing education, and licensed practical nurses of the Commonwealth. ***The fund may also issue grants for nursing workforce competency development.***

SECTION 17. A NEW SECTION OF KRS CHAPTER 314 IS CREATED TO READ AS FOLLOWS:

(1) The board may, on petition by any interested person, issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any statute, administrative regulation, decision, order, or other written statement of law or policy within the jurisdiction of the board.

(2) A declaratory ruling shall be binding on the board and all parties to the proceedings on the statement of facts alleged.

(3) The board may not retroactively change a declaratory ruling, but nothing in this section shall prevent the board from prospectively changing a declaratory ruling.

(4) The board shall issue an administrative regulation promulgated in accordance with KRS Chapter 13A on procedures for submission, consideration, and disposition of a petition for a declaratory ruling.

(5) A declaratory ruling of the board may be appealed to the Circuit Court of the county in which the board's offices are located within thirty (30) days of the date of the final ruling by the board.

Section 18. In the event the reorganization of the Cabinet for Human Resources into the Cabinet for Families and Children and the Cabinet for Health Services is confirmed by this 1998 Regular Session of the General Assembly, the provisions of Section 10 naming the Secretary of the Cabinet for Human Resources to the Sexual Assault Nurse Examiner Advisory Council shall be codified as one (1) representative of the Cabinet for Families and Children and one (1) representative of the Cabinet for Health Services. The total number of Council members shall be adjusted accordingly.

HCR 79, A CONCURRENT RESOLUTION directing the Legislative Research Commission to create the Task Force on Unlicensed Assistive Nursing to study the use of unlicensed assistive nursing personnel in the health care delivery system of the state.

WHEREAS, the use of unlicensed assistive nursing personnel is increasing; and

WHEREAS, there is a lack of uniform standards for training, competency evaluation, and certification of unlicensed assistive nursing personnel; and

WHEREAS, there is a potential for abuse of patients by unlicensed assistive nursing personnel; and

WHEREAS, the health and safety of the patients of Kentucky is of primary concern;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The Legislative Research Commission is directed to create the Task Force on Unlicensed Assistive Nursing to study the use of unlicensed assistive nursing personnel in the health care delivery system of the Commonwealth.

Section 2. The members of the Task Force shall include two (2) members of the Senate to be appointed by the President of the Senate and two (2) members of the House of Representatives to be appointed by the Speaker of the House. The citizen members shall be representatives from private organizations and state agencies including, but not limited to:

(1) The Kentucky Nurses Association;
(2) The Kentucky State Association of Licensed Practical Nurses;
(3) The Kentucky Association of Homes and Services for the Aged;
(4) The Kentucky Association of Health Care Facilities;
(5) The Kentucky Board of Nursing; and
(6) The Cabinet for Human Resources, Division of Licensing and Regulation.

Section 3. The Task Force shall submit a final report to the Legislative Research Commission no later than July 1, 1999.

Section 4. Staff services to be utilized in completing this study are estimated to cost $20,000. These staff services shall be provided from the regular Commission budget and are subject to the limitations and other research responsibilities of the Commission.

The Committee Substitute to **HCR 79** is as follows:

A CONCURRENT RESOLUTION directing the Legislative Research Commission to create the Task Force on Unlicensed Assistive Nursing to study the use of unlicensed assistive nursing personnel in the health care delivery system of the state.

WHEREAS, the use of unlicensed assistive nursing personnel is increasing; and

WHEREAS, there is a lack of uniform standards for training, competency evaluation, and certification of unlicensed assistive nursing personnel; and

WHEREAS, there is a potential for abuse of patients by unlicensed assistive nursing personnel; and

WHEREAS, the health and safety of the patients of Kentucky is of primary concern;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The Legislative Research Commission is directed to create the Task Force on Unlicensed Assistive Nursing to study the use of unlicensed assistive nursing personnel in the health care delivery system of the Commonwealth.

Section 2. The members of the Task Force shall include two (2) members of the Senate to be appointed by the President of the Senate and two (2) members of the House of Representatives to be appointed by the Speaker of the House. The citizen members shall be representatives from private organizations and state agencies including, but not limited to:

(1) The Kentucky Nurses Association;
(2) The Kentucky State Association of Licensed Practical Nurses;
(3) The Kentucky Association of Homes and Services for the Aged;
(4) The Kentucky Association of Health Care Facilities;
(5) The Kentucky Board of Nursing;
(6) The Cabinet for Human Resources, Division of Licensing and Regulation;
(7) The Kentucky Hospital Association; and

(8) The Kentucky Home Health Association.

Section 3. The Task Force shall submit a final report to the Legislative Research Commission no later than July 1, 1999.

Section 4. Staff services to be utilized in completing this study are estimated to cost $20,000. These staff services shall be provided from the regular Commission budget and are subject to the limitations and other research responsibilities of the Commission.

Calendar

HB 211, HB 498, HB 510, HB 593, HB 598, HB 636, HB 654, SB 177, HB 614, SB 63, SB 105, SB 135, HB 48, HB 107, HB 425, HB 610, HB 651, HB 671, HB 155, HB 372, HB 450, HB 625, HB 629, HB 645, HB 655, HB 656, SB 167, SB 259, HB 115, HB 312, HB 454, HB 537, HB 563, HB 623, HB 638, SB 207, HB 658, and **HB 680** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Floor Amendments (Continued)

Floor Amendment No. 2 to the Committee Substitute to **HB** 49, by Representative Bratcher:

On page 1, line 6, after the word "***Act***" by inserting the following "***if the board for floodplain construction review, as described in Section 2 of this Act, finds that there will be no harm to persons or property resulting from that construction***"; and

On page 1, line 10, after the words "***floodplain area***" by inserting the following "***if the board for floodplain construction permit review, as described in Section 2 of this Act, gives its approval***"

On page 1, after line 18 by inserting the following:

"SECTION 2. A NEW SECTION OF KRS CHAPTER 104 IS CREATED TO READ AS FOLLOWS:

(1) A county with a city of the first class shall jointly with the city of the first class establish a board for floodplain construction permit review. The board shall review each request to build any new structure within a floodplain area within that county. The board shall either grant permission to build or deny permission to build within sixty (60) days of receipt of the request. In determining whether or not to approve any new construction, the board shall weigh the anticipated environmental effects of the new construction on the floodplain as well as the anticipated economic effects of the construction to determine if the construction will have a harmful effect on persons or property. The board shall issue any rules necessary to conduct its business required by Section 1 of this Act and this section.

(2) The board shall be composed of seven (7) members. The county judge/executive of the county shall appoint one (1) member at large, and two (2) members from local conservation and landowner organizations, which shall be chosen one (1) each from lists containing at least five (5) names and submitted by local watershed advocacy groups and from associations composed of, and representing, neighborhood associations within the county. The mayor of the city of the first class shall appoint one (1) member at large, and two (2) members from the lists submitted by local conservation and neighborhood advocacy organizations. The final member of the board shall be selected by the county judge/executive from a list submitted by local homebuilders' associations. The initial terms of the board members shall be staggered with four (4) members serving terms of two (2) years and three (3) members serving terms for one (1) year. Thereafter, the terms of all board members shall be for two (2) years. Board members may be appointed for consecutive terms. In the event of a vacancy, the vacant seat shall be filled in the same manner as the original appointment. The board shall elect a chair and a vice chair from among its members.

(3) The board shall meet as often as it needs to complete its evaluations within sixty (60) days of the board's receipt of the request.

(4) The county and the city shall agree upon the board members' pay or reimbursement for necessary expenses and upon the administration of the board in general, including, but not limited to, grounds for dismissal of board members.

(5) The staff of any sewer district with jurisdiction over the floodplains within the county shall provide staff needed to assist the board in carrying out the provisions of Section 1 of this Act and this section and any local ordinance or regulation deemed necessary to carry out the provisions of Section 1 of this Act and this section. Any costs of the employees and staff shall be shared by the city and the county.

(6) Any person aggrieved by a decision of the board may appeal to the Circuit Court of jurisdiction.

(7) The board formed under Section 1 of this Act and this section shall be the sole authority in a county with a city of the first class for approving or disapproving new construction within a floodplain.

(8) The county with a city of the first class and the city of the first class within that county shall have the authority to promulgate any ordinances or regulations deemed necessary to carry out the provisions of Section 1 of this Act and

this section.

Recess

Representative Stumbo moved to suspend the rules to allow the House to recess for a Committee on Rules meeting in the Speaker's Office. Agreed. At the appointed hour, the Speaker resumed the Chair and called the House to order.

Floor Amendments (Continued)

Floor Amendment No. 19 to the Committee Substitute No. 2 to **HB 455**, by Representative Bowling:

On page 145, after line 18, but before line 19, by adding the following new section:

"Section 122. KRS 640.040 is amended to read as follows:

(1) No youthful offender who has been convicted of a capital offense who was under the age of sixteen (16) years at the time of the commission of the offense shall be sentenced to capital punishment. A youthful offender may be sentenced to capital punishment if he was sixteen (16) years of age or older at the time of the commission of the offense. A youthful offender convicted of a capital offense regardless of age may be sentenced to a term of imprisonment appropriate for one who has committed a Class A felony and may be sentenced to life imprisonment without benefit of parole for twenty-five (25) years.

(2) No youthful offender shall be subject to persistent felony offender sentencing under the provisions of KRS 532.080 for offenses committed before the age of eighteen (18) years.

(3) No youthful offender shall be subject to limitations on probation, parole or conditional discharge as provided for in KRS 533.060.

(4) Any youthful offender convicted of a misdemeanor or any felony offense which would exempt him from KRS 635.020(2), (3), (4), (5), (6), ~~[or]~~ (7) ***or (8)*** shall be disposed of by the Circuit Court in accordance with the provisions of KRS 635.060."; and

by renumbering subsequent sections accordingly.

Representative Stumbo moved that the rules be suspended for a Committee on Rules Report. Agreed.

Report of Committees (Continued)

The Committee on Rules reported that **HB 188, HB 51, HB 592, HB 455, HB 565, HB 632, HB 644, HCR 77, HB 614, HB 623, HB 638, HB 651,** and **HB 654** have been posted for passage in the Orders of the Day for March 2, 1998.

Floor Amendments (Continued)

Floor Amendment No. 1 to **HB 211**, by Representative Nunn:

On page 1, line 4, after "***intake***" by inserting "***unless an extension of the area of prohibition is requested and granted under subsection (3)***" and

after line 7, by inserting, "***(3) The division shall allow water supply systems with intakes on lake waters of this state to request that the prohibition on mooring or anchoring be extended beyond one hundred (100) feet but no farther than three hundred (300) feet. The division may grant a request if the water supply system demonstrates circumstances that justify extending the area of prohibition. The division shall inform the Department for Fish and Wildlife Resources when a request to extend an area of prohibition is granted.***"

Floor Amendment No. 1 to the Committee Substitute No. 2 to **HB 246**, by Representative Damron:

On page 1, line 3, at the beginning of the line to insert "***(1)***"; and

On page 1, line 7, following "committees." to start a new paragraph and insert "***(2)***" before "***The***"; and

On page 1, line 9, following "***days.***" to insert "***Except as provided in this Constitution, the interim session of the General Assembly shall have the same power and authority as a regular session.***

(3) A bill or resolution that passes one house during the interim session but that has not reached a floor vote in the second House during that session shall automatically be carried over to the even year regular session of the General Assembly and need not be reintroduced. It shall progress from the position last attained in the interim session as

provided by the rules of procedure."; and

On page 1, line 9, to start a new paragraph and to insert "*(4)*" prior to "The General Assembly".

Floor Amendment No. 2 to the Committee Substitute No. 2 to **HB 246**, by Representative Damron:

On page 1, below line 24, to insert the following:

"Section 3. It is proposed that Section 80 of the Constitution of Kentucky be amended to read as follows:

He may, on extraordinary occasions, convene the General Assembly at the seat of government, or at a different place, if that should have become dangerous from an enemy or from contagious disease, In case of disagreement between the two Houses with respect to the time of adjournments, he may adjourn them to such time as he shall think proper, not exceeding four months. When he shall convene the General Assembly it shall be by proclamation, stating the subjects to be considered, and ***except as hereinafter provided***, no others shall be considered. ***At a special session of the General Assembly, an additional topic or topics may be added to the call by a joint resolution passed by a majority of the members elected to each House of the General Assembly. A joint resolution, thus passed, shall not be presented to the Governor as provided in Section 88 of this Constitution, but shall be considered as law.***"; and

On page 2, line 1, to renumber "Section 3" as "Section 4"; and

On page 2, line 7, following "days" to insert ", to permit bills to be held over from an interim session to a regular session, and to permit the General Assembly to add topics to a special session of the General Assembly called by the Governor".

Floor Amendment No. 3 to the Committee Substitute to **HB 273**, by Representative Wayne:

On page 1, line 17, by removing the brackets and strikethrough; and

On page 4, lines 21 and 22, by removing the brackets and strikethrough; and

On page 4, line 22, after the word "after" by inserting "***four (4)***" and bracketing and striking through "two (2)".

Floor Amendment No. 3 to the Committee Substitute No. 2 to **HB 246**, by Representative Damron:

On page 1, line 24, following "impeachment." to insert "***During the interim session, legislative day shall be construed to mean a calendar day on which at least one House meets. A day on which committees meet but neither House of the General Assembly meets shall not be considered as a legislative day for the purposes of counting the twenty-five day limitation but shall be a day on which the members are paid for their attendance at the committee meeting. During a regular session,***".

Floor Amendment No. 4 Title to the Committee Substitute No. 2 to **HB 246**, by Representative Damron:

On page 1, by amending the title to read as follows: "AN ACT proposing an amendment to Sections 36, 42, and 80 of the Constitution of Kentucky relating to legislative sessions.".

Floor Amendment No. 1 to the Committee Substitute to **SB 63**, by Representative Zimmerman:

Page 1, after line 22 and before line 23 by inserting the following:

"***(4) Nothing in this section shall apply to supplemental policies.***";

Page 2, after line 18 and before line 19 by inserting the following:

"***(4) Nothing in this section shall apply to supplemental policies.***";

Page 3, after line 13 and before line 14 by inserting the following:

"***(4) Nothing in this section shall apply to supplemental policies.***";

Page 4, after line 9 and before line 10 by inserting the following:

"***(4) Nothing in this section shall apply to supplemental policies.***"; and

Page 5, after line 3 by adding the following:

"***(4) Nothing in this section shall apply to supplemental policies.***".

Floor Amendment No. 2 to the Committee Substitute to **HB 515**, by Representative Cave:

On page 3, line 6, by deleting the bracket and strikthrough; and

On page 3, line 7, by inserting at the beginning of the line:

"***(f) With the approval of the commissioner, an independent contractor that solicits mortgage loans for only one (1) licensed mortgage loan company or licensed mortgage loan broker may be exempted from obtaining a license under this chapter if:***

1. The licensed mortgage loan company or licensed mortgage loan broker notifies the department that it will assume legal responsibility for the actions of the independent contractor in complying with the provisions of KRS Chapter 294; and

2. The licensed mortgage loan company or licensed mortgage loan broker provides the department with proof that its bond will cover the independent contractor"; and

On page 3, line 7, by placing "[" before "~~(h)~~".

Orders of the Day

HB 401, with Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Damron moved the adoption of Floor Amendment No. 1 to **HB 401**. Agreed.

Representative Crimm moved that **HB 401**, as amended, be passed.

On the roll call the vote was: Yeas 84, Nays 10 (See February 27, 1997 roll call on **HB 401** - Appendix.) **HB 401**, as amended, was passed and the title agreed to. Representative Crimm moved that the vote by which **HB 401**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 328, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved the adoption of Committee Amendment No. 1 to **HB 328**. Agreed.

Representative Long moved that **HB 328**, as amended, be passed.

On the roll call the vote was: Yeas 95, Nays 0 (See February 27, 1998 roll call on **HB 328** - Appendix.) **HB 328**, as amended, was passed and the title agreed to. Representative Long moved that the vote by which **HB 328**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 20 to the Committee Substitute No. 2 to **HB 455**, by Representative A. Arnold:

On page 145 between lines 14 and 15, to insert the following:

"Section 121. KRS 237.110 is amended to read as follows:

(1) The Department of State Police is authorized to issue licenses to carry concealed firearms or other deadly weapons to persons qualified as provided in this section. Licenses shall be valid throughout the state for a period of three (3) years from the date of issuance. Any person in compliance with the terms of the license may carry a concealed firearm or other deadly weapon or combination of firearms and other deadly weapons on or about his person. The licensee shall carry the license at all times the licensee is carrying a concealed firearm or other deadly weapon and shall display the license upon request of a law enforcement officer. Violation of the provisions of this subsection shall constitute a noncriminal violation with a penalty of twenty-five dollars ($25), payable to the clerk of the District Court.

(2) The Department of State Police shall issue a license if the applicant:

- (a) Is a resident of the state and has been a resident for six (6) months or longer immediately preceding the filing of the application;
- (b) Is twenty-one (21) years of age or older;
- (c) Is not ineligible to possess a firearm pursuant to 18 U.S.C. sec. 922(g) or KRS 527.040;
- (d) Has not been committed to a state or federal facility for the abuse of a controlled substance or been convicted of a misdemeanor violation of KRS Chapter 218A or similar laws of any other state relating to controlled substances

within a three (3) year period immediately preceding the date on which the application is submitted;

(e) Does not chronically and habitually use alcoholic beverages as evidenced by the applicant having two (2) or more convictions for violating KRS 189A.010 within the three (3) years immediately preceding his application or if the applicant has been committed as an alcoholic pursuant to KRS Chapter 222, or similar laws of any other state, within the three (3) year period immediately preceding the date on which the application is submitted;

(f) Demonstrates competence with a firearm by any one (1) of the following:

1. Completion, prior to, on, or after October 1, 1996, of any hunter education and firearms safety course approved by the Department of Fish and Wildlife or a similar agency of another state. The Department of Fish and Wildlife may impose additional qualifications by promulgation of administrative regulations to meet the requirements of this section and may establish fees as may be required, so as to avoid a diversion of Fish and Game funds as specified in 50 C.F.R. Part 80. Any fee assessed shall be reasonable and shall not exceed the actual cost of administering the program;
2. Completion, prior to, on, or after October 1, 1996, of any law enforcement firearms safety or training course or class offered for special local peace officers or special law enforcement officers conducted or approved by the Department of Criminal Justice Training;
3. Completion, prior to, on, or after October 1, 1996, of any firearm safety or training course or class available to the general public offered by law enforcement, junior college, college, or private or public institution or organization or firearms training school, utilizing instructors certified by the Department of Criminal Justice Training; or
4. Completion, prior to, on, or after October 1, 1996, of any firearms training or safety course or class conducted by a state-certified firearms instructor or an instructor holding a certification as a firearms instructor issued by a state or federal agency.

Classes presented pursuant to this paragraph shall include instruction on handguns, the safe use of handguns, the care and cleaning of handguns, handgun marksmanship principles, and actual range firing of a handgun in a safe manner. Classes presented pursuant to this paragraph shall include information on laws relating to firearms as described in KRS Chapters 237 and 527 and the law of the use of force as described in KRS Chapter 503. The Department of Criminal Justice Training, Department of State Police, and any other state agency with the authority to certify firearms instructors, shall promulgate uniform administrative regulations concerning the certification and de-certification of all firearms instructors practicing in the Commonwealth of Kentucky. Notwithstanding any other provision of the Kentucky Revised Statutes, no person shall qualify as having demonstrated competence with a firearm pursuant to this subsection, unless certified by a governmental agency of the Commonwealth of Kentucky, or of the federal government. The Administrative Office of the Courts shall publish and make available, at no cost, information in a manner suitable for distribution to class participants. A legible photocopy of a certificate of completion of any of the courses or classes or a notarized affidavit from the instructor, school, club, organization, or group that conducts or teaches the course or class attesting to the completion of the course or class by the applicant shall constitute evidence of qualification under this paragraph. Peace officers who are retired and are members of the Kentucky Employees Retirement System, State Police Retirement System, or County Employees Retirement System shall be deemed to have met the training requirement;

(g) Has not been adjudicated an incompetent under KRS Chapter 202B or has waited three (3) years from the date his competency was restored by the court order under KRS Chapter 202B; and

(h) Has not been involuntarily committed to a mental institution pursuant to KRS Chapter 202A, unless he possesses a certificate from a psychiatrist licensed in this state that he has not suffered from disability for a period of three (3) years.

(3) The Department of State Police may deny a license if the applicant has been found guilty of a violation of KRS 508.030 or 508.080 within the three (3) year period prior to the date on which the application is submitted or may revoke a license if the licensee has been found guilty of a violation of KRS 508.030 or 508.080 within the preceding three (3) years.

(4) The application for a permit, or renewal of a permit, to carry a concealed deadly weapon shall be obtained from the office of the sheriff in the county in which the person resides. The completed application and all accompanying material plus an application fee or renewal fee, as appropriate, of sixty dollars ($60) shall be presented to the office of the sheriff of the county in which the applicant resides. A retired peace officer who is a member of the Kentucky Employees Retirement System, State Police Retirement System, or County Employees Retirement System shall be exempt from paying the application or renewal fees following the date of his retirement. The sheriff shall transmit the application and accompanying material to the Department of State Police within five (5) working days. Twenty dollars ($20) of the application fee shall be retained by the office of the sheriff for official expenses of the office. Twenty dollars ($20) shall be sent to the Department of State Police with the application. Ten dollars ($10) shall be transmitted by the sheriff to the

Administrative Office of the Courts to fund background checks for youth leaders, and ten dollars ($10) shall be transmitted to the Administrative Office of the Courts to fund background checks for applicants for concealed weapons. The application shall be completed, under oath, on a form promulgated by the Department of State Police by administrative regulation which shall only include:

(a) The name, address, place and date of birth, gender, and Social Security number of the applicant;

(b) A statement that, to the best of his knowledge, the applicant is in compliance with criteria contained within subsections (2) and (3) of this section;

(c) A statement that the applicant has been furnished a copy of this section and is knowledgeable about its provisions;

(d) A statement that the applicant has been furnished a copy of, has read, and understands KRS Chapter 503 as it pertains to the use of deadly force for self-defense in Kentucky; and

(e) A conspicuous warning that the application is executed under oath and that a materially false answer to any question, or the submission of any materially false document by the applicant, subjects the applicant to criminal prosecution under KRS 523.030.

(5) The applicant, if a resident of the Commonwealth, shall submit to the sheriff of the applicant's county of residence:

(a) A completed application as described in subsection (4) of this section;

(b) A recent color photograph of the applicant, as prescribed by administrative regulation; and

(c) A photocopy of a certificate or an affidavit or document as described in subsection (2)(f) of this section.

(6) The Department of State Police shall, within ninety (90) days after the date of receipt of the items listed in subsection (5) of this section, either:

(a) Issue the license; or

(b) Deny the application based solely on the grounds that the applicant fails to qualify under the criteria listed in subsection (2) or (3) of this section. If the Department of State Police denies the application, it shall notify the applicant in writing, stating the grounds for denial and informing the applicant of a right to submit, within thirty (30) days, any additional documentation relating to the grounds of denial. Upon receiving any additional documentation, the Department of State Police shall reconsider its decision and inform the applicant within twenty (20) days of the result of the reconsideration. The applicant shall further be informed of the right to seek de novo review of the denial in the District Court of his place of residence.

(7) The Department of State Police shall maintain an automated listing of licenseholders and pertinent information, and this information shall be available on-line, upon request, at all times to all Kentucky law enforcement agencies. Except as provided in this subsection, information on applications for licenses, names and addresses, or other identifying information relating to license holders shall be confidential and shall not be made available except to law enforcement agencies. Requests for information to be provided to any requester other than a bona fide law enforcement agency which has direct access to the Law Enforcement Information Network of Kentucky shall be made, in writing, directly to the commissioner of the Department of State Police, together with the fee required for the providing of the information. The Department of State Police shall, upon proper application and the payment of the required fee, provide to the requester in hard copy form only, a list of names of all holders in the Commonwealth of a license to carry a concealed deadly weapon. No identifying information other than the name shall be provided, and information for geographic areas or other subdivisions of any type from the list shall not be provided and shall be confidential. The fee to be charged shall be the same as for other public records provided by the Department of State Police. No request for lists of local or statewide permit holders shall be made to any state or local law enforcement agency, peace officer, or other agency of government other than the Department of State Police, and no state or local law enforcement agency, peace officer, or agency of government, other than the Department of State Police, shall provide any information not entitled to it by law. The names of all persons, other than law enforcement agencies and peace officers, requesting information under this section shall be a public record.

(8) Within thirty (30) days after the changing of a permanent address, or within thirty (30) days after the loss or destruction of a license, the licensee shall notify the Department of State Police of the loss or destruction. Failure to notify the Department of State Police shall constitute a noncriminal violation with a penalty of twenty-five dollars ($25) payable to the clerk of the district court.

(9) If a license is lost or destroyed, the license shall be automatically invalid, and the person to whom the same was issued may, upon payment of fifteen dollars ($15) to the Department of State Police, obtain a duplicate, upon furnishing a notarized statement to the Department of State Police that the license has been lost or destroyed.

(10) A license issued under this section shall be suspended or revoked if the licensee becomes ineligible to be issued a license under the criteria set forth in subsection (2)(a), (c), (d), (e), (f), or (h) of this section. When a domestic violence order or emergency protective order is issued pursuant to the provisions of KRS Chapter 403 against a person holding a license issued under this section, the holder of the permit shall surrender the license to the court or to the officer serving the

order. The officer to whom the license is surrendered shall forthwith transmit the license to the court issuing the order. The license shall be suspended until the order is terminated, or until the judge who issued the order terminates the suspension prior to the termination of the underlying domestic violence order or emergency protective order, in writing and by return of the license, upon proper motion by the license holder. Subject to the same conditions as above, a peace officer against whom an emergency protective order or domestic violence order has been issued shall not be permitted to carry a concealed deadly weapon when not on duty, the provisions of KRS 527.020 to the contrary notwithstanding.

(11) Not less than ninety (90) days prior to the expiration date of the license, the Department of State Police shall mail to each licensee a written notice of the expiration and a renewal form prescribed by the Department of State Police. The licensee may renew his license on or before the expiration date by filing with the sheriff of his county of residence the renewal form, a notarized affidavit stating that the licensee remains qualified pursuant to the criteria specified in subsections (2) and (3) of this section, and the required renewal fee. The license shall be renewed to a qualified applicant upon receipt of the completed renewal application and appropriate payment of fees. A licensee who fails to file a renewal application on or before its expiration date may renew his license by paying, in addition to the license fees, a late fee of fifteen dollars ($15). No license shall be renewed six (6) months or more after its expiration date, and the license shall be deemed to be permanently expired six (6) months after its expiration date. A person whose license has permanently expired may reapply for licensure pursuant to subsections (4), (5), and (6) of this section.

(12) No license issued pursuant to this section shall authorize any person to carry a concealed firearm into:

(a) Any police station or sheriff's office;

(b) Any detention facility, prison, or jail;

(c) Any courthouse, solely occupied by the Court of Justice courtroom, or court proceeding, except that nothing in this section shall preclude a judge from carrying a concealed weapon;

(d) Any meeting of the governing body of a county, municipality, or special district; or any meeting of the General Assembly or a committee of the General Assembly, except that nothing in this section shall preclude a member of the body, holding a concealed deadly weapon license, from carrying a concealed deadly weapon at a meeting of the body of which he is a member;

(e) Any portion of an establishment licensed to dispense beer or alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to that purpose;

(f) Any elementary or secondary school facility without the consent of school authorities as provided in KRS 527.070, any child-caring facility as defined in KRS 199.011, any day-care center as defined in KRS 199.894, or any certified family child-care home as defined in KRS 199.8982, except however, any owner of a certified child-care home may carry a concealed firearm into the owner's residence used as a certified child-care home;

(g) An area of an airport to which access is controlled by the inspection of persons and property;

(h) Any church, synagogue, house of worship, or other property owned, leased, or otherwise used and operated by a religious organization in the furtherance of a religious purpose; or

(i) Any place where the carrying of firearms is prohibited by federal law.

(13) The owner, business or commercial lessee, or manager of a private business enterprise, day-care center as defined in KRS 199.894 or certified or licensed family child-care home as defined in KRS 199.8982, or a health-care facility licensed under KRS Chapter 216B, except facilities renting or leasing housing, may prohibit persons holding concealed deadly weapon licenses from carrying concealed deadly weapons on the premises and may prohibit employees, not authorized by the employer, holding concealed deadly weapons licenses from carrying concealed deadly weapons on the property of the employer. If the building or the premises are open to the public, the employer or business enterprise shall post signs on or about the premises if carrying concealed weapons is prohibited. Possession of weapons in a vehicle on the premises shall not be a criminal offense so long as the weapons are not removed from the vehicle or brandished while the vehicle is on the premises. ***A private but not a public*** ~~[An]~~employer may prohibit employees or other persons holding a concealed deadly weapons license from carrying concealed deadly weapons in vehicles owned by the employer, but may not prohibit employees or other persons holding a concealed deadly weapons license from carrying concealed deadly weapons in vehicles owned by the employee. Carrying of a concealed weapon in a location specified in this subsection by a license holder shall not be a criminal act but may subject the person to denial from the premises or removal from the premises, and, if an employee of an employer, disciplinary measures by the employer.

(14) All moneys collected by the Department of State Police pursuant to this section shall be used to administer the provisions of this section. By March 1 of each year, the Department of State Police and the Administrative Office of the Courts shall submit reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives, indicating the amounts of money collected and the expenditures related to this section and KRS 237.115, 244.125, 527.020, and 527.070, and the administration of the provisions of this section and KRS 237.115, 244.125, 527.020, and 527.070.

(15) The General Assembly finds as a matter of public policy that it is necessary to provide statewide uniform standards for issuing licenses to carry concealed firearms and to occupy the field of regulation of the bearing of concealed firearms to ensure that no person who qualifies under the provisions of this section is denied his rights. The General Assembly does

not delegate to the Department of State Police the authority to regulate or restrict the issuing of licenses provided for in this section beyond those provisions contained in this section. This section shall be liberally construed to carry out the constitutional right to bear arms for self-defense.

(16) (a) A person who has a valid license issued by another state of the United States to carry a concealed deadly weapon in that state and whose state grants to Kentucky residents the right to carry a concealed deadly weapon in the state of the licensee without requiring a separate license to carry a concealed deadly weapon issued by that state, may, subject to provisions of Kentucky law, carry a concealed deadly weapon in Kentucky, and his license shall be considered as valid in Kentucky.

(b) A person who holds a valid license issued by another state of the United States whose home state permits Kentucky residents to obtain a license to carry a concealed deadly weapon in that state may apply directly to the Department of State Police for a license to carry concealed deadly weapons in Kentucky. The Department of State Police shall take whatever steps are necessary to verify that the person applying has a valid license to carry a concealed deadly weapon issued by his home state.

(17) By March 1 of each year, the Department of State Police shall submit a statistical report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, indicating the number of licenses issued, revoked, suspended, and denied since the previous report and in total and also the number of licenses currently valid. The report shall also include the number of arrests, convictions, and types of crimes committed since the previous report by individuals licensed to carry concealed weapons."; and

To renumber the ensuing sections accordingly.

Floor Amendment No. 1 to **HB 671**, by Representative Reinhardt:

On Page 2, after line 6, by adding the following new section,

"SECTION 2. A NEW SECTION OF KRS CHAPTER 100 IS CREATED TO READ AS FOLLOWS:

Members of a planning commission shall be required to disclose any personal or family commercial interest relevant to land use, new development supply, or new development construction. The disclosure shall be a written, signed statement of the general nature of the member's interest. The disclosure shall be filed with the commission's records in accordance with KRS 100.167 and shall be available for public inspection during regular business hours. A member shall not vote on an issue in which the member or member's family has an interest. The willful failure of a member to disclose an interest, or a member's voting on an issue in which the member or member's family has a known interest, shall subject the member to removal proceedings in accordance with KRS 100.157. '.

Floor Amendment No. 2 Title to **HB 671**, by Representative Reinhardt:

Amend title to read, "AN ACT relating to planning and zoning."

Orders of the Day (Continued)

HB 337, with Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative R. Adams moved the adoption of Floor Amendment No. 1 to **HB 337**. Agreed.

Representative Stein moved that **HB 337**, as amended, be passed.

Representative Lindsay moved that **HB 337** be laid on the Clerk's Desk. The motion that **HB 337** be laid on the Clerk's Desk was rejected. (See February 27, 1998 roll call on Motion to Lay **HB 337** on the Clerk's Desk - Appendix.)

On the roll call on the passage of **HB 337** the vote was: Yeas 56, Nays 39. (See February 27, 1998 roll call on **HB 337** - Appendix.) **HB 337**, as amended, was passed and the title agreed to. Representative Stein moved that the vote by which **HB 337**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 423, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Scott moved the adoption of the Committee Substitute to **HB 423**. Agreed.

Representative Scott moved that **HB 423**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 92, Nays 0 (See February 27, 1998 roll call on **HB 423** - Appendix.) **HB 423**, by way of Committee Substitute, was passed and the title agreed to. Representative Scott moved that the vote by which **HB 423**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 491, with Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Geveden moved the adoption of Floor Amendment No. 1 to **HB 491**. Rejected.

Representative Riggs moved that **HB 491** be passed.

On the roll call the vote was: Yeas 48, Nays 48 (See February 27, 1997 roll call on **HB 491** - Appendix.) **HB 491** was defeated.

Floor Amendments (Continued)

Floor Amendment No. 1 to the Committee Substitute to **HB 673**, by Representative Vincent:

on page 14, line 16, after "***negligence***" by adding "**,**"; and

on line 17 after "***wanton***" by deleting "***and***" and by adding "***or***" in its stead; and

on line 17, after "***misconduct***" by adding "**,**".

Motions, Petitions and Communications (Continued)

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions, Report of Committees and Posting of Bills and Resolutions for Consideration. Agreed.

Report On Enrolled Bills

The Committee on Enrollment reported that **HB 1, HB 171,** and **HB 195** have been examined and found correctly enrolled. Said Bills were read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -11:55 a.m.)

Introduction of Bills and Resolutions (Continued)

HB 764, by Representative Jenkins: AN ACT relating to diplomas.

HB 765, by Representative Moberly: AN ACT relating to oil and gas recovery enhancement.

HB 766, by Representatives Palumbo, Callahan, Walton, Kerr, Murgatroyd, and Cave: AN ACT relating to competitive natural gas choices for consumers.

HB 767, by Representative Adkins: AN ACT relating to the Renaissance Kentucky Tax Credit Program.

HB 768, by Representative Alexander: AN ACT relating to the Kentucky lottery.

HB 769, by Representative D. Graham: AN ACT relating to agricultural marketing.

HR 102, by Representative Hatcher: A RESOLUTION adjourning the House of Representatives in honor of Clifford H. Turner.

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bills and Resolutions have been posted for Committee consideration:

Tourism Development and Energy: **HB 612, HB 613, HCR 67, HJR 89, HJR 95**

Judiciary: **HB 692, SB 264, HB 607, HB 224**

Banking and Insurance: **HB 676, HB 688**

Cities: **HB 716**

Health and Welfare: **SB 145**

State Government: **HCR 81, HB 116, HB 251, HB 539, HB 554, HB 562, HB 569, HB 590, HB 633, HB 639, HB 640, HB 646, HB 682, HB 708, SB 33, SB 54, SB 139, SB 161, SB 165** and posting withdrawn on **HB 367**.

Floor Amendments (Continued)

Floor Amendment No. 21 to the Committee Substitute No. 2 to **HB 455**, by Representative Riner:

On page 145, between lines 14 and 15, by inserting:

"SECTION 121. A NEW SECTION OF KRS CHAPTER 197 IS CREATED TO READ AS FOLLOWS:

(1) Each facility, in a city of the first class, operated by the Department of Corrections or under contract to the department shall maintain reports of all grievances by inmates during a calendar year. A grievance report shall be an open public record and made available to any person who requests to see the file at the site as long as the inmate has signed a waiver of confidentiality.

(2) Each grievance report shall contain the date the grievance was filed, the nature of the grievance, the name of the individual filing the grievance as well as the name of the person preparing the report, the residence, the county, actions taken by the facility, and the date the report was filed. The report shall be signed by an administrator or officer of the facility.

(3) With the written permission of the inmate, a photo copy of the file may be made and the content may be released to the public. The facility may require a ten cent ($0.10) per page copying fee.

(4) All grievance reports may be destroyed after December 31 of the following year.

SECTION 122. A NEW SECTION OF KRS CHAPTER 441 IS CREATED TO READ AS FOLLOWS:

(1) Each jail, in a city of the first class, shall maintain reports of all grievances by inmates during a calendar year. A grievance report shall be an open public record and made available to any person who requests to see the file at the site as long as the inmate has signed a waiver of confidentiality.

(2) Each grievance report shall contain the date the grievance was filed, the nature of the grievance, the name of the individual filing the grievance as well as the name of the person preparing the report, the residence, the county, actions taken by the facility, and the date the report was filed. The report shall be signed by an administrator or officer of the facility.

(3) With the written permission of the inmate, a photo copy of the file may be made and the content may be released to the public. The facility may require a ten cent ($0.10) per page copying fee.

(4) All grievance reports may be destroyed after December 31 of the following year."; and

By renumbering subsequent sections accordingly.

Motions, Petitions and Communications (Continued)

Representative Marcotte moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Marcotte moved that his vote be changed from "yea" to "nay" on **HB 337**. Agreed.

Representative Stine moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Stine moved that she be recorded as voting "nay" on **HB 130**. Agreed. Representative Stine moved that she be recorded as voting "yea" on **HB 189** and **HB 121**. Agreed. Representative Stine moved that her vote be changed from "yea" to "nay" on **HB 193**. Agreed.

Representative Yonts moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Yonts moved that his vote be changed from "yea" to "nay" on the motion to table **HB 13**. Agreed.

Representative Hoffman moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Hoffman moved that he be recorded as voting "yea" on the motion to reconsider the vote to on **HB 13** and the motion to reassign **HB 13** to Judiciary. Agreed.

Representative Coleman moved the adoption of the following **Legislative Citation No. 121**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes and honors Mercer County High School for the exemplary effort put forth in promoting the educational success of the students of Mercer County. Inasmuch as the development of high caliber citizens who are prepared to meet the challenges of tomorrow is indeed noteworthy, this fine institution is applauded for its role in forming the future leaders of this great Commonwealth. The members of this distinguished body are pleased to join Representative Jack Coleman in graciously welcoming the students of Mercer County High School to today's session of the Kentucky House of Representatives. **Legislative Citation No. 121** was adopted without objection.

Representative Hatcher moved the adoption of the following **HR 102**:

HR 102, A RESOLUTION adjourning the House of Representatives in honor of Clifford H. Turner.

WHEREAS, Clifford H. Turner, president of Land Development Services, Inc., has played an invaluable role for the Louisville community in his commitment to pioneering one of the first affordable high-tech multifamily housing developments in the United States; and

WHEREAS, Clifford H. Turner is the first African-American to receive nonprofit tax credits from the State of Kentucky through the Kentucky Housing Corporation, and he also holds the distinction of having been granted the largest loan ever awarded to an African-American developer from the Kentucky Housing Corporation; and

WHEREAS, Clifford H. Turner's extraordinary vision and driving force allowed him to convert the Shawnee Elementary School into 43 apartment units, completing Phase I nine years ago, and the project is ranked as one of the top ten in the country of HUD-insured multifamily housing developments; and

WHEREAS, Shawnee Garden Apartments Phase II of this project will convert the old parking lot for the school into 28 units; Phase II will employ over 100 people from the Louisville community to aid in both the construction and professional services areas, which explicitly justifies the financial benefits of six lending institutions; and

WHEREAS, the Shawnee Garden Apartments Phase II Groundbreaking Ceremony will be held on Saturday, February 28, 1998, at the Shawnee Gardens Apartment Complex, 225 South Forty-second Street in Louisville; and

WHEREAS, Clifford H. Turner's endless efforts and tireless commitment to his community and to these projects have demonstrated his unwavering determination and perseverance during the most difficult of situations by never accepting rejection; his friends and peers seem to ask, "Clifford, what part of no do you not understand?";

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. This honorable body is proud to recognize Clifford H. Turner for his immeasurable contributions to the Louisville community while always exemplifying dedication, professionalism, and high standards that many seek but few accomplish. We wish to Clifford H. Turner success in all future endeavors.

Section 2. When the House of Representatives adjourns this day, it does so in honor of Clifford H. Turner.

Section 3. The Clerk of the House of Representatives is hereby directed to transmit a copy of this Resolution to Representative Porter Hatcher for presentation to Mr. Clifford H. Turner upon the occasion of the Shawnee Garden Apartments Phase II Groundbreaking Ceremony on February 28, 1998.

There being no objection **HR 102** was adopted.

Representative Damron moved the adoption of the following **HR 99**:

HR 99, A RESOLUTION adjourning the House of Representatives in honor of Esther Robison upon the occasion of her imminent retirement.

WHEREAS, Esther Robison has served the Commonwealth for over twenty years in various positions with Kentucky State University, the Natural Resources and Environmental Protection Cabinet, and the Legislative Research Commission; and

WHEREAS, almost eighteen of those years were spent with the Legislative Research Commission, first with the Program Review and Investigations Committee, and then later with the Capital Planning Advisory Board and the Capital Projects and Bond Oversight Committee; and

WHEREAS, during her tenure with the Legislative Research Commission, Esther Robison, first as Secretary and later as Committee Assistant, has gained the respect of legislators and colleagues for her writing, editing, and analytical skills, her meticulous attention to detail, and her incredible "institutional" memory; and

WHEREAS, when Esther Robison retires at the end of this month, she does so as the senior staff person assigned to the Capital Projects and Bond Oversight Committee, having devoted more years of service to that committee than any other person in the history of the committee;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. This honorable body hails, commends, and thanks Esther Robison for her many years of dedicated service to the Legislative Research Commission and to the Commonwealth of Kentucky.

Section 2. When the House of Representatives adjourns this day, it does so in honor of Esther Robison.

Section 3. The Clerk of the House of Representatives is hereby directed to transmit a copy of this Resolution to Ms. Esther Robison, 147 Tracey Lane, Bagdad, Kentucky 40003.

There being no objection **HR 99** was adopted.

Representative G. Graham moved the adoption of the following **Legislative Citation No. 119**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby honors Elkhorn Middle School for outstanding effort in promoting the educational success of the Commonwealth's future leaders. Inasmuch as this exemplary institution fosters the pursuit of academic excellence and is notably instrumental in developing high caliber citizens who are prepared to meet the challenges of the future, it is with great pleasure that the members of this honorable body join with Representative Gippy Graham in welcoming the students and teachers of Elkhorn Middle School to today's session of the House of Representatives. **Legislative Citation No. 119** was adopted without objection.

Representative G. Graham moved that the rules be suspended to grant floor privileges and to act upon a Legislative Citation. Agreed.

Representative G. Graham moved the adoption of the following **Legislative Citation No. 120**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby honors Collins Lane Elementary School for outstanding effort in promoting the educational success of the Commonwealth's future leaders. Inasmuch as this exemplary institution fosters the pursuit of academic excellence and is notably instrumental in developing high caliber citizens who are prepared to meet the challenges of the future, it is with great pleasure that the members of this honorable body join with Representative Gippy Graham in welcoming the students and teachers of Collins Lane Elementary School to today's session of the House of Representatives. **Legislative Citation No. 120** was adopted without objection.

The following members filed requests to have their names added as co-sponsors of Bills under rules previously suspended: **HB 115, HB 591, HB 709**, Representative P. Clark; **HB 444**, Representative Moberly; **HB 455**, Representative Bratcher; **HB 702**, Representative Jenkins; **HB 734, HB 735**, Representative Vincent; **HB 762**, Representatives Stacy, Geveden.

Announcement

The following meeting was announced:

Budget Review Subcommittee on Justice, upon adjournment, Speaker's Office.

Adjournment

Representative Stumbo moved that the House adjourn until 4:00 p.m., March 2, 1998.

On the roll call the vote was **Yeas 78**--R. Adams, Adkins, Alexander, Anderson, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Bratcher, Brown, D. Butler, D. D. Butler, Callahan, Cave, L. Clark, P. Clark, Coleman, Collins, Colter, Cox, Crenshaw, Crimm, Damron, Ford, Gee, Geveden, Gooch, D. Graham, G. Graham, Hatcher, Haydon, Hoffman, Hogancamp, Hoover, Horlander, Johns, Jordan, Kerr, Lindsay, Long, Marcotte, Marzian, Mason, McKee, Miller, Miniard, Moberly, Murgatroyd, Napier, Nesler, Newsome, Palumbo, Polston, Rasche, Ratliff, Reinhardt, Richards, Riggs, Riner, Scott, Siler, Simpson, Sims, Stacy, Stein, Stine, Thomas, Treesh, Turner, Vincent, Walton, Wayne, Weaver, Wilkey, Worthington, Yonts, Zimmerman. **Nays 3**--Crall, Nunn, Stewart.

The motion to adjourn was adopted.

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for a school during the second two (2) years of the accountability cycle.

SECTION 2. A NEW SECTION OF KRS 158.645 to 158.805 IS CREATED TO READ AS FOLLOWS:

The Department of Education shall develop a plan for implementing the state assessment and accountability system created under Sections 14 and 15 of this Act and shall report quarterly to the Interim Joint Committee on Education on its progress in the following areas:

(1) Establishing a consistent structure of test components, grade-level testing distribution, and test administration procedures;

(2) Beginning a new cycle of equating procedures for which their adequacy and precision can be tested rigorously and conducting appropriate equating analyses to accommodate the new accountability cycle;

(3) Resetting standards following established procedures to accompany the start of the new baseline;

(4) Publishing more complete and informative guides for interpreting school accountability index score changes that include information about the estimated error of the accountability index, as well as information about the connections between index score changes and estimated changes in student performance levels;

(5) Reviewing the basis of "reward" and "in review" school accountability classifications to assure their construct validity in all cases where they are applied;

(6) Maintaining and strengthening the annual audit of portfolio scores in ways that serve to minimize error between teacher-produced scores and audit-generated scores;

(7) Developing and implementing a validity research plan as required under Section 14 of this Act;

(8) Establishing additional routine audits of key processes in the assessment and accountability program;

(9) Maintaining and cataloging a library of technical documents related to the assessment and accountability program for internal and external review purposes. In addition, the department shall produce an annual technical report for audiences that include educators, testing coordinators, parents, and legislators; and

(10) Maintaining a vigorous ongoing program of research and documentation of the effects of the assessment and accountability system on Kentucky schools.

SECTION 3. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) A permanent subcommittee of the Commission to be known as the Education Assessment and Accountability Review Subcommittee is hereby created. The subcommittee shall be composed of eight (8) members, no more than five (5) of whom shall be members of the same political party. The Commission shall appoint from the membership of the General Assembly, the members of the subcommittee for terms of two (2) years, and the members so appointed shall elect one (1) of their number to serve as chair. Any vacancy that may occur in the membership of the subcommittee shall be filled by the Commission at its next regularly scheduled meeting after the occurrence of the vacancy.

(2) The subcommittee shall review administrative regulations and advise the Kentucky Board of Education concerning the implementation of the state system of assessment and accountability, established in Sections 14, 15, and 17 of this Act.

(3) The subcommittee shall meet at a time and place as the chair may determine. The members of the subcommittee shall be compensated for attending meetings as provided in KRS 7.090.

(4) Any professional, clerical, or other employees required by the subcommittee shall be provided in accordance with the provisions of KRS 7.090.

SECTION 4. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

The review of administrative regulations promulgated by the Kentucky Board of Education under the authority granted by Sections 14, 15, and 17 of this Act shall comply with the provisions of Section 5 of this Act and KRS Chapter 13A.

SECTION 5. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) Within forty-five (45) days after publication of an administrative regulation in "The Administrative Register" or within forty-five (45) days of the receipt of a statement of consideration, the subcommittee shall meet to review the administrative regulation.

(2) The meetings shall be open to the public.

(3) Public notice of the time, date, and place of the subcommittee meeting shall be given in The Administrative Register.

(4) A representative of the administrative body promulgating the administrative regulation under consideration shall be present to explain the administrative regulation and to answer questions thereon. If a representative of the administrative body with authority to amend the administrative regulation is not present at the subcommittee meeting, the administrative regulation shall be deferred to the next regularly scheduled meeting of the subcommittee.

(5) Following the meeting and before the next regularly scheduled meeting of the Commission, the subcommittee shall forward to the Commission its findings, recommendations, or other comments it deems appropriate in writing. The subcommittee shall also forward to the Commission its findings, recommendations, or other comments it deems appropriate on an existing administrative regulation it has reviewed. One (1) copy shall be sent to the promulgating agency. The subcommittee's findings shall be published in The Administrative Register.

(6) (a) After review by the subcommittee, the Commission shall at its next regularly scheduled meeting assign the matter as appropriate to the Interim Joint Committee on Education, the Senate standing Education Committee, the House standing Education Committee, or the Senate and the House standing committees meeting jointly.

(b) Upon notification of the assignment by the Commission, the Education Committee shall notify the regulations compiler:

1. Of the date, time, and place of the meeting at which it will consider the matter; or

2. That it will not meet to consider the matter.

(7) Within thirty (30) days of the assignment, the Education Committee shall hold a public meeting during which the regulation shall be reviewed. If the thirtieth day of the assignment falls on a Saturday, Sunday, or holiday, the deadline for review shall be the workday following the Saturday, Sunday, or holiday. The committee may also review an existing administrative regulation and make a determination as provided by KRS 13A.030(2) and (3). Notice of the time, date, and place of the meeting shall be placed in the legislative calendar.

(8) An administrative body shall comply with subsection (4) of this section.

(9) The Education Committee shall be empowered to make the same nonbinding determinations and to exercise the same authority as the subcommittee as provided in KRS 13A.030(2) and (3).

(10) (a) Upon adjournment of the meeting at which the education committee has considered an administrative regulation pursuant to subsection (7) of this section, the committee shall inform the regulations compiler of its findings, recommendations, or other action taken on the administrative regulation.

(b) Following the meeting and before the next regularly scheduled meeting of the Commission, the committee shall forward to the Commission its findings, recommendations, or other comments it deems appropriate in writing. One (1) copy shall be sent to the promulgating agency. The subcommittee's findings shall be published in The Administrative Register.

SECTION 6. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

A School Curriculum, Assessment, and Accountability Council is hereby created to study, review, and make recommendations concerning Kentucky's system of setting academic standards, assessing learning, holding schools accountable for learning, and assisting schools to improve their performance. The council shall advise the Kentucky Board of Education and the Commission on all issues related to developing and communicating the academic expectations and core content for assessment and the development and implementation of the statewide assessment and accountability program, distributing of rewards and sanctions, and assisting schools to improve their performance under Sections 14, 15, 16, and 17 of this Act in accordance with the following:

(1) The School Curriculum, Assessment, and Accountability Council shall be composed of fifteen (15) voting members appointed by the Governor. The members shall serve terms of two (2) years with no member serving more than two (2) consecutive terms, except that seven (7) of the initial appointments shall be for four (4) year terms. The members shall be appointed as follows:

(a) Two (2) parents from recommendations submitted by organizations representing school councils and parents;

(b) Two (2) teachers from recommendations submitted by organizations representing teachers;

(c) Two (2) superintendents from recommendations submitted by organizations representing superintendents;

(d) Two (2) principals from organizations representing school administrators;

(e) Two (2) local school board members from recommendations submitted by organizations representing school boards;

(f) Two (2) school district assessment coordinators appointed by the Kentucky Association of District Assessment Coordinators;

(g) Two (2) university professors with expertise in assessment and measurement; and

(h) One (1) at-large member.

(2) The School Curriculum, Assessment, and Accountability Council shall elect a chair annually from its membership.

(3) The members shall be remunerated for actual and necessary expenses incurred while attending meetings of the council or while serving as representative of the council.

(4) The School Curriculum, Assessment, and Accountability Council shall meet at least four (4) times each year at times and places as it determines by resolution.

(5) The School Curriculum, Assessment, and Accountability Council shall be attached to the Department of Education for administrative purposes. It shall be provided appropriate staff and resources to conduct its work.

SECTION 7. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

The Commission shall appoint a National Technical Advisory Panel on Assessment and Accountability composed of no fewer than three (3) professionals with a variety of expertise in education testing and measurement. The panel shall advise the Commission, and upon approval of the director, the Kentucky Board of Education and the Department of Education, in the implementation of Sections 14, 15, and 17 of this Act. The commission is authorized to contract for the services and expenses of the panel members.

Section 8. KRS 13A.030 is amended to read as follows:

(1) The Administrative Regulation Review Subcommittee shall:

(a) Conduct a continuous study as to whether additional legislation or changes in legislation are needed based on various factors, including but not limited to, review of new, emergency, and existing administrative regulations, the lack of administrative regulations, and the needs of administrative bodies;

(b) *Except as provided by Sections 4 and 5 of this Act,* review and comment upon administrative regulations submitted to it by the Commission;

(c) Make recommendations for changes in statutes, new statutes, repeal of statutes affecting administrative regulations or the ability of administrative bodies to promulgate them; and

(d) Conduct such other studies relating to administrative regulations as may be assigned by the Commission.

(2) The subcommittee may make a nonbinding determination:

(a) That an administrative regulation:

1. Is wrongfully promulgated;

2. Appears to be in conflict with an existing statute;

3. Appears to have no statutory authority for its promulgation;

4. Appears to impose stricter or more burdensome state requirements than required by the federal mandate, without reasonable justification;

5. Fails to use tiering when tiering is applicable;

6. Is in excess of the administrative body's authority; or

7. Appears to be deficient in any other manner;

(b) That an administrative regulation is needed to implement an existing statute;

(c) That an administrative regulation should be amended or repealed.

(3) The subcommittee may require any administrative body to submit data and information as required by the subcommittee in the performance of its duties under this chapter, and no administrative body shall fail to provide the information or data required.

Section 9. KRS 13A.290 is amended to read as follows:

(1) *Except as provided by Sections 4 and 5 of this Act,* within forty-five (45) days after publication of an administrative regulation in "The Administrative Register," or within forty-five (45) days of the receipt of a statement of consideration, the Administrative Regulation Review Subcommittee shall meet to review the administrative regulation.

(2) The meetings shall be open to the public.

(3) Public notice of the time, date, and place of the Administrative Regulation Review Subcommittee meeting shall be given in the Administrative Register.

(4) A representative of the administrative body promulgating the administrative regulation under consideration shall be present to explain the administrative regulation and to answer questions thereon. If a representative of the administrative body with authority to amend the administrative regulation is not present at the subcommittee meeting, the administrative regulation shall be deferred to the next regularly-scheduled meeting of the subcommittee.

(5) Following the meeting and before the next regularly-scheduled meeting of the Commission, the Administrative Regulation Review Subcommittee shall forward to the Commission its findings, recommendations, or other comments it deems appropriate in writing. The Administrative Regulation Review Subcommittee shall also forward to the Commission its findings, recommendations, or other comments it deems appropriate on an existing administrative regulation it has reviewed. One (1) copy thereof shall be sent to the promulgating agency. The Administrative Regulation Review Subcommittee's findings shall be published in the Administrative Register.

(6) (a) After review by the Administrative Regulation Review Subcommittee, the Commission shall, at its next regularly-scheduled meeting, assign the matter to a subcommittee of appropriate jurisdiction over the subject matter.

(b) Upon notification of the assignment by the Commission, the legislative subcommittee to which the matter is assigned shall notify the regulations compiler:

1. Of the date, time, and place of the meeting at which it will consider the matter; or

2. That it will not meet to consider the matter.

(7) Within thirty (30) days of the assignment, the subcommittee shall hold a public meeting during which the regulation shall be reviewed. If the thirtieth day of the assignment falls on a Saturday, Sunday, or holiday, the deadline for review shall be the workday following the Saturday, Sunday, or holiday. The subcommittee may also review an existing administrative regulation and make a determination as provided by KRS 13A.030(2) and (3). Notice of the time, date, and place of the meeting shall be placed in the legislative calendar.

(8) An administrative body shall comply with subsection (4) of this section.

(9) The subcommittee shall be empowered to make the same nonbinding determinations and to exercise the same authority as the Administrative Regulation Review Subcommittee as provided in KRS 13A.030(2) and (3).

(10) (a) Upon adjournment of the meeting at which a legislative subcommittee has considered an administrative regulation pursuant to subsection (7) of this section, the subcommittee shall inform the regulations compiler of its findings, recommendations, or other action taken on the administrative regulation.

(b) Following the meeting and before the next regularly-scheduled meeting of the Commission, the subcommittee shall forward to the Commission its findings, recommendations, or other comments it deems appropriate in writing. One (1) copy thereof shall be sent to the promulgating agency. The subcommittee's findings shall be published in the Administrative Register.

Section 10. KRS 156.095 is amended to read as follows:

(1) The Kentucky Board of Education shall establish, direct, and maintain a statewide program of professional development to improve instruction in the public schools.

(2) Each local school district superintendent shall appoint a certified school employee to fulfill the role and responsibilities of a professional development coordinator. The manner of appointment, qualifications, and duties of the professional development coordinator shall be as established by Kentucky Board of Education regulations.

(3) The Kentucky Board of Education shall provide an annual training program for local school district professional development coordinators. The training program may include, but not be limited to, the demonstration of various approaches to needs assessment; instruction in methods to involve both teachers and administrators in actively planning, delivering, and evaluating programs; presenting options for meeting professional development needs, especially through individualized programs; and identification of resources needed for quality, motivational professional development programs.

(4) The Kentucky Board of Education shall provide for a series of state sponsored, professional development programs for certified personnel throughout the Commonwealth. Professional development shall ***include but not be limited to***[~~focus on the following areas during the 1990-91 and 1991-92 school years~~]:

(a) ***Exposure to research-based instructional practices that promote academic achievement for students with different learning needs at the elementary, middle, and high school levels***[~~The Kentucky Education Reform Act of 1990~~];

(b) ***Information about instructional materials, academic content, demonstration projects, and successful model programs***[~~School-based decision making~~];

(c) ***Assessment strategies, including strategies to integrate writing portfolio entry development with content instruction***[~~Performance-based student assessment~~]; ***and***

(d) ***Opportunities for follow-up activities after practice***[~~Nongraded primary programs;~~

~~(e) Research-based instructional practices;~~

~~(f) Instructional uses of technology; and~~

~~(g) Effective awareness and sensitivity training so teachers can motivate and nurture students of diverse cultures~~].

(5) The Department of Education shall ***assure that***[~~provide~~] professional development activities ***are offered*** at times and locations which are convenient for school personnel.[~~ During the 1990-91 and 1991-92 school years, school districts shall use the four (4) days designated for professional development in KRS 158.070 to acquire skills and knowledge in the areas listed in subsection (4) of this section. The master professional development plan shall reflect the districts' choices from the required areas for the 1990-91 and 1991-92 school years. A district's master professional development plan which has been developed in conjunction with the district improvement plan pursuant to KRS 158.685, shall be exempt~~

~~from the requirements of this subsection~~].

(6) Local school districts with an enrollment of twenty thousand (20,000) or more students shall be exempt from the requirements of this section if they meet the standards for professional development established by the Kentucky Board of Education.

Section 11. KRS 156.132 is amended to read as follows:

As used in this section, except subsection (1), "public school officer" means a person who previously served as a superintendent of schools or board member during which time charges were brought against him under this section.

(1) The chief state school officer shall recommend, by written charges to the proper school authorities having immediate jurisdiction, the removal of any superintendent of schools, principal, teacher, member of a school council, or other public school officer as to whom he has reason to believe is guilty of immorality, misconduct in office, incompetency, willful neglect of duty, or nonfeasance. In the case of a member of a school council, the written charges shall be provided to the local board of education.

(2) The chief state school officer shall recommend by written charges the suspension by the Kentucky Board of Education of any district board member, superintendent of schools, or other public school officer whom he has reason to believe is guilty of immorality, misconduct in office, incompetency, willful neglect of duty, nonfeasance, or who shall be removed pursuant to KRS 158.6455[~~(7)~~]. If the charges brought under this subsection represent an immediate threat to the public health, safety, or welfare, the Kentucky Board of Education shall summarily suspend the person against whom the charges are made. The action by the Kentucky Board of Education may be taken upon a recommendation of the chief state school officer, or the action may be taken by a majority vote of the Kentucky Board of Education without recommendation from the chief state school officer.

(3) The Kentucky Board of Education may suspend a district superintendent of schools or other public school officer under subsection (2) of this section or remove him pursuant to subsection (5) of this section only if, after thirty (30) days of receipt of the written charges specified in subsection (1) of this section, the proper school authorities having immediate jurisdiction, either the superintendent or the district board of education, have refused to act, have acted in bad faith, arbitrarily, or capriciously, or if a recommendation to the district board would have been futile.

(4) Any officer suspended by the Kentucky Board of Education under subsection (2) of this section shall be furnished with an emergency order specifying in detail the reasons for suspension and notifying the officer of his right to appeal the action and have an emergency hearing pursuant to KRS 13B.125.

(5) As an alternative to first seeking suspension, the chief state school officer may recommend by written charges the removal by the Kentucky Board of Education of any district board member, superintendent of schools, or other public school officer whom he has reason to believe is guilty of immorality, misconduct in office, incompetency, willful neglect of duty, or nonfeasance, or who shall be removed pursuant to KRS 158.6455[~~(7)~~]. The officer against whom the written charges are issued by the chief state school officer shall be furnished with the written charges and notice of procedural rights conferred under KRS Chapter 13B. Within twenty (20) days after receipt of the charges, the officer may notify the Kentucky Board of Education of his intention to appear and answer the charges. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B. If the officer fails to notify the board of his intention to appear and answer the charges, the Kentucky Board of Education may remove the officer by a majority vote, and the dismissal shall be final.

(6) The hearing shall be public or private at the discretion of the accused former or current superintendent and shall be public when testimony is taken for board members.

(7) The Kentucky Board of Education may meet in closed session to consider the evidence and may by a majority vote remove the officer. If the board votes to remove the officer, the board shall prepare final order specifying which charge or charges it found to be the basis for removal. If within ninety (90) days from the date of suspension if applicable, the state board has not removed the officer, or has dismissed the charges, the suspended officer shall be reinstated and shall be paid his full salary for the period of suspension.

(8) The officer shall have a right to appeal on the record to the Circuit Court located in the county of the school district in accordance with KRS Chapter 13B. If the decision of the court is against removal, the officer shall be paid his full salary from the date of suspension. The payment shall be made from funds appropriated to the State Department of Education.

(9) If a superintendent of schools is removed from office or resigns while charges are pending pursuant to this section after July 15, 1994, any continuing contract pursuant to KRS 161.720 to 161.810 shall be terminated. If the removal is reversed upon appeal, the continuing contract shall be restored and he shall be paid his full salary for the period of suspension.

Section 12. KRS 156.160 is amended to read as follows:

(1) With the advice of the Local Superintendents Advisory Council, the Kentucky Board of Education shall promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. These regulations shall comply with the expected outcomes for students and schools set forth in KRS 158.6451. Administrative regulations shall be promulgated for the following:

(a) Courses of study for the different grades and kinds of common schools ***identifying the common curriculum content directly tied to the goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451, and Section 14 of this Act and distributed to local school districts and schools. They shall include***[~~, subject to~~] the following[~~ conditions~~]:

1. a. Procedures for developing an ungraded primary program as defined in KRS 158.030 which shall be implemented by the beginning of the 1992-93 school year, and the program, in its entirety, shall be fully implemented for all students who have not entered the fourth grade in every elementary school in every district by the beginning of the 1993-1994 school year, except as provided in subparagraph 1.b. of this paragraph. The primary program shall include the following critical attributes: developmentally appropriate educational practices, multiage and multiability classrooms; continuous progress; authentic assessment; qualitative reporting methods; professional teamwork; and positive parent involvement. The implementation of the primary program may take into consideration the necessary arrangements required for students attending part-time and will allow for grouping of students attending their first year of school when determined to be developmentally appropriate.

b. A school council established pursuant to KRS 160.345 or if none exists, a school may determine, based on individual student needs, that implementing multiage and multiability classrooms need not apply for every grouping of students for every activity throughout the entire day. The school council or school shall revise the action plan to reflect any changes in the primary program's design.

2. The courses of study for students shall include American sign language which shall be accepted as meeting the foreign language requirements in common schools notwithstanding other provisions of law;

(b) The acquisition and use of educational equipment for the schools as recommended by the Council for Education Technology;

(c) The minimum requirements for high school graduation[~~. Prior to the beginning of the 1994-95 school year, the State Board for Elementary and Secondary Education shall review graduation requirements~~] in light of the expected outcomes for students and schools set forth in KRS 158.6451***. Student scores from any assessment conducted under Section 14 of this Act that are valid and reliable at the individual level shall be included on the student transcript***;

(d) Taking, and keeping a school census, and the forms, blanks, and software to be used in taking and keeping the census and in compiling the required reports. The board shall create a statewide student identification numbering system based on students' Social Security numbers. The system shall provide a student identification number similar to, but distinct from, the Social Security number, for each student who does not have a Social Security number or whose parents or guardians choose not to disclose the Social Security number for the student;

(e) Sanitary and protective construction of public school buildings, toilets, physical equipment of school grounds, school buildings, and classrooms. With respect to physical standards of sanitary and protective construction for school buildings, the Kentucky Board of Education shall adopt the Uniform State Building Code;

(f) Medical inspection, physical and health education and recreation, and other regulations necessary or advisable for the protection of the physical welfare and safety of the public school children. The administrative regulations shall set requirements for student health standards to be met by all students in grades four (4), eight (8), and twelve (12) pursuant to the outcomes described in KRS 158.6451. The administrative regulations shall permit a student who received a physical examination no more than six (6) months prior to his initial admission to Head Start to substitute that physical examination for the physical examination required by the Kentucky Board of Education of all students upon initial admission to the public schools, if the physical examination given in the Head Start program meets all the requirements of the physical examinations prescribed by the Kentucky Board of Education;

(g) The transportation of children to and from school;

(h) The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine;

(i) The preparation of budgets and salary schedules for the several school districts under the management and control of the Kentucky Board of Education;

(j) A uniform series of forms and blanks, educational and financial, including forms of contracts, for use in the several school districts; and

(k) The disposal of real and personal property owned by local boards of education.

(2) (a) At the request of a local board of education or a school council, a local school district superintendent shall request that the Kentucky Board of Education waive any administrative regulation promulgated by that board. Beginning

in the 1996-97 school year, a request for waiver of any administrative regulation shall be submitted to the Kentucky Board of Education in writing with appropriate justification for the waiver. The Kentucky Board of Education may approve the request when the school district or school has demonstrated circumstances that may include, but are not limited to, the following:

1. An alternative approach will achieve the same result required by the administrative regulation;
2. Implementation of the administrative regulation will cause a hardship on the school district or school or jeopardize the continuation or development of programs; or
3. There is a finding of good cause for the waiver.

(b) Regulations relating to health and safety, civil rights, any state regulation required by a federal law, and regulations promulgated pursuant to KRS 158.6451, 158.6453, 158.6455, 158.685, and this section, relating to measurement of performance outcomes and determination of successful districts or schools shall not be subject to waiver.

(c) Any waiver granted under this subsection shall be subject to revocation upon a determination by the Kentucky Board of Education that the school district or school holding the waiver has subsequently failed to meet the intent of the waiver.

(3) Any private, parochial, or church school may voluntarily comply with curriculum, certification, and textbook standards established by the Kentucky Board of Education and be certified upon application to the board by such schools.

Section 13. KRS 157.067 is amended to read as follows:

(1) To carry out the purpose of rewarding successful schools as provided in KRS Chapter 158, the Kentucky successful schools trust fund is hereby established in the Finance and Administration Cabinet. Funds appropriated by the General Assembly in each biennial budget for payments of rewards to successful schools shall be credited to the fund and invested until needed for payments to successful schools. All interest earned on moneys in the funds shall be retained in the fund for reinvestment.

(2) [~~Upon certification of eligibility by the Kentucky Board of Education,~~]The Finance and Administration Cabinet shall issue a warrant and the State Treasurer shall issue a check to the ***school district on behalf of the*** eligible school ***when the following conditions have been met:***

(a) The Office of Education Accountability has determined that the data analyses, which included the effects of task sampling, indicate a high level of confidence in the dependability of accountability decisions to assure that according to accepted psychometric standards, and that it is statistically unlikely that a school or district that truly has a decrease in student performance will receive a reward or that a school or district that truly has improved student performance will be classified as "not improving" or "in review"; and

(b) The Kentucky Board of Education certifies that the school is eligible to receive the reward.

(3) All moneys credited to the fund, including interest, shall be used only for payments to eligible schools and shall not lapse, but shall be carried forward in the next biennial budget.

Section 14. KRS 158.6453 is amended to read as follows:

(1) The Kentucky Board of Education shall be responsible for creating and implementing a statewide, primarily performance-based assessment program to ensure school accountability for student achievement of the goals set forth in KRS 158.645 ***and KRS 158.6451. The board shall seek the advice of the Office of Education Accountability, the School Curriculum Assessment and Accountability Council, and the National Technical Advisory Panel on Assessment and Accountability***. The statewide assessment program shall not include measurement of a student's ability to become a self-sufficient individual or to become a responsible member of a family, work group, or community.[~~ The program shall be implemented as early as the 1993-94 school year but no later than the 1995-96 school year. The board shall also be responsible for administering an interim testing program to assess student skills in reading, mathematics, writing, science, and social studies in grades four (4), eight (8), and twelve (12). The tests shall be designed to provide the state with national comparisons and shall be the same as, or similar to those used by the National Assessment of Educational Progress. The interim testing program shall begin during the 1991-92 school year and shall be administered to a sample of students representative of each school and the state as a whole. The test scores shall be used, along with other factors described in KRS 158.6451, to establish a baseline for determining school success during the 1993-94 school year.~~]

(2) ***The assessment program shall be designed in accordance with current standards for educational and psychological testing. It shall include the following components:***

(a) A secure, customized, nationally normed or standards-based multiple-choice test obtained from a commercial publisher in reading and mathematics that matches Kentucky's core content for assessment and provides normative data that is valid and reliable for individual students in elementary, middle, and high school;

(b) Open-response and multiple-choice items to assess student skills in reading, mathematics, writing, science,

social studies, arts and humanities, and practical living and vocational studies.

1. These assessments shall be derived from the core content for assessment identified by the Department of Education during the 1997-98 school year. Any revisions to the core content for assessment shall be made through a public process involving parents; educators at the elementary, secondary, and postsecondary education levels; professional education advocacy groups and organizations; and business and civic leaders, and shall be distributed to all public schools.

2. Kentucky teachers shall have a significant role in their development;

(c) Writing portfolios consisting of samples of student work. The writing portfolio shall not include more than four (4) pieces of student work. The Kentucky Board of Education shall seek the advice of the Writing Advisory Committee for reducing the teacher and student time involved in preparing a writing portfolio that may include limiting the number of revisions or the time spent preparing a single entry, or collecting entries at different grade levels;

(d) Performance assessment events for schools that have students enrolled in performing arts organizations sponsoring sanctioned events with an established protocol for adjudication; and

(e) A technically sound longitudinal comparison of the assessment results for the same students on successive administrations of the assessments required under paragraphs (a) to (c) of this subsection[~~Upon July 13, 1990, the state board shall contract with three (3) or more authorities in the field of performance assessment to design the specifications for the interim and full-scale statewide assessment development effort. The bid specifications shall include requirements that the successful bidder:~~

~~(a) Direct the development of the interim and full-scale assessment program; and~~

~~(b) Direct the development of the formula to be used to determine successful schools pursuant to KRS 158.6455.~~

~~The assessment authorities shall review the bids and make a recommendation to the board. The authorities shall have no pecuniary interest with the successful bidder~~].

(3) *The assessments shall be designed to:*

(a) Measure core academic content, basic skills, and higher-order skills;

(b) Provide valid and reliable scores for schools and for students, when scores are reported for students individually; and

(c) Minimize the time spent by teachers and students on assessment by distributing the subjects assessed among different grade levels as determined by the Kentucky Board of Education.

(4) Results from the state assessment under this section shall be reported to the school districts and schools as soon as practicable.

(5) The Department of Education shall gather information to establish the validity of the assessment and accountability program. It shall develop a biennial plan for validation activities that shall include, but not be limited to, the match of testing material to the academic expectations and the core content for assessment, the consistency of student results across multiple measures, the congruence of school scores with documented improvements in instructional practice and school learning environment, and the potential for all scores to yield fair, consistent, and accurate student performance level and school accountability decisions. Validation activities shall take place in a timely manner and shall include a review of the accuracy of scores assigned to students and schools, as well as of the testing materials. The plan shall be submitted to the Interim Joint Committee on Education by September 1 of the first year of each biennium. Quarterly reports shall be submitted as required under Section 2 of this Act and a summary of the findings shall be submitted not later than September 1 of the second year of the biennium.

(6) In addition to statewide testing for the purpose of determining school success, the board shall have the responsibility of assisting local school districts and schools in developing and using continuous assessment strategies needed to assure student progress. *The continuous assessment shall provide diagnostic information to improve instruction and meet the needs of individual students.*

(7)[~~(4)~~] *The Kentucky Board of Education shall promulgate an administrative regulation in conformity with the provisions of Sections 4 and 5 of this Act, and KRS Chapter 13A establishing the components of a school report card to clearly communicate with parents and the public about school performance. The school report card shall be sent to the parents of the students of the districts and a summary of the results for the district shall be published in the newspaper with the largest circulation in the county. It shall include, but not be limited to, the following components reported by race, gender, and disability when appropriate:*

(a) Student academic achievement including the results from each of the assessments administered under this section;

(b) Nonacademic achievement including the school's attendance, retention, dropout rates, and student transition

to adult life; and

(c) School learning environment including measures of parental involvement and school safety[~~By October 1 of each year, local boards of education shall publish in the newspaper with the largest circulation in the county an annual performance report on district accomplishments and activities pertaining to performance goals including, but not limited to, retention rates and student performance, the districts' goals for the succeeding year, and other items as may be set forth in Kentucky Board of Education administrative regulations~~].

Section 15. KRS 158.6455 is amended to read as follows:

It is the intent of the General Assembly that schools succeed with all students and receive the appropriate consequences in proportion to that success.

(1) ***After receiving the advice of the Office of Education Accountability, the School Curriculum, Assessment, and Accountability Council, and the National Technical Advisory Panel on Assessment and Accountability,*** the Kentucky Board of Education shall promulgate administrative regulations ***in conformity with the provisions of Sections 4 and 5 of this Act, and KRS Chapter 13A*** to establish a system of determining successful schools and dispensing appropriate rewards. The system shall be based on the following:

(a) A school shall be the unit of measure to determine success;

(b) School success shall be determined by measuring a school's improvement over a two (2) year period;

(c) A school shall be rewarded for an increased proportion of successful students, including those students who are at risk of school failure;

(d) ***The Kentucky Board of Education shall establish the expected growth in***[~~A threshold level for~~] school improvement ***for each school with a reward threshold, an improving threshold, and a not improving threshold set for each accountability cycle through the school year 2014. The board shall not establish a new improving or not improving threshold for a school or district classified as "in review" under subsection (5) of this section more than two (2) times through the school year 2014***[~~shall be established by the board to determine the amount of success needed for a school to receive a reward. The threshold definition shall establish the percentage of increase required in a school's percentage of successful students as compared to a school's present proportion of successful students, with consideration given to the fact that a school closest to having one hundred percent (100%) successful students will have a lower percentage increase required~~];

(e) ***A school shall be classified as "reward" if its accountability index is equal to or greater than the reward threshold for the accountability cycle. A school classified as "reward" shall not receive a financial award unless the school's dropout rate is less than six percent (6%). Distribution of rewards to local schools shall be based on policy established by the Kentucky Board of Education.*** Rewards shall be given to the[~~school on behalf of the~~] full-time, part-time, and itinerant instructional staff ***assigned to the school on the last working day of the accountability cycle unless a majority of the certified staff vote otherwise. Rewards shall not be added to a staff person's base salary and shall not be defined as compensation for retirement purposes under KRS 161.220(10)***[~~of a school who generate the reward when the school achieves at least one percent (1%) gain over its threshold as defined in paragraph (d) of this subsection~~]. Substitute teachers shall not be used in calculating the reward;

(f) [~~Rewards shall be calculated by applying the percentage set by the General Assembly in the biennial budget to the current annual salary of each certified staff person employed in the school on the last working day of the year of the reward. The reward for part-time and itinerant staff shall be calculated for the proportion of time spent in the school. In determining the percentage to be applied to a school for calculation of the rewards for the school's staff, consideration shall be given to the fact that schools already having a high percentage of successful students shall have a lower requirement for a percentage increase in its number of successful students. The staff person's identity in connection to his share of the reward shall be maintained when his share of the reward is deposited to the school's account;~~

~~(g) The certified staff members shall by majority rule collectively decide on the ways the reward funds shall be spent. Each individual staff person shall use the amount he earned in accordance with the decisions made by the total staff. Rewards shall not be added to a staff person's base salary and shall not be defined as compensation for retirement purposes under KRS 161.220(10); and~~

~~(h)~~]The Department of Education shall send the school's reward to the local district office for transmittal to the school ***staff; and***

(g) The Kentucky Board of Education shall identify reports and paperwork requirements from which schools classified in reward shall be exempt.

(2) ***After receiving the advice of the Office of Education Accountability, the School Curriculum, Assessment, and Accountability Council, and the National Technical Advisory Panel on Assessment and Accountability,*** the Kentucky Board of Education shall adopt by administrative regulation ***in conformity with the provisions of Sections 4 and 5 of***

this Act, and KRS Chapter 13A the formula ***for a school accountability index***[~~to be used~~] to ***classify***[~~determine successful~~] schools ***every two (2) years based on whether they have met or exceeded their expected growth in student achievement for the 2000-2004 accountability cycle through the 2010-2014 accountability cycle***. The formula shall ***include academic and nonacademic***[~~be a calculus of~~] factors which reflect the school goals described in KRS 158.6451, except there shall be no measurement of the goals included in subsection (1)(b)3. and (1)(b)4.

(3) A school that ***is classified as "improving"***[~~does not reach its threshold level as defined in paragraph (d) of subsection (1) of this section but maintains the previous proportion of successful students~~] shall be required to develop a school improvement plan and shall be eligible to receive funds from the school improvement fund pursuant to KRS 158.805.[~~ A school that does not reach its threshold level but maintains the previous proportion of successful students after the second biennial review shall be required to meet the provisions of subsection (4) of this section.~~]

(4) A school ***that is classified as "not improving"***[~~in which the proportion of successful students declines by less than five percent (5%)~~] shall be required to develop a school improvement plan, shall be eligible to receive funds from the school improvement fund, and shall have ***the assistance of***[~~one (1) or more~~] Kentucky distinguished educators assigned to the school to carry out the duties as described in KRS 158.782.[~~ If the school does not meet its original threshold after the next biennial review or after the 1996-98 biennial review, whichever is later, the school shall be subject to the requirements of subsection (5) of this section.~~]

(5) ***(a)*** A school ***that meets the criteria for being classified as***[~~in which the proportion of successful students declines by five percent (5%) or more in any biennium beginning with the 1994-96 biennium shall be declared by the Kentucky Board of Education to be a~~] "***in review***[~~school in crisis.~~]"[~~ When a school is declared to be a "school in crisis," the following actions~~] shall be [~~required:~~]***subject to a scholastic audit as provided in paragraph (b) of this subsection.***

(b) After receiving the advice of the Office of Education Accountability, the School Curriculum, Assessment, and Accountability Council, and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate an administrative regulation in conformity with the provisions of Sections 4 and 5 of this Act, and KRS Chapter 13A establishing the guidelines for conducting a scholastic audit, which shall include the process for:

1. Appointing and training team members. The team shall include at least a distinguished educator, a teacher, a principal or other local district administrator, a parent, and a university faculty member;

2. Reviewing a school's learning environment, efficiency, and academic performance of students;

3. Evaluating each certified staff member assigned to the school. Only certified members of the audit team shall evaluate personnel. The evaluation shall indicate whether subsequent evaluations other than those conducted by the district under KRS 156.101 are necessary. If the initial evaluation of a certified staff member is unsatisfactory:

a. The team shall recommend a subsequent evaluation or evaluations to begin no sooner than sixty (60) days. The recommendation shall identify any problem areas and professional development activities to address the areas of concern. No certified staff shall have their contract terminated under KRS 161.790 based on results of the initial team evaluation;

b. The certified employee may choose whether to have subsequent evaluations conducted by the certified members of the scholastic audit team or the assisting distinguished educator assigned to the school. The employee shall not be subject to the district evaluation conducted under KRS 156.101 during this period; and

4. Recommending that the Kentucky Board of Education classify the school as "not improving" or "in review".

(c) A school that is classified as "in review" shall be subject to the following actions:

[~~(a) The full-time and part-time certified staff of that school shall be placed on probation;~~]

1.[~~(b)~~] The principal shall immediately notify the students' parents of the students' right to transfer to a successful school, with procedures for initiating the request;

2.[~~(c)~~] Within thirty (30) days after the declaration by the state board under this subsection or no later than thirty (30) days before the start of the next school year, whichever is later, any student in that school may request and shall be allowed to transfer to a successful school as determined under the provisions of subsection (2) of this section. The superintendent shall select the receiving successful school in the home district or make arrangements with a neighboring district. If two (2) districts cannot agree, the superintendent of the student's resident district shall request the Kentucky Board of Education to resolve the issue and make a decision on the placement of the student within thirty (30) days of the request. The board of the district in which the student resides shall be responsible for all tuition and transportation costs incurred as a result of a student transferring from a "***in review***[~~school in crisis~~]" to a successful school. If a decline in student enrollment causes overstaffing at the "***in review***[~~school in crisis~~]," personnel shall be reduced or transferred pursuant to KRS 161.760 and 161.800***;***[~~.~~]

3.[~~(d)~~] One (1) or more Kentucky distinguished educators shall be assigned to the school by the commissioner of education to carry out the duties as described in KRS 158.782.[~~ Notwithstanding any other statute to the contrary, at the end of six (6) months,~~] The Kentucky distinguished educator ***or the certified members of the scholastic audit team as appropriate*** shall evaluate and make ***in accordance with paragraph (b) of this subsection*** a recommendation to the superintendent regarding the retention, dismissal, or transfer of each full-time and part-time certified staff member. Recommendations for transfer shall conform to any employer-employee bargained contract which is in effect. Recommendations for dismissal shall be binding on the superintendent who shall notify the staff member pursuant to KRS 161.790[~~. This evaluation process shall continue every six (6) months until the school is no longer a "school in crisis" as determined by the Kentucky Board of Education~~];[~~ and~~]

4.[~~(e)~~] The school shall be required to develop a school improvement plan and shall be eligible to receive funds from the school improvement fund***; and***

5. ***The Kentucky Board of Education shall establish new "improving" and "not improving" thresholds for the school, using the accountability index for the accountability cycle it was classified as "in review" as a new starting point for the "not improving" threshold, and one hundred (100) as the goal for 2014. The new "improving" threshold shall be five (5) points above the new "not improving" threshold.***

(6) ***The Kentucky Board of Education shall recognize all schools with an accountability index above eighty (80) as high performing schools. Notwithstanding subsections 4 and 5 of this section, these schools shall not be classified as "not improving" or "in review".***

(7) ***Notwithstanding subsections (1) to (5) of this section and KRS 158.645 to 158.805, the Kentucky Board of Education, after receiving the advice of the Office of Education Accountability, the School Curriculum, Assessment, and Accountability Council and the National Technical Advisory Panel on Assessment and Accountability, shall promulgate an administrative regulation in conformity with the provisions of Sections 4 and 5 of this Act, and in accordance with KRS Chapter 13A, establishing a formula for school accountability and a school improvement goal for each school during the 1998-1999 and 1999-2000 school years, with the 1996-97 and 1997-98 school years serving as the baseline. The formula shall be based on the academic and nonacademic components that are administered in a consistent manner during the four (4) year period. The Kentucky Board of Education shall reward schools exceeding their threshold for improvement. Schools failing to improve shall be reviewed by the Kentucky Department of Education to determine whether a distinguished educator should be assigned to act solely in an advisory capacity. These schools shall also be eligible for school improvement funds under Section 16 of this Act.***

(8) The Kentucky Board of Education shall develop a system of rewards and sanctions for certified staff who are not assigned to a school in a local school district. The system shall be analogous to the system described in subsections (1) to (5) of this section. Rewards shall be given to ***the district based on the number of*** nonschool-based staff ***to be used for purposes determined by the local board of education*** when the district's proportion of successful students increases above a threshold adopted by the state board and comparable to the threshold adopted for schools. Sanctions shall be imposed when the proportion of successful students in the district declines in the same proportion used to determine school sanctions under subsections (3), (4), and (5) of this section. A school district that does not meet its threshold shall be required to develop a district improvement plan[~~ defined in KRS 158.650~~].

(9) A school district ***classified as "in review"***[~~in which the proportion of successful students declines by five percent (5%) or more in any biennium beginning with the 1994-96 biennium~~] shall be assigned one (1) or more Kentucky distinguished educators to assist the system ***and***[~~,~~] evaluate personnel ***at the option of the personnel following an unsatisfactory initial evaluation by the scholastic audit team***[~~, and notwithstanding any other statute to the contrary, make personnel recommendations every six (6) months on retention, dismissal, or transfer. Personnel recommendations shall be made to the superintendent. Recommendations on the superintendent's status shall be made to the local board of education. If the recommendation is to terminate the superintendent, the board shall terminate the contract pursuant to KRS 160.350~~]. If a district ***is classified as "in review"***[~~has a declining proportion of successful students~~] for two (2) consecutive biennial assessment periods, the district[~~ shall be declared an education development district pursuant to KRS 158.685, and the~~] board members and the superintendent shall be removed under the provisions of KRS 156.132 and 156.136.

(10)[~~(8)~~] The Kentucky Board of Education shall adopt administrative regulations to establish a process whereby a school shall be allowed to appeal a performance judgment which it considers grossly unfair. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B. The state board may adjust a performance judgment on appeal when evidence of highly unusual circumstances warrants the conclusion that the performance judgment is based on fraud or a mistake in computations, is arbitrary, is lacking any reasonable basis, or when there are significant new circumstances occurring during the biennial assessment period which are beyond the control of the school.

Section 16. KRS 158.805 is amended to read as follows:

(1) There is hereby created the Commonwealth school improvement fund to assist local schools in pursuing new and innovative strategies to meet the educational needs of the school's students and raise the school's performance level. The Kentucky Board of Education shall utilize the Commonwealth school improvement fund to provide grants to schools for the following purposes:

(a) To support teachers and administrators in the development of sound and innovative approaches to improve instruction or management;

(b) To assist in replicating successful programs ***and models that improve student academic achievement***[~~developed in other districts~~];

(c) To encourage cooperative instructional or management approaches to specific school educational problems; and

(d) To encourage teachers and administrators to conduct experimental programs to test concepts and applications being advanced as solutions to specific educational problems.

(2) The Kentucky Board of Education shall develop criteria for awards of grants from the Commonwealth school improvement fund to schools[~~ in educationally deficient districts pursuant to KRS 158.685 through the 1993-94 school year. Beginning with the 1994-95 school year, grants shall go to schools~~] which do not meet their threshold as defined in KRS 158.6455. The ***School Curriculum, Assessment, and Accountability Council established under Section 6 of this Act shall***[~~Governor shall appoint an advisory committee which shall include teachers, administrators, teacher educators, and representatives of the general public to~~] assist in the planning and implementation of the Commonwealth school improvement fund. The members of the advisory committee shall serve without compensation, but shall be reimbursed for all reasonable expenses incurred in the discharge of official duties. The committee shall advise the board on application procedures, review of proposals, evaluation criteria, reporting requirements, and other matters relating to the fund as requested by the board.

(3) The Kentucky Board of Education shall have the sole authority to approve grants from the fund. The advisory committee shall review proposals for grants and make recommendations to the board relating to the merits of each proposal.

(4) The Kentucky Board of Education may establish priorities for the use of the funds and, through the Department of Education, shall provide assistance to schools in preparing their grant proposals. The board shall require that no funds awarded under the Commonwealth school improvement fund are used to supplant funds from any other source. Requests for necessary equipment may be approved at the discretion of the state board, however the cost of equipment purchased by any grantee shall not exceed twenty percent (20%) of the total amount of money awarded for each proposal and shall be matched by local funds on a dollar for dollar basis.

(5) The Kentucky Board of Education shall establish maximums for specific grant awards. All fund recipients shall provide the board with an accounting of all money received from the fund and shall report the results and conclusions of any funded projects to the Kentucky Board of Education. All fund recipients shall provide the board with adequate documentation of all projects to enable replication of successful projects in other areas of the state.

Section 17. KRS 158.782 is amended to read as follows:

(1) ***After receiving the advice of the Office of Education Accountability, the School Curriculum, Assessment, and Accountability Council, and the National Technical Advisory Panel on Assessment and Accountability,*** the Kentucky Board of Education shall promulgate administrative regulations ***in conformity with the provisions of Sections 4 and 5 of this Act, and KRS Chapter 13A*** to set forth the criteria for the Kentucky Distinguished Educators Program which shall be implemented by July 1, 1991. The designation of "Kentucky Distinguished Educator" shall be given to the state's most outstanding and highly skilled certified educators who deserve recognition and are willing to fulfill the following purposes of the program:

(a) Serving as teaching ambassadors to spread the message that teaching is an important and fulfilling profession;

(b) Assisting the Department of Education with research projects and staff development efforts;

(c) Accepting assignments in schools whose percentage of successful students declined as described in KRS 158.6455. The assignments shall require the educator to:

1. Work in a school on a full-time or part-time basis for a designated period of time to assist the school staff with implementing its school improvement plan. The educator shall have the authority in a school in ***review***[~~crisis~~] as defined in KRS 158.6455(5) to make decisions previously made by the school staff;

2. Help to increase the effectiveness of the staff, parents, the civic and business community, and government and private agencies in improving the school's performance; and

3. Evaluate and make recommendations ***concerning***[~~on~~] the retention, dismissal, or transfer of certified staff in a "school in ***review" when appropriate under subsections (5) and (6) of Section 15 of this***

Act.[~~crisis."~~]

4. Complete an intensive training program, provided by the Department of Education and approved by the Kentucky Board of Education, prior to being assigned to assist a school's staff with implementing its school improvement plan. The training program shall include, but shall not be limited to instruction in the methods of personnel evaluation, school organization, school curriculum, and assessment.

(2) The Kentucky Distinguished Educators Program criteria shall include:

(a) A selection process which shall allow for self nomination, provide a broad spectrum of instructional positions, and generate statewide representation.

(b) Beginning with the 1992-93 school year, special recognition shall be given to five (5) Kentucky distinguished educators each year in the form of a one (1) year sabbatical leave to work with instructional personnel across the state and to serve as teaching ambassadors to the state at large.

(c) Each recipient shall receive a monetary award of two hundred fifty dollars ($250) when selected and shall also be paid in accordance with his current salary for other program requirements which arise pursuant to subsection (1) of this section. The Department of Education shall be responsible for all expenses incurred as a result of the Kentucky Distinguished Educators Program, except those expenses associated with the funding of the position of the person who replaces the Kentucky distinguished educator when he is assigned to an unsuccessful school or district.

(d) Kentucky distinguished educators assigned to an unsuccessful school shall receive a salary supplement of ***thirty-five***[~~fifty~~] percent ***(35%)***[~~(50%)~~] of his annual salary for each year of service in that capacity. The state board shall determine if reimbursement for vehicle mileage shall be allowed. If his assigned school achieves the threshold level in the next biennial review, he shall receive his portion of the reward due to the entire staff calculated on his base salary regardless of decisions made by the school staff pursuant to KRS 158.6455[~~(1)(g)~~].

(e) The Kentucky distinguished educator shall be granted professional leave pursuant to KRS 161.770 though the time may exceed two (2) years if determined by the state board to be necessary. The Kentucky distinguished educator shall not lose any employee benefits as a result of his special assignment.

(f) A Kentucky distinguished educator shall not be assigned to a school or to a district assignment in the district in which he is employed.

Section 18. KRS 160.350 is amended to read as follows:

(1) After considering the recommendations of a screening committee, as provided in KRS 160.352, each board of education shall appoint a superintendent of schools whose term of office shall begin on July 1, following his appointment. The appointment may be for a term of no more than four (4) years. In the event a vacancy occurs in the office of superintendent prior to the expiration of the term set by the board, the term shall expire on the date the vacancy occurs. Therefore, the board may appoint a superintendent for a new term as provided in this subsection, which shall begin on the date of the superintendent's appointment, except when the vacancy occurs after a school board election and before the newly elected members take office. When a vacancy occurs during this period, the position shall not be filled until the new members take office, but the board may appoint an acting superintendent to serve a term not to exceed six (6) months. This appointment may be renewed once for a period not to exceed three (3) months. The person appointed to serve as acting superintendent shall not be an applicant for, nor be appointed to, the position of superintendent. If a vacancy occurs, a local board may also appoint an acting superintendent during the period the screening committee pursuant to KRS 160.352 conducts its business and prior to the actual appointment of the new superintendent. No superintendent shall resign his term and accept a new term from the same board of education prior to the expiration date of his present term. In the case of a vacancy in the office for an unexpired term, the board of education shall make the appointment so that the term will end on June 30. The board shall set the salary of the superintendent to be paid in regular installments.

(2) Before any superintendent assumes his duties, he shall present to the board of education that appointed him a statement signed by the chief state school officer that the superintendent has been duly issued a certificate of administration and supervision issued in accordance with the provisions of law and which qualifies him to hold the position to which he has been appointed, and he shall hold such certificate throughout the period of his employment. A superintendent candidate who is to begin his duties after June 30, 1994, shall successfully complete the training program and assessment center process within one (1) year of assuming his duties as superintendent. A superintendent shall not serve as director or officer of a bank, trust company, or savings or loan association which has his school district funds on deposit. Following appointment, the superintendent shall establish residency in Kentucky.

(3) A superintendent of schools may be removed for cause by a vote of four-fifths (4/5) of the membership of a board of education and upon approval by the chief state school officer. However, if the dismissal of the superintendent has been recommended by ***the members of a scholastic team or the***[~~a~~] Kentucky distinguished educator pursuant to KRS 158.6455 and the action is approved by the chief state school officer, the board shall terminate the superintendent's contract. Written notice setting out the charges for removal shall be spread on the minutes of the board and given to the

superintendent. The board shall seek approval by the chief state school officer for removing the superintendent. The chief state school officer shall investigate the accuracy of the charges made, evaluate the superintendent's overall performance during his appointment, and consider the educational performance of the students in the district. Within thirty (30) days of notification, he shall either approve or reject the board's request.

Section 19. KRS 161.790 is amended to read as follows:

(1) The contract of a teacher shall remain in force during good behavior and efficient and competent service by the teacher and shall not be terminated except for any of the following causes:

(a) Insubordination, including but not limited to violation of the school laws of the state or administrative regulations adopted by the Kentucky Board of Education or lawful rules and regulations established by the local board of education for the operation of schools, or refusal to recognize or obey the authority of the superintendent, principal, or any other supervisory personnel of the board in the performance of their duties;

(b) Immoral character or conduct unbecoming a teacher;

(c) Physical or mental disability;

(d) Inefficiency, incompetency, or neglect of duty, when a written statement identifying the problems or difficulties has been furnished the teacher or teachers involved.

(2) Charges under subsections (1)(a) and (1)(d) of this section shall be supported by a written record of teacher performance by the superintendent, principal, or other supervisory personnel of the district, except when the charges are brought as a result of a recommendation made by ***the scholastic audit team or*** a Kentucky distinguished educator under KRS 158.6455.

(3) No contract shall be terminated except upon notification of the board by the superintendent. Prior to notification of the board, the superintendent shall furnish the teacher with a written statement specifying in detail the charge against the teacher. The teacher may within ten (10) days after receiving the charge notify the chief state school officer and the superintendent of his intention to answer the charge, and upon failure of the teacher to give notice within ten (10) days, the dismissal shall be final.

(4) Upon receiving the teacher's notice of his intention to answer the charge, the chief state school officer shall appoint a three (3) member tribunal, consisting of one (1) teacher, one (1) administrator, and one (1) lay person, none of whom reside in the district, to conduct an administrative hearing in accordance with KRS Chapter 13B within the district. The chief state school officer shall name the chairman and set the date and time for the hearing. The hearing shall begin no later than forty-five (45) days after the teacher files the notice of intent to answer the charge.

(5) The hearing may be public or private at the discretion of the teacher. At the hearing, a hearing officer appointed by the chief state school officer shall preside with authority to rule on procedural matters, but the tribunal shall be the ultimate trier of fact. The local board shall pay each member of the tribunal a per diem of one hundred dollars ($100) and travel expenses.

(6) Upon hearing both sides of the case, the tribunal may by a majority vote render its decision or may defer its action for not more than five (5) days. Provisions of KRS Chapter 13B notwithstanding, the tribunal decision shall be a final order and may be rendered on the record.

(7) The superintendent may suspend the teacher pending final action to terminate the contract, if, in his judgment, the character of the charge warrants the action. If after the hearing the decision of the tribunal is against termination of the contract, the suspended teacher shall be paid his full salary for any period of suspension.

(8) The teacher shall have the right to make an appeal to the Circuit Court having jurisdiction in the county where the school district is located in accordance with KRS Chapter 13B.

(9) As an alternative to termination of a teacher's contract, the superintendent upon notifying the board and providing written notification to the teacher of the charge may impose other sanctions, including, suspension without pay, public reprimand, or private reprimand. The procedures set out in subsection (3) of this section shall apply, except to a private reprimand. The teacher may appeal the action of the superintendent, except a private reprimand, in the same manner as established in subsections (4) to (8) of this section. Upon completion of a suspension period, the teacher may be reinstated.

Section 20. Notwithstanding the provisions of Sections 1, 2, 12, 13, 14, 15, 16, and 17 of this Act to the contrary, the Kentucky Board of Education shall classify schools and districts based on the results for the 1994-98 accountability cycle according to the Kentucky Board of Education administrative regulations in force for the cycle on the effective date of this Act, except that the following rewards and consequences shall be applied:

(1) Thirty million dollars ($30,000,000) shall be paid out of the Kentucky successful schools trust fund under KRS 157.067. The Kentucky Board of Education shall determine an amount to be distributed to every school that exceeds its 1994-96 baseline in the 1996-98 school years and twice that amount to every school that exceeds its threshold level for school improvement. Rewards shall be given to the school's full-time, part-time, and itinerant instructional staff assigned to the school on the last working day of the accountability cycle unless a majority of the certified staff vote otherwise. Rewards shall not be

added to a staff person's based salary and shall not be defined as compensation for retirement purposes under KRS 161.220 (10);

(2) All schools failing to reach their school improvement goal shall develop a school improvement plan and may apply for Commonwealth school improvement funds; and

(3) All schools classified as "in decline" or "in crisis" may request the assistance of a distinguished educator to act only in an advisory capacity. No employee shall be placed on probation based on the school being designated "in crisis." Parents of students attending a school classified as "in crisis" may request to transfer their children to a successful school.

Section 21. Whereas it is imperative that the new assessment and accountability system be implemented as expeditiously as possible to better enable the General Assembly to carry out its constitutional duty to establish an efficient system of common schools, an emergency is declared to exist, and this Act shall take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

The Committee Substitute to **HB 627** is as follows:

AN ACT relating to education assessment and accountability, making an appropriation therefor, and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS 158.645 TO 158.805 IS CREATED TO READ AS FOLLOWS:

As used in this section and Sections 2, 7, 13, 14, 15, and 17 of this Act, unless the context requires otherwise:

(1) "Academic index" means the weighting and combining of data for assessments administered under subsection (2)(b) and (c) of Section 14 of this Act for each content area of writing, reading, mathematics, science, social studies, arts and humanities, and practical living and vocational studies and the longitudinal comparison under subsection (2)(e) of Section 14 of this Act.

(2) "Accountability biennium" means two (2) school years.

(3) "Accountability index" means the statistic that is the combination of a school's academic and nonacademic indices.

(4) "Commission" means the Legislative Research Commission.

(5) "Core content for assessment" means the content identified for all students to know that is to be included on the state assessment.

(6) "Expected growth" means the difference between one hundred (100), the goal for all schools in the 2018-2019 and 2019-2020 school years, and the school's accountability baseline based on the 1998-1999 and 1999-2000 school years, divided by ten (10) to establish a rewards threshold of school improvement for the ten (10) successive accountability bienniums.

(7) "Improving" means an accountability index that is less than the rewards threshold, but equal to or greater than the improving threshold.

(8) "Improving threshold" means a point on the accountability index scale for the accountability biennium set at seven (7) points below the rewards threshold.

(9) "In review" means an accountability index that is below the review threshold.

(10) "Nonacademic index" means the statistic that describes school success on:

(a) Increasing attendance and decreasing retention rates at the elementary school level;

(b) Increasing attendance rates and decreasing retention and dropout rates at the middle school level; and

(c) Increasing attendance rates, decreasing retention and dropout rates, and improving the transition to adult life at the secondary school level.

(11) "Not improving" means an accountability index that is equal to or greater than the review threshold, but less than the improving threshold.

(12) "Review threshold" means the accountability index for the accountability biennium set at five (5) points below the improving threshold.

(13) "Rewards threshold" means the accountability index score that describes the amount of expected growth required for a school during the accountability biennium.

SECTION 2. A NEW SECTION OF KRS 158.645 TO 158.805 IS CREATED TO READ AS FOLLOWS:

The Department of Education shall develop a plan for implementing the state assessment and accountability system created under Sections 14 and 15 of this Act and shall report quarterly to the Interim Joint Committee on Education on its progress in the following areas:

(1) Establishing a consistent structure of test components, grade-level testing distribution, and test administration

procedures;

(2) Beginning a new cycle of equating procedures for which their adequacy and precision can be tested rigorously and conducting appropriate equating analyses to accommodate the new accountability system;

(3) Resetting performance standards following established procedures to accompany the start of the new baseline;

(4) Publishing more complete and informative guides for interpreting school accountability index score changes that include information about the estimated error of the accountability index, as well as information about the connections between index score changes and estimated changes in student performance levels;

(5) Reviewing the basis of "reward" and "in review" school accountability classifications to assure their construct validity in all cases where they are applied;

(6) Maintaining and strengthening the annual audit of portfolio scores in ways that serve to minimize the differences between teacher-produced scores and audit-generated scores;

(7) Developing and implementing a validity research plan as required under Section 14 of this Act;

(8) Establishing additional routine audits of key processes in the assessment and accountability program;

(9) Maintaining and cataloging a library of technical documents related to the assessment and accountability program for internal and external review purposes. In addition, the department shall produce an annual technical report for audiences that include educators, testing coordinators, parents, and legislators; and

(10) Maintaining a vigorous ongoing program of research and documentation of the effects of the assessment and accountability system on Kentucky schools.

SECTION 3. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) A permanent subcommittee of the Commission to be known as the Education Assessment and Accountability Review Subcommittee is hereby created. The subcommittee shall be composed of eight (8) members, no more than five (5) of whom shall be members of the same political party. The Commission shall appoint from the membership of the General Assembly, the members of the subcommittee for terms of two (2) years, and the members so appointed shall elect one (1) of their number to serve as chair. Any vacancy that may occur in the membership of the subcommittee shall be filled by the Commission at its next regularly scheduled meeting after the occurrence of the vacancy.

(2) The subcommittee shall review administrative regulations and advise the Kentucky Board of Education concerning the implementation of the state system of assessment and accountability, established in Sections 14, 15, and 17 of this Act.

(3) The subcommittee shall meet at a time and place as the chair may determine. The members of the subcommittee shall be compensated for attending meetings as provided in KRS 7.090.

(4) Any professional, clerical, or other employees required by the subcommittee shall be provided in accordance with the provisions of KRS 7.090.

SECTION 4. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

The review of administrative regulations promulgated by the Kentucky Board of Education under the authority granted by Sections 14, 15, and 17 of this Act shall comply with the provisions of Section 5 of this Act and KRS Chapter 13A.

SECTION 5. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) Within forty-five (45) days after publication of an administrative regulation in "The Administrative Register" or within forty-five (45) days of the receipt of a statement of consideration, the subcommittee shall meet to review the administrative regulation.

(2) The meetings shall be open to the public.

(3) Public notice of the time, date, and place of the subcommittee meeting shall be given in The Administrative Register.

(4) A representative of the administrative body promulgating the administrative regulation under consideration shall be present to explain the administrative regulation and to answer questions thereon. If a representative of the administrative body with authority to amend the administrative regulation is not present at the subcommittee meeting, the administrative regulation shall be deferred to the next regularly scheduled meeting of the subcommittee.

(5) Following the meeting and before the next regularly scheduled meeting of the Commission, the subcommittee shall forward to the Commission its findings, recommendations, or other comments it deems appropriate in writing. The subcommittee shall also forward to the Commission its findings, recommendations, or other comments it deems appropriate on an existing administrative regulation it has reviewed. One (1) copy shall be sent to the promulgating agency. The subcommittee's findings shall be published in The Administrative Register.

(6) (a) After review by the subcommittee, the Commission shall at its next regularly scheduled meeting assign the matter as appropriate to the Interim Joint Committee on Education, the Senate standing Education

Committee, the House standing Education Committee, or the Senate and the House standing committees meeting jointly.

(b) Upon notification of the assignment by the Commission, the Education Committee shall notify the regulations compiler:

1. Of the date, time, and place of the meeting at which it will consider the matter; or

2. That it will not meet to consider the matter.

(7) Within thirty (30) days of the assignment, the Education Committee when it plans to consider an administrative regulation shall hold a public meeting during which the regulation shall be reviewed. If the thirtieth day of the assignment falls on a Saturday, Sunday, or holiday, the deadline for review shall be the workday following the Saturday, Sunday, or holiday. The committee may also review an existing administrative regulation and make a determination as provided by KRS 13A.030(2) and (3). Notice of the time, date, and place of the meeting shall be placed in the legislative calendar.

(8) An administrative body shall comply with subsection (4) of this section.

(9) The Education Committee shall be empowered to make the same nonbinding determinations and to exercise the same authority as the subcommittee as provided in KRS 13A.030(2) and (3).

(10) (a) Upon adjournment of the meeting at which the Education Committee has considered an administrative regulation pursuant to subsection (7) of this section, the committee shall inform the regulations compiler of its findings, recommendations, or other action taken on the administrative regulation.

(b) Following the meeting and before the next regularly scheduled meeting of the Commission, the committee shall forward to the Commission its findings, recommendations, or other comments it deems appropriate in writing. One (1) copy shall be sent to the promulgating agency. The subcommittee's findings shall be published in The Administrative Register.

SECTION 6. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

A School Curriculum, Assessment, and Accountability Council is hereby created to study, review, and make recommendations concerning Kentucky's system of setting academic standards, assessing learning, holding schools accountable for learning, and assisting schools to improve their performance. The council shall advise the Kentucky Board of Education and the Commission on issues related to developing and communicating the academic expectations and core content for assessment and the development and implementation of the statewide assessment and accountability program, distributing of rewards and sanctions, and assisting schools to improve their performance under Sections 14, 15, 16, and 17 of this Act in accordance with the following:

(1) The School Curriculum, Assessment, and Accountability Council shall be composed of fifteen (15) voting members appointed by the Governor. On making appointments to the council, the Governor shall assure broad geographical representation and representation of elementary, middle, and secondary school levels, assure equal representation of the two (2) sexes, inasmuch as possible, and assure that appointments reflect the minority racial composition of the Commonwealth. The members shall serve terms of two (2) years with no member serving more than two (2) consecutive terms, except that seven (7) of the initial appointments shall be for four (4) year terms. The members shall be appointed as follows:

(a) Two (2) parents from recommendations submitted by organizations representing school councils and parents;

(b) Two (2) teachers from recommendations submitted by organizations representing teachers;

(c) Two (2) superintendents from recommendations submitted by organizations representing superintendents;

(d) Two (2) principals from organizations representing school administrators;

(e) Two (2) local school board members from recommendations submitted by organizations representing school boards;

(f) Two (2) school district assessment coordinators from recommendations submitted by organizations representing district assessment coordinators;

(g) Two (2) university professors with expertise in assessment and measurement; and

(h) One (1) at-large member.

(2) The School Curriculum, Assessment, and Accountability Council shall elect a chair annually from its membership.

(3) The members shall be remunerated for actual and necessary expenses incurred while attending meetings of the council or while serving as representative of the council.

(4) The School Curriculum, Assessment, and Accountability Council shall meet at least four (4) times each year at times and places as it determines by resolution.

(5) The School Curriculum, Assessment, and Accountability Council shall be attached to the Department of Education

for administrative purposes. It shall be provided appropriate staff and resources to conduct its work.

SECTION 7. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

The Commission shall appoint a National Technical Advisory Panel on Assessment and Accountability composed of no fewer than three (3) professionals with a variety of expertise in education testing and measurement. The panel shall advise the Commission, and upon approval of the director of the Commission, the Kentucky Board of Education and the Department of Education, in the implementation of Sections 14, 15, and 17 of this Act. The commission is authorized to contract for the services and expenses of the panel members.

Section 8. KRS 13A.030 is amended to read as follows:

(1) The Administrative Regulation Review Subcommittee shall:

(a) Conduct a continuous study as to whether additional legislation or changes in legislation are needed based on various factors, including but not limited to, review of new, emergency, and existing administrative regulations, the lack of administrative regulations, and the needs of administrative bodies;

(b) ***Except as provided by Sections 4 and 5 of this Act,*** review and comment upon administrative regulations submitted to it by the Commission;

(c) Make recommendations for changes in statutes, new statutes, repeal of statutes affecting administrative regulations or the ability of administrative bodies to promulgate them; and

(d) Conduct such other studies relating to administrative regulations as may be assigned by the Commission.

(2) The subcommittee may make a nonbinding determination:

(a) That an administrative regulation:

1. Is wrongfully promulgated;

2. Appears to be in conflict with an existing statute;

3. Appears to have no statutory authority for its promulgation;

4. Appears to impose stricter or more burdensome state requirements than required by the federal mandate, without reasonable justification;

5. Fails to use tiering when tiering is applicable;

6. Is in excess of the administrative body's authority; or

7. Appears to be deficient in any other manner;

(b) That an administrative regulation is needed to implement an existing statute;

(c) That an administrative regulation should be amended or repealed.

(3) The subcommittee may require any administrative body to submit data and information as required by the subcommittee in the performance of its duties under this chapter, and no administrative body shall fail to provide the information or data required.

Section 9. KRS 13A.290 is amended to read as follows:

(1) ***Except as provided by Sections 4 and 5 of this Act,*** within forty-five (45) days after publication of an administrative regulation in "The Administrative Register," or within forty-five (45) days of the receipt of a statement of consideration, the Administrative Regulation Review Subcommittee shall meet to review the administrative regulation.

(2) The meetings shall be open to the public.

(3) Public notice of the time, date, and place of the Administrative Regulation Review Subcommittee meeting shall be given in the Administrative Register.

(4) A representative of the administrative body promulgating the administrative regulation under consideration shall be present to explain the administrative regulation and to answer questions thereon. If a representative of the administrative body with authority to amend the administrative regulation is not present at the subcommittee meeting, the administrative regulation shall be deferred to the next regularly-scheduled meeting of the subcommittee.

(5) Following the meeting and before the next regularly-scheduled meeting of the Commission, the Administrative Regulation Review Subcommittee shall forward to the Commission its findings, recommendations, or other comments it deems appropriate in writing. The Administrative Regulation Review Subcommittee shall also forward to the Commission its findings, recommendations, or other comments it deems appropriate on an existing administrative regulation it has reviewed. One (1) copy thereof shall be sent to the promulgating agency. The Administrative Regulation Review Subcommittee's findings shall be published in the Administrative Register.

(6) (a) After review by the Administrative Regulation Review Subcommittee, the Commission shall, at its next regularly-scheduled meeting, assign the matter to a subcommittee of appropriate jurisdiction over the subject matter.

(b) Upon notification of the assignment by the Commission, the legislative subcommittee to which the matter is assigned shall notify the regulations compiler:

1. Of the date, time, and place of the meeting at which it will consider the matter; or

2. That it will not meet to consider the matter.

(7) Within thirty (30) days of the assignment, the subcommittee shall hold a public meeting during which the regulation shall be reviewed. If the thirtieth day of the assignment falls on a Saturday, Sunday, or holiday, the deadline for review shall be the workday following the Saturday, Sunday, or holiday. The subcommittee may also review an existing administrative regulation and make a determination as provided by KRS 13A.030(2) and (3). Notice of the time, date, and place of the meeting shall be placed in the legislative calendar.

(8) An administrative body shall comply with subsection (4) of this section.

(9) The subcommittee shall be empowered to make the same nonbinding determinations and to exercise the same authority as the Administrative Regulation Review Subcommittee as provided in KRS 13A.030(2) and (3).

(10) (a) Upon adjournment of the meeting at which a legislative subcommittee has considered an administrative regulation pursuant to subsection (7) of this section, the subcommittee shall inform the regulations compiler of its findings, recommendations, or other action taken on the administrative regulation.

(b) Following the meeting and before the next regularly-scheduled meeting of the Commission, the subcommittee shall forward to the Commission its findings, recommendations, or other comments it deems appropriate in writing. One (1) copy thereof shall be sent to the promulgating agency. The subcommittee's findings shall be published in the Administrative Register.

Section 10. KRS 156.095 is amended to read as follows:

(1) The Kentucky Board of Education shall establish, direct, and maintain a statewide program of professional development to improve instruction in the public schools.

(2) Each local school district superintendent shall appoint a certified school employee to fulfill the role and responsibilities of a professional development coordinator. The manner of appointment, qualifications, and duties of the professional development coordinator shall be as established by Kentucky Board of Education regulations.

(3) The Kentucky Board of Education shall provide an annual training program for local school district professional development coordinators. The training program may include, but not be limited to, the demonstration of various approaches to needs assessment; instruction in methods to involve both teachers and administrators in actively planning, delivering, and evaluating programs; presenting options for meeting professional development needs, especially through individualized programs; and identification of resources needed for quality, motivational professional development programs.

(4) The Kentucky Board of Education shall provide for a series of state sponsored, professional development programs for certified personnel throughout the Commonwealth. Professional development shall ***be consistent with current standards and best practice. Activities shall include but not be limited to***[~~focus on the following areas during the 1990-91 and 1991-92 school years~~]:

(a) ***Exposure to research-based instructional practices that promote academic achievement for students with different learning needs at the elementary, middle, and high school levels***[~~The Kentucky Education Reform Act of 1990~~];

(b) ***Information about instructional materials, academic content, demonstration projects, and successful model programs including instructional uses of technology***[~~School-based decision making~~];

(c) ***Training in assessment strategies, including strategies to integrate writing portfolio entry development with content instruction***[~~Performance-based student assessment~~]; ***and***

(d)[~~Nongraded primary programs;~~

~~(e) Research-based instructional practices;~~

~~(f) Instructional uses of technology; and~~

~~(g)~~] Effective awareness and sensitivity training so teachers can motivate and nurture students of diverse cultures.

(5) The Department of Education shall ***assure that***[~~provide~~] professional development activities ***are offered*** at times and locations which are convenient for school personnel.[~~During the 1990-91 and 1991-92 school years, school districts shall use the four (4) days designated for professional development in KRS 158.070 to acquire skills and knowledge in the areas listed in subsection (4) of this section. The master professional development plan shall reflect the districts' choices from the required areas for the 1990-91 and 1991-92 school years. A district's master professional development plan which has been developed in conjunction with the district improvement plan pursuant to KRS 158.685, shall be exempt from the requirements of this subsection~~].

(6) Local school districts with an enrollment of twenty thousand (20,000) or more students shall be exempt from the

requirements of this section if they meet the standards for professional development established by the Kentucky Board of Education.

Section 11. KRS 156.132 is amended to read as follows:

As used in this section, except subsection (1), "public school officer" means a person who previously served as a superintendent of schools or board member during which time charges were brought against him under this section.

(1) The chief state school officer shall recommend, by written charges to the proper school authorities having immediate jurisdiction, the removal of any superintendent of schools, principal, teacher, member of a school council, or other public school officer as to whom he has reason to believe is guilty of immorality, misconduct in office, incompetency, willful neglect of duty, or nonfeasance. In the case of a member of a school council, the written charges shall be provided to the local board of education.

(2) The chief state school officer shall recommend by written charges the suspension by the Kentucky Board of Education of any district board member, superintendent of schools, or other public school officer whom he has reason to believe is guilty of immorality, misconduct in office, incompetency, willful neglect of duty, nonfeasance, or who shall be removed pursuant to KRS 158.6455[~~(7)~~]. If the charges brought under this subsection represent an immediate threat to the public health, safety, or welfare, the Kentucky Board of Education shall summarily suspend the person against whom the charges are made. The action by the Kentucky Board of Education may be taken upon a recommendation of the chief state school officer, or the action may be taken by a majority vote of the Kentucky Board of Education without recommendation from the chief state school officer.

(3) The Kentucky Board of Education may suspend a district superintendent of schools or other public school officer under subsection (2) of this section or remove him pursuant to subsection (5) of this section only if, after thirty (30) days of receipt of the written charges specified in subsection (1) of this section, the proper school authorities having immediate jurisdiction, either the superintendent or the district board of education, have refused to act, have acted in bad faith, arbitrarily, or capriciously, or if a recommendation to the district board would have been futile.

(4) Any officer suspended by the Kentucky Board of Education under subsection (2) of this section shall be furnished with an emergency order specifying in detail the reasons for suspension and notifying the officer of his right to appeal the action and have an emergency hearing pursuant to KRS 13B.125.

(5) As an alternative to first seeking suspension, the chief state school officer may recommend by written charges the removal by the Kentucky Board of Education of any district board member, superintendent of schools, or other public school officer whom he has reason to believe is guilty of immorality, misconduct in office, incompetency, willful neglect of duty, or nonfeasance, or who shall be removed pursuant to KRS 158.6455[~~(7)~~]. The officer against whom the written charges are issued by the chief state school officer shall be furnished with the written charges and notice of procedural rights conferred under KRS Chapter 13B. Within twenty (20) days after receipt of the charges, the officer may notify the Kentucky Board of Education of his intention to appear and answer the charges. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B. If the officer fails to notify the board of his intention to appear and answer the charges, the Kentucky Board of Education may remove the officer by a majority vote, and the dismissal shall be final.

(6) The hearing shall be public or private at the discretion of the accused former or current superintendent and shall be public when testimony is taken for board members.

(7) The Kentucky Board of Education may meet in closed session to consider the evidence and may by a majority vote remove the officer. If the board votes to remove the officer, the board shall prepare final order specifying which charge or charges it found to be the basis for removal. If within ninety (90) days from the date of suspension if applicable, the state board has not removed the officer, or has dismissed the charges, the suspended officer shall be reinstated and shall be paid his full salary for the period of suspension.

(8) The officer shall have a right to appeal on the record to the Circuit Court located in the county of the school district in accordance with KRS Chapter 13B. If the decision of the court is against removal, the officer shall be paid his full salary from the date of suspension. The payment shall be made from funds appropriated to the State Department of Education.

(9) If a superintendent of schools is removed from office or resigns while charges are pending pursuant to this section after July 15, 1994, any continuing contract pursuant to KRS 161.720 to 161.810 shall be terminated. If the removal is reversed upon appeal, the continuing contract shall be restored and he shall be paid his full salary for the period of suspension.

Section 12. KRS 156.160 is amended to read as follows:

(1) With the advice of the Local Superintendents Advisory Council, the Kentucky Board of Education shall promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. These regulations shall comply with the expected outcomes for students and schools set forth in KRS 158.6451. Administrative regulations shall be promulgated for the following:

(a) Courses of study for the different grades and kinds of common schools ***identifying the common curriculum content directly tied to the goals, outcomes, and assessment strategies developed under KRS 158.645,***

158.6451, and Section 14 of this Act and distributed to local school districts and schools. They shall include[~~, subject to~~] the following[~~ conditions~~]:

1. a. Procedures for developing an ungraded primary program as defined in KRS 158.030 which shall be implemented by the beginning of the 1992-93 school year, and the program, in its entirety, shall be fully implemented for all students who have not entered the fourth grade in every elementary school in every district by the beginning of the 1993-1994 school year, except as provided in subparagraph 1.b. of this paragraph. The primary program shall include the following critical attributes: developmentally appropriate educational practices, multiage and multiability classrooms; continuous progress; authentic assessment; qualitative reporting methods; professional teamwork; and positive parent involvement. The implementation of the primary program may take into consideration the necessary arrangements required for students attending part-time and will allow for grouping of students attending their first year of school when determined to be developmentally appropriate.

b. A school council established pursuant to KRS 160.345 or if none exists, a school may determine, based on individual student needs, that implementing multiage and multiability classrooms need not apply for every grouping of students for every activity throughout the entire day. The school council or school shall revise the action plan to reflect any changes in the primary program's design.

2. The courses of study for students shall include American sign language which shall be accepted as meeting the foreign language requirements in common schools notwithstanding other provisions of law;

(b) The acquisition and use of educational equipment for the schools as recommended by the Council for Education Technology;

(c) The minimum requirements for high school graduation[~~. Prior to the beginning of the 1994-95 school year, the State Board for Elementary and Secondary Education shall review graduation requirements~~] in light of the expected outcomes for students and schools set forth in KRS 158.6451***. Student scores from any assessment conducted under Section 14 of this Act that are valid and reliable at the individual level shall be included on the student transcript***;

(d) Taking, and keeping a school census, and the forms, blanks, and software to be used in taking and keeping the census and in compiling the required reports. The board shall create a statewide student identification numbering system based on students' Social Security numbers. The system shall provide a student identification number similar to, but distinct from, the Social Security number, for each student who does not have a Social Security number or whose parents or guardians choose not to disclose the Social Security number for the student;

(e) Sanitary and protective construction of public school buildings, toilets, physical equipment of school grounds, school buildings, and classrooms. With respect to physical standards of sanitary and protective construction for school buildings, the Kentucky Board of Education shall adopt the Uniform State Building Code;

(f) Medical inspection, physical and health education and recreation, and other regulations necessary or advisable for the protection of the physical welfare and safety of the public school children. The administrative regulations shall set requirements for student health standards to be met by all students in grades four (4), eight (8), and twelve (12) pursuant to the outcomes described in KRS 158.6451. The administrative regulations shall permit a student who received a physical examination no more than six (6) months prior to his initial admission to Head Start to substitute that physical examination for the physical examination required by the Kentucky Board of Education of all students upon initial admission to the public schools, if the physical examination given in the Head Start program meets all the requirements of the physical examinations prescribed by the Kentucky Board of Education;

(g) The transportation of children to and from school;

(h) The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine;

(i) The preparation of budgets and salary schedules for the several school districts under the management and control of the Kentucky Board of Education;

(j) A uniform series of forms and blanks, educational and financial, including forms of contracts, for use in the several school districts; and

(k) The disposal of real and personal property owned by local boards of education.

(2) (a) At the request of a local board of education or a school council, a local school district superintendent shall request that the Kentucky Board of Education waive any administrative regulation promulgated by that board. Beginning in the 1996-97 school year, a request for waiver of any administrative regulation shall be submitted to the Kentucky Board of Education in writing with appropriate justification for the waiver. The Kentucky Board of

Education may approve the request when the school district or school has demonstrated circumstances that may include, but are not limited to, the following:

1. An alternative approach will achieve the same result required by the administrative regulation;
2. Implementation of the administrative regulation will cause a hardship on the school district or school or jeopardize the continuation or development of programs; or
3. There is a finding of good cause for the waiver.

(b) Regulations relating to health and safety, civil rights, any state regulation required by a federal law, and regulations promulgated pursuant to KRS 158.6451, 158.6453, 158.6455, 158.685, and this section, relating to measurement of performance outcomes and determination of successful districts or schools shall not be subject to waiver.

(c) Any waiver granted under this subsection shall be subject to revocation upon a determination by the Kentucky Board of Education that the school district or school holding the waiver has subsequently failed to meet the intent of the waiver.

(3) Any private, parochial, or church school may voluntarily comply with curriculum, certification, and textbook standards established by the Kentucky Board of Education and be certified upon application to the board by such schools.

Section 13. KRS 157.067 is amended to read as follows:

(1) To carry out the purpose of rewarding successful schools as provided in KRS Chapter 158, the Kentucky successful schools trust fund is hereby established in the Finance and Administration Cabinet. Funds appropriated by the General Assembly in each biennial budget for payments of rewards to successful schools shall be credited to the fund and invested until needed for payments to successful schools. All interest earned on moneys in the funds shall be retained in the fund for reinvestment.

(2) ~~[Upon certification of eligibility by the Kentucky Board of Education,]~~The Finance and Administration Cabinet shall issue a warrant and the State Treasurer shall issue a check to the ***school district on behalf of the*** eligible school ***when the following conditions have been met:***

(a) The Kentucky Board of Education has determined that the data analyses, which included the effects of task sampling, indicate a high level of confidence in the dependability of accountability decisions to assure that according to accepted psychometric standards, and that it is statistically unlikely that a school or district that truly has a decrease in student performance will receive a reward or that a school or district that truly has improved student performance will be classified as "not improving" or "in review". The Kentucky Board of Education shall seek the advice of the Office of Education Accountability, the School Curriculum, Assessment, and Accountability Council, and the National Technical Panel on Assessment and Accountability before making its determination; and

(b) The Kentucky Board of Education certifies that the school is eligible to receive the reward.

(3) All moneys credited to the fund, including interest, shall be used only for payments to eligible schools and shall not lapse, but shall be carried forward in the next biennial budget.

Section 14. KRS 158.6453 is amended to read as follows:

(1) The Kentucky Board of Education shall be responsible for creating and implementing a statewide, primarily performance-based assessment program to ensure school accountability for student achievement of the goals set forth in KRS 158.645 ***and KRS 158.6451. The board shall seek the advice of the Office of Education Accountability, the School Curriculum, Assessment, and Accountability Council, and the National Technical Advisory Panel on Assessment and Accountability***. The statewide assessment program shall not include measurement of a student's ability to become a self-sufficient individual or to become a responsible member of a family, work group, or community.~~[The program shall be implemented as early as the 1993-94 school year but no later than the 1995-96 school year. The board shall also be responsible for administering an interim testing program to assess student skills in reading, mathematics, writing, science, and social studies in grades four (4), eight (8), and twelve (12). The tests shall be designed to provide the state with national comparisons and shall be the same as, or similar to those used by the National Assessment of Educational Progress. The interim testing program shall begin during the 1991-92 school year and shall be administered to a sample of students representative of each school and the state as a whole. The test scores shall be used, along with other factors described in KRS 158.6451, to establish a baseline for determining school success during the 1993-94 school year.]~~

(2) ***The assessment program shall be designed in accordance with current standards for educational and psychological testing. It shall include the following components:***

(a) A secure, customized, nationally normed or standards-based multiple-choice test obtained from a commercial publisher in reading and mathematics that matches Kentucky's current core content for assessment and provides normative data that is valid and reliable for individual students in elementary, middle, and high

school;

(b) Open-response and multiple-choice items to assess student skills in reading, mathematics, science, social studies, arts and humanities, and practical living and vocational studies; and an on-demand assessment of student writing.

1. These assessments shall be derived from the core content for assessment identified by the Department of Education for the 1997-98 school year. Any revisions to the core content for assessment shall be made through a public process involving parents; educators at the elementary, secondary, and postsecondary education levels; professional education advocacy groups and organizations; and business and civic leaders, and shall be distributed to all public schools.

2. Kentucky teachers shall have a significant role in their development;

(c) Writing portfolios consisting of samples of student work. The writing portfolio shall not require more than four (4) pieces of student work. The Kentucky Board of Education shall seek the advice of the Writing Advisory Committee for strategies to reduce the teacher and student time involved in preparing a writing portfolio that may include limiting the number of revisions or the time spent preparing a single entry, or collecting entries at different grade levels;

(d) Performance assessment events for schools that have students enrolled in performing arts organizations sponsoring sanctioned events with an established protocol for adjudication; and

(e) A technically sound longitudinal comparison of the assessment results for the same students~~[Upon July 13, 1990, the state board shall contract with three (3) or more authorities in the field of performance assessment to design the specifications for the interim and full-scale statewide assessment development effort. The bid specifications shall include requirements that the successful bidder:~~

~~(a) Direct the development of the interim and full-scale assessment program; and~~

~~(b) Direct the development of the formula to be used to determine successful schools pursuant to KRS 158.6455.~~

~~The assessment authorities shall review the bids and make a recommendation to the board. The authorities shall have no pecuniary interest with the successful bidder]~~.

(3) *The assessments shall be designed to:*

(a) Measure core academic content, basic skills, and higher-order skills;

(b) Provide valid and reliable scores for schools and for students, when scores are reported for students individually;

(c) Minimize the time spent by teachers and students on assessment;

(d) Distribute the subjects assessed among different grade levels as determined by the Kentucky Board of Education; and

(e) Be scored by the teachers, parents, and citizens of Kentucky.

(4) Results from the state assessment under this section shall be reported to the school districts and schools by September of the following school year.

(5) The Department of Education shall gather information to establish the validity of the assessment and accountability program. It shall develop a biennial plan for validation activities that shall include, but not be limited to, the match of testing material to the academic expectations and the core content for assessment, the consistency of student results across multiple measures, the congruence of school scores with documented improvements in instructional practice and school learning environment, and the potential for all scores to yield fair, consistent, and accurate student performance level and school accountability decisions. Validation activities shall take place in a timely manner and shall include a review of the accuracy of scores assigned to students and schools, as well as of the testing materials. The plan shall be submitted to the Interim Joint Committee on Education by September 1 of the first year of each biennium. Quarterly reports shall be submitted as required under Section 2 of this Act and a summary of the findings shall be submitted not later than September 1 of the second year of the biennium.

(6) In addition to statewide testing for the purpose of determining school success, the board shall have the responsibility of assisting local school districts and schools in developing and using continuous assessment strategies needed to assure student progress. *The continuous assessment shall provide diagnostic information to improve instruction and meet the needs of individual students.*

(7)~~[(4)]~~ *The Kentucky Board of Education shall promulgate an administrative regulation in conformity with the provisions of Sections 4 and 5 of this Act, and KRS Chapter 13A establishing the components of a school report card to clearly communicate with parents and the public about school performance. The school report card shall be sent to the parents of the students of the district and a summary of the results for the district shall be published in the newspaper with the largest circulation in the county. It shall include, but not be limited to, the following components*

reported by race, gender, and disability when appropriate:

(a) Student academic achievement including the results from each of the assessments administered under this section;

(b) Nonacademic achievement including the school's attendance, retention, dropout rates, and student transition to adult life; and

(c) School learning environment including measures of parental involvement and school safety~~[By October 1 of each year, local boards of education shall publish in the newspaper with the largest circulation in the county an annual performance report on district accomplishments and activities pertaining to performance goals including, but not limited to, retention rates and student performance, the districts' goals for the succeeding year, and other items as may be set forth in Kentucky Board of Education administrative regulations]~~.

Section 15. KRS 158.6455 is amended to read as follows:

It is the intent of the General Assembly that schools succeed with all students and receive the appropriate consequences in proportion to that success.

(1) ***After receiving the advice of the Office of Education Accountability, the School Curriculum, Assessment, and Accountability Council, and the National Technical Advisory Panel on Assessment and Accountability,*** the Kentucky Board of Education shall promulgate administrative regulations ***in conformity with the provisions of Sections 4 and 5 of this Act, and KRS Chapter 13A*** to establish a system of determining successful schools and dispensing appropriate rewards. The system shall be based on the following:

(a) A school shall be the unit of measure to determine success;

(b) School success shall be determined by measuring a school's improvement over a two (2) year period;

(c) A school shall be rewarded for an increased proportion of successful students, including those students who are at risk of school failure;

(d) ***The Kentucky Board of Education shall establish the expected growth in***~~[A threshold level for]~~ school improvement ***for each school with a rewards threshold, an improving threshold, and a review threshold set for each accountability biennium through the school year 2020. The board shall not establish a new improving or review threshold for a school or district classified as "in review" under subsection (5) or (8) of this section more than two (2) times through the school year 2020***~~[shall be established by the board to determine the amount of success needed for a school to receive a reward. The threshold definition shall establish the percentage of increase required in a school's percentage of successful students as compared to a school's present proportion of successful students, with consideration given to the fact that a school closest to having one hundred percent (100%) successful students will have a lower percentage increase required]~~;

(e) ***A school shall be classified as "reward" if its accountability index is equal to or greater than the rewards threshold for the accountability biennium. A school classified as "reward" shall not receive a financial award unless the school's dropout rate is less than six percent (6%). Distribution of rewards to local schools shall be based on policy established by the Kentucky Board of Education.*** Rewards shall be given to the~~[school on behalf of the]~~ full-time, part-time, and itinerant instructional staff ***assigned to the school on the last working day of the accountability biennium unless a majority of the certified staff vote otherwise. Rewards shall not be added to a staff person's base salary and shall not be defined as compensation for retirement purposes under KRS 161.220(10)***~~[of a school who generate the reward when the school achieves at least one percent (1%) gain over its threshold as defined in paragraph (d) of this subsection]~~. Substitute teachers shall not be used in calculating the reward;

(f) ~~[Rewards shall be calculated by applying the percentage set by the General Assembly in the biennial budget to the current annual salary of each certified staff person employed in the school on the last working day of the year of the reward. The reward for part time and itinerant staff shall be calculated for the proportion of time spent in the school. In determining the percentage to be applied to a school for calculation of the rewards for the school's staff, consideration shall be given to the fact that schools already having a high percentage of successful students shall have a lower requirement for a percentage increase in its number of successful students. The staff person's identity in connection to his share of the reward shall be maintained when his share of the reward is deposited to the school's account;~~

~~(g) The certified staff members shall by majority rule collectively decide on the ways the reward funds shall be spent. Each individual staff person shall use the amount he earned in accordance with the decisions made by the total staff. Rewards shall not be added to a staff person's base salary and shall not be defined as compensation for retirement purposes under KRS 161.220(10); and~~

~~(h)]~~The Department of Education shall send the school's reward to the local district office for transmittal to the school ***staff; and*** *(g) The Kentucky Board of Education shall identify reports and paperwork requirements from which schools classified in reward shall be exempt*.

(2) *After receiving the advice of the Office of Education Accountability, the School Curriculum, Assessment, and Accountability Council, and the National Technical Advisory Panel on Assessment and Accountability,* the Kentucky Board of Education shall adopt by administrative regulation *in conformity with the provisions of Sections 4 and 5 of this Act, and KRS Chapter 13A* the formula *for a school accountability index*[~~to be used~~] to *classify*[~~determine successful~~] schools *every two (2) years based on whether they have met or exceeded their expected growth in student achievement for the 2002-2004 accountability biennium through the 2012-2014 accountability biennium*. The formula shall *include academic and nonacademic*[~~be a calculus of~~] factors which reflect the school goals described in KRS 158.6451, except there shall be no measurement of the goals included in subsection (1)(b)3. and (1)(b)4.

(3) A school that *is classified as "improving"*[~~does not reach its threshold level as defined in paragraph (d) of subsection (1) of this section but maintains the previous proportion of successful students~~] shall be required to develop a school improvement plan and shall be eligible to receive funds from the school improvement fund pursuant to KRS 158.805.[~~A school that does not reach its threshold level but maintains the previous proportion of successful students after the second biennial review shall be required to meet the provisions of subsection (4) of this section.~~]

(4) A school *that is classified as "not improving"*[~~in which the proportion of successful students declines by less than five percent (5%)~~] shall be required to develop a school improvement plan, shall be eligible to receive funds from the school improvement fund, and shall have *the assistance of*[~~one (1) or more~~] Kentucky distinguished educators assigned to the school to carry out the duties as described in KRS 158.782.[~~If the school does not meet its original threshold after the next biennial review or after the 1996-98 biennial review, whichever is later, the school shall be subject to the requirements of subsection (5) of this section.~~]

(5) *(a)* A school *that meets the criteria for being classified as*[~~in which the proportion of successful students declines by five percent (5%) or more in any biennium beginning with the 1994-96 biennium shall be declared by the Kentucky Board of Education to be a~~] "*in review*[~~school in crisis.~~]"[~~When a school is declared to be a "school in crisis," the following actions~~] shall be [~~required:~~]*subject to a scholastic audit as provided in paragraph (b) of this subsection.*

(b) After receiving the advice of the Office of Education Accountability, the School Curriculum, Assessment, and Accountability Council, and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate an administrative regulation in conformity with the provisions of Sections 4 and 5 of this Act, and KRS Chapter 13A establishing the guidelines for conducting a scholastic audit, which shall include the process for:

1. Appointing and training team members. The team shall include at least a distinguished educator, a teacher, a principal or other local district administrator, a parent, and a university faculty member. Members of the scholastic audit team shall be given release time from their respective school districts. The Department of Education shall reimburse the audit team member's school district for the employee's salary and pay the team member an additional amount for participating in the process;

2. Reviewing a school's learning environment, efficiency, and academic performance of students;

3. Evaluating each certified staff member assigned to the school. Only certified members of the audit team shall evaluate personnel. The evaluation shall indicate whether subsequent evaluations other than those conducted by the district under KRS 156.101 are necessary. If the initial evaluation of a certified staff member is unsatisfactory:

a. The team shall recommend a subsequent evaluation or evaluations to begin no sooner than sixty (60) days. The recommendation shall identify any problem areas and professional development activities to address the areas of concern. No certified staff shall have their contract terminated under KRS 161.790 based on results of the initial team evaluation;

b. The certified employee may choose whether to have subsequent evaluations conducted by the certified members of the scholastic audit team or the assisting distinguished educator assigned to the school. The employee shall not be subject to the district evaluation conducted under KRS 156.101 during this period; and

4. Recommending that the Kentucky Board of Education classify the school as "not improving" or "in review".

(c) A school that is classified as "in review" shall be subject to the following actions:

[~~(a) The full-time and part-time certified staff of that school shall be placed on probation;~~]

1.[~~(b)~~] The principal shall immediately notify the students' parents of the students' right to transfer to a successful school, with procedures for initiating the request;

2.~~[(c)]~~ Within thirty (30) days after the declaration by the state board under this subsection or no later than thirty (30) days before the start of the next school year, whichever is later, any student in that school may request and shall be allowed to transfer to a successful school as determined under the provisions of subsection (2) of this section. The superintendent shall select the receiving successful school in the home district or make arrangements with a neighboring district. If two (2) districts cannot agree, the superintendent of the student's resident district shall request the Kentucky Board of Education to resolve the issue and make a decision on the placement of the student within thirty (30) days of the request. The board of the district in which the student resides shall be responsible for all tuition and transportation costs incurred as a result of a student transferring from a "***in review***~~[school in crisis]~~" to a successful school. If a decline in student enrollment causes overstaffing at the "***in review***~~[school in crisis]~~," personnel shall be reduced or transferred pursuant to KRS 161.760 and 161.800***;***~~[.]~~

3.~~[(d)]~~ One (1) or more Kentucky distinguished educators shall be assigned to the school by the commissioner of education to carry out the duties as described in KRS 158.782.~~[Notwithstanding any other statute to the contrary, at the end of six (6) months,]~~ The Kentucky distinguished educator ***or the certified members of the scholastic audit team as appropriate*** shall evaluate and make ***in accordance with paragraph (b) of this subsection*** a recommendation to the superintendent regarding the retention, dismissal, or transfer of each full-time and part-time certified staff member. Recommendations for transfer shall conform to any employer-employee bargained contract which is in effect. Recommendations for dismissal shall be binding on the superintendent who shall notify the staff member pursuant to KRS 161.790~~[. This evaluation process shall continue every six (6) months until the school is no longer a "school in crisis" as determined by the Kentucky Board of Education]~~;~~[and]~~

4.~~[(e)]~~ The school shall be required to develop a school improvement plan and shall be eligible to receive funds from the school improvement fund***; and***

5. The Kentucky Board of Education shall establish new improving and review thresholds for the school, using the accountability index for the accountability biennium it was classified as "in review" as a new starting point for the review threshold, and one hundred (100) as the goal for 2020. The new improving threshold shall be five (5) points above the new review threshold.

(6) ***The Kentucky Board of Education shall recognize all schools with an accountability index above eighty (80) as high performing schools. Notwithstanding subsections (4) and (5) of this section, these schools shall not be classified as "not improving" or "in review".***

(7) ***(a) Notwithstanding subsections (1) to (5) of this section and KRS 158.645 to 158.805, the Kentucky Board of Education, after receiving the advice of the Office of Education Accountability, the School Curriculum, Assessment, and Accountability Council and the National Technical Advisory Panel on Assessment and Accountability, shall promulgate an administrative regulation in conformity with the provisions of Sections 4 and 5 of this Act, and in accordance with KRS Chapter 13A, establishing a formula for school accountability and a school improvement goal for each school during the 1998-1999 and 1999-2000 school years, with the 1996-97 and 1997-98 school years serving as the baseline. The formula shall be based on the academic and nonacademic components that are administered in a consistent manner during the four (4) year period.***

(b) The Kentucky Board of Education shall reward schools that exceed their reward threshold and have a dropout rate below eight percent (8%). Schools failing to improve shall be reviewed by a scholastic audit team appointed by the state board under subsection (5)(b) of this section. The audit shall not include a formal evaluation of each certified staff member. The team shall determine whether a distinguished educator should be assigned to act solely in an advisory capacity. These schools shall develop a school improvement plan and are eligible for school improvement funds under Section 16 of this Act.

(8) The Kentucky Board of Education shall develop a system of rewards and sanctions for certified staff who are not assigned to a school in a local school district. The system shall be analogous to the system described in subsections (1) to (5) of this section. Rewards shall be given to ***the district based on the number of*** nonschool-based staff ***to be used for purposes determined by the local board of education*** when the ***district performs***~~[district's proportion of successful students increases]~~ above a threshold adopted by the state board and comparable to the threshold adopted for schools. Sanctions shall be imposed when the ***district falls below a threshold set by the board***~~[proportion of successful students in the district declines]~~ in ***a similar manner***~~[the same proportion]~~ used to determine school sanctions under subsections (3), (4), and (5) of this section. A school district that does not meet its ***expected growth***~~[threshold]~~ shall be required to develop a district improvement plan***.***~~[defined in KRS 158.650.]~~

(9) A school district ***classified as "in review"***~~[in which the proportion of successful students declines by five percent (5%) or more in any biennium beginning with the 1994-96 biennium]~~ shall be assigned one (1) or more Kentucky distinguished educators to assist the system ***and***~~[,]~~ evaluate personnel ***at the option of the personnel following an unsatisfactory initial evaluation by the scholastic audit team***~~[, and notwithstanding any other statute to the contrary,~~

~~make personnel recommendations every six (6) months on retention, dismissal, or transfer. Personnel recommendations shall be made to the superintendent. Recommendations on the superintendent's status shall be made to the local board of education. If the recommendation is to terminate the superintendent, the board shall terminate the contract pursuant to KRS 160.350~~]. If a district ***is classified as "in review"***[~~has a declining proportion of successful students~~] for two (2) consecutive biennial assessment periods, the district[~~ shall be declared an education development district pursuant to KRS 158.685, and the~~] board members and the superintendent shall be removed under the provisions of KRS 156.132 and 156.136.

(10)[~~(8)~~] The Kentucky Board of Education shall adopt administrative regulations to establish a process whereby a school shall be allowed to appeal a performance judgment which it considers grossly unfair. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B. The state board may adjust a performance judgment on appeal when evidence of highly unusual circumstances warrants the conclusion that the performance judgment is based on fraud or a mistake in computations, is arbitrary, is lacking any reasonable basis, or when there are significant new circumstances occurring during the biennial assessment period which are beyond the control of the school.

Section 16. KRS 158.805 is amended to read as follows:

(1) There is hereby created the Commonwealth school improvement fund to assist local schools in pursuing new and innovative strategies to meet the educational needs of the school's students and raise the school's performance level. The Kentucky Board of Education shall utilize the Commonwealth school improvement fund to provide grants to schools for the following purposes:

 (a) To support teachers and administrators in the development of sound and innovative approaches to improve instruction or management;

 (b) To assist in replicating successful programs ***and models that improve student academic achievement***[~~developed in other districts~~];

 (c) To encourage cooperative instructional or management approaches to specific school educational problems; and

 (d) To encourage teachers and administrators to conduct experimental programs to test concepts and applications being advanced as solutions to specific educational problems.

(2) The Kentucky Board of Education shall develop criteria for awards of grants from the Commonwealth school improvement fund to schools[~~ in educationally deficient districts pursuant to KRS 158.685 through the 1993-94 school year. Beginning with the 1994-95 school year, grants shall go to schools~~] which do not meet their ***rewards*** threshold as defined in KRS 158.6455. The ***School Curriculum, Assessment, and Accountability Council established under Section 6 of this Act shall***[~~Governor shall appoint an advisory committee which shall include teachers, administrators, teacher educators, and representatives of the general public to~~] assist in the planning and implementation of the Commonwealth school improvement fund.[~~ The members of the advisory committee shall serve without compensation, but shall be reimbursed for all reasonable expenses incurred in the discharge of official duties.~~] The ***council***[~~ committee~~] shall advise the board on application procedures, review of proposals, evaluation criteria, reporting requirements, and other matters relating to the fund as requested by the board.

(3) The Kentucky Board of Education shall have the sole authority to approve grants from the fund. The ***council***[~~advisory committee~~] shall review proposals for grants and make recommendations to the board relating to the merits of each proposal.

(4) The Kentucky Board of Education may establish priorities for the use of the funds and, through the Department of Education, shall provide assistance to schools in preparing their grant proposals. The board shall require that no funds awarded under the Commonwealth school improvement fund are used to supplant funds from any other source. Requests for necessary equipment may be approved at the discretion of the state board, however the cost of equipment purchased by any grantee shall not exceed twenty percent (20%) of the total amount of money awarded for each proposal and shall be matched by local funds on a dollar for dollar basis.

(5) The Kentucky Board of Education shall establish maximums for specific grant awards. All fund recipients shall provide the board with an accounting of all money received from the fund and shall report the results and conclusions of any funded projects to the Kentucky Board of Education. All fund recipients shall provide the board with adequate documentation of all projects to enable replication of successful projects in other areas of the state.

Section 17. KRS 158.782 is amended to read as follows:

(1) ***After receiving the advice of the Office of Education Accountability, the School Curriculum, Assessment, and Accountability Council, and the National Technical Advisory Panel on Assessment and Accountability,*** the Kentucky Board of Education shall promulgate administrative regulations ***in conformity with the provisions of Sections 4 and 5 of this Act, and KRS Chapter 13A*** to set forth the criteria for the Kentucky Distinguished Educators Program which shall be implemented by July 1, 1991. The designation of "Kentucky Distinguished Educator" shall be given to the state's most outstanding and highly skilled certified educators who deserve recognition and are willing to fulfill the following purposes of the program:

(a) Serving as teaching ambassadors to spread the message that teaching is an important and fulfilling profession;

(b) Assisting the Department of Education with research projects and staff development efforts;

(c) Accepting assignments in schools ***classified as "not improving" or "in review"***[~~whose percentage of successful students declined~~] as described in KRS 158.6455. The assignments shall require the educator to:

  1. Work in a school on a full-time or part-time basis for a designated period of time to assist the school staff with implementing its school improvement plan. The educator shall have the authority in a school in ***review***[~~crisis~~] as defined in KRS 158.6455(5) to make decisions previously made by the school staff;

  2. Help to increase the effectiveness of the staff, parents, the civic and business community, and government and private agencies in improving the school's performance; and

  3. Evaluate and make recommendations ***concerning***[~~on~~] the retention, dismissal, or transfer of certified staff in a "school in ***review" when appropriate under subsections (5), (8), and (9) of Section 15 of this Act.***[~~crisis."~~]

  4. Complete an intensive training program, provided by the Department of Education and approved by the Kentucky Board of Education, prior to being assigned to assist a school's staff with implementing its school improvement plan. The training program shall include, but shall not be limited to instruction in the methods of personnel evaluation, school organization, school curriculum, and assessment.

(2) The Kentucky Distinguished Educators Program criteria shall include:

(a) A selection process which shall allow for self nomination, provide a broad spectrum of instructional positions, and generate statewide representation.

(b) Beginning with the 1992-93 school year, special recognition shall be given to five (5) Kentucky distinguished educators each year in the form of a one (1) year sabbatical leave to work with instructional personnel across the state and to serve as teaching ambassadors to the state at large.

(c) Each recipient shall receive a monetary award of two hundred fifty dollars ($250) when selected and shall also be paid in accordance with his current salary for other program requirements which arise pursuant to subsection (1) of this section. The Department of Education shall be responsible for all expenses incurred as a result of the Kentucky Distinguished Educators Program, except those expenses associated with the funding of the position of the person who replaces the Kentucky distinguished educator when he is assigned to ***a***[~~an unsuccessful~~] school or district ***classified as "not improving" or "in review"***.

(d) Kentucky distinguished educators assigned to ***a***[~~ an unsuccessful~~] school ***or district classified as "not improving" or "in review"*** shall receive a salary supplement of ***thirty-five***[~~fifty~~] percent ***(35%)***[~~(50%)~~] of ***their daily rate of the one hundred eighty-five (185) day base***[~~his annual~~] salary for ***the number of days served*** each year[~~ of service~~] in that capacity. The state board shall determine if reimbursement for vehicle mileage shall be allowed. If his assigned school achieves the ***rewards*** threshold[~~ level~~] in the next biennial review, he shall receive his portion of the reward due to the entire staff[~~ calculated on his base salary~~] regardless of decisions made by the school staff pursuant to KRS 158.6455[~~(1)(g)~~].

(e) The Kentucky distinguished educator shall be granted professional leave pursuant to KRS 161.770 though the time may exceed two (2) years if determined by the state board to be necessary. The Kentucky distinguished educator shall not lose any employee benefits as a result of his special assignment.

(f) A Kentucky distinguished educator shall not be assigned to a school or to a district assignment in the district in which he is employed.

Section 18. KRS 160.350 is amended to read as follows:

(1) After considering the recommendations of a screening committee, as provided in KRS 160.352, each board of education shall appoint a superintendent of schools whose term of office shall begin on July 1, following his appointment. The appointment may be for a term of no more than four (4) years. In the event a vacancy occurs in the office of superintendent prior to the expiration of the term set by the board, the term shall expire on the date the vacancy occurs. Therefore, the board may appoint a superintendent for a new term as provided in this subsection, which shall begin on the date of the superintendent's appointment, except when the vacancy occurs after a school board election and before the newly elected members take office. When a vacancy occurs during this period, the position shall not be filled until the new members take office, but the board may appoint an acting superintendent to serve a term not to exceed six (6) months. This appointment may be renewed once for a period not to exceed three (3) months. The person appointed to serve as acting superintendent shall not be an applicant for, nor be appointed to, the position of superintendent. If a vacancy occurs, a local board may also appoint an acting superintendent during the period the screening committee pursuant to KRS 160.352 conducts its business and prior to the actual appointment of the new superintendent. No superintendent shall resign his term and accept a new term from the same board of education prior to the expiration date of his present term. In the case of a vacancy in the office for an unexpired term, the board of education shall make the appointment so that the term will end on June 30. The board shall set the salary of the superintendent to be paid in

regular installments.

(2) Before any superintendent assumes his duties, he shall present to the board of education that appointed him a statement signed by the chief state school officer that the superintendent has been duly issued a certificate of administration and supervision issued in accordance with the provisions of law and which qualifies him to hold the position to which he has been appointed, and he shall hold such certificate throughout the period of his employment. A superintendent candidate who is to begin his duties after June 30, 1994, shall successfully complete the training program and assessment center process within one (1) year of assuming his duties as superintendent. A superintendent shall not serve as director or officer of a bank, trust company, or savings or loan association which has his school district funds on deposit. Following appointment, the superintendent shall establish residency in Kentucky.

(3) A superintendent of schools may be removed for cause by a vote of four-fifths (4/5) of the membership of a board of education and upon approval by the chief state school officer. However, if the dismissal of the superintendent has been recommended by ***the members of a scholastic audit team or the***~~[a]~~ Kentucky distinguished educator pursuant to KRS 158.6455 and the action is approved by the chief state school officer, the board shall terminate the superintendent's contract. Written notice setting out the charges for removal shall be spread on the minutes of the board and given to the superintendent. The board shall seek approval by the chief state school officer for removing the superintendent. The chief state school officer shall investigate the accuracy of the charges made, evaluate the superintendent's overall performance during his appointment, and consider the educational performance of the students in the district. Within thirty (30) days of notification, he shall either approve or reject the board's request.

Section 19. KRS 161.790 is amended to read as follows:

(1) The contract of a teacher shall remain in force during good behavior and efficient and competent service by the teacher and shall not be terminated except for any of the following causes:

(a) Insubordination, including but not limited to violation of the school laws of the state or administrative regulations adopted by the Kentucky Board of Education or lawful rules and regulations established by the local board of education for the operation of schools, or refusal to recognize or obey the authority of the superintendent, principal, or any other supervisory personnel of the board in the performance of their duties;

(b) Immoral character or conduct unbecoming a teacher;

(c) Physical or mental disability;

(d) Inefficiency, incompetency, or neglect of duty, when a written statement identifying the problems or difficulties has been furnished the teacher or teachers involved.

(2) Charges under subsections (1)(a) and (1)(d) of this section shall be supported by a written record of teacher performance by the superintendent, principal, or other supervisory personnel of the district, except when the charges are brought as a result of a recommendation made by ***the scholastic audit team or*** a Kentucky distinguished educator under KRS 158.6455.

(3) No contract shall be terminated except upon notification of the board by the superintendent. Prior to notification of the board, the superintendent shall furnish the teacher with a written statement specifying in detail the charge against the teacher. The teacher may within ten (10) days after receiving the charge notify the chief state school officer and the superintendent of his intention to answer the charge, and upon failure of the teacher to give notice within ten (10) days, the dismissal shall be final.

(4) Upon receiving the teacher's notice of his intention to answer the charge, the chief state school officer shall appoint a three (3) member tribunal, consisting of one (1) teacher, one (1) administrator, and one (1) lay person, none of whom reside in the district, to conduct an administrative hearing in accordance with KRS Chapter 13B within the district. The chief state school officer shall name the chairman and set the date and time for the hearing. The hearing shall begin no later than forty-five (45) days after the teacher files the notice of intent to answer the charge.

(5) The hearing may be public or private at the discretion of the teacher. At the hearing, a hearing officer appointed by the chief state school officer shall preside with authority to rule on procedural matters, but the tribunal shall be the ultimate trier of fact. The local board shall pay each member of the tribunal a per diem of one hundred dollars ($100) and travel expenses.

(6) Upon hearing both sides of the case, the tribunal may by a majority vote render its decision or may defer its action for not more than five (5) days. Provisions of KRS Chapter 13B notwithstanding, the tribunal decision shall be a final order and may be rendered on the record.

(7) The superintendent may suspend the teacher pending final action to terminate the contract, if, in his judgment, the character of the charge warrants the action. If after the hearing the decision of the tribunal is against termination of the contract, the suspended teacher shall be paid his full salary for any period of suspension.

(8) The teacher shall have the right to make an appeal to the Circuit Court having jurisdiction in the county where the school district is located in accordance with KRS Chapter 13B.

(9) As an alternative to termination of a teacher's contract, the superintendent upon notifying the board and providing written

notification to the teacher of the charge may impose other sanctions, including, suspension without pay, public reprimand, or private reprimand. The procedures set out in subsection (3) of this section shall apply, except to a private reprimand. The teacher may appeal the action of the superintendent, except a private reprimand, in the same manner as established in subsections (4) to (8) of this section. Upon completion of a suspension period, the teacher may be reinstated.

SECTION 20. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) The local board of education, in collaboration with the district's school councils, shall establish performance standards expected of students to demonstrate mastery of essential skills in reading and mathematics at a performance level necessary to achieve at the upper levels prior to being enrolled in regular middle school and regular high school courses. Schools shall provide alternative or supplemental instructional programs for those students who are determined to need the opportunity or additional time to achieve the standards, and schools shall not be limited to the minimum school term in providing this education.

(2) The local board of education shall establish procedures for identifying students who need alternative or supplemental instructional programs. Students may be identified through a variety of measures including standardized norm-referenced tests, diagnostic subject matter tests including but not limited to reading and mathematics, state administered tests, and teacher assessments.

(3) The major emphases of alternative or supplemental instructional programs shall be:

(a) To provide extended programming for students who have been retained or who are at risk of being retained in a class or grade or of failing to graduate on time without additional assistance; and

(b) To close the achievement gap of low-performing students so that the students will perform successfully in the instructional program appropriate to their age ranges.

(4) The alternative or supplemental instructional program shall include:

(a) A method to assess the priority educational needs of each individual student and to determine the performance standards to be exhibited by the student at the end of the extended program;

(b) An appropriate educational program designed for the individual student that assists the student in mastering the performance standards within the timelines specified by the program; and

(c) An ongoing method of informal and formal assessment to document the student's progress toward mastery of the performance standards.

(5) The Kentucky Board of Education shall promulgate administrative regulations establishing criteria to implement this section.

Section 21. Notwithstanding the provisions of Sections 1, 2, 12, 13, 14, 15, 16, and 17 of this Act to the contrary, the Kentucky Board of Education shall classify schools and districts based on the results for the 1994-98 accountability cycle according to the Kentucky Board of Education administrative regulations in force for the cycle on the effective date of this Act, except that the following rewards and consequences shall be applied for the biennium:

(1) Thirty million dollars ($30,000,000) shall be paid out of the Kentucky successful schools trust fund under KRS 157.067. The Kentucky Board of Education shall determine an amount to be distributed to every school that exceeds its 1994-96 baseline in the 1996-98 school years and twice that amount to every school that exceeds its threshold level for school improvement. Rewards shall be given to the school's full-time, part-time, and itinerant instructional staff assigned to the school on the last working day of the accountability cycle unless a majority of the certified staff vote otherwise. Rewards shall not be added to a staff person's base salary and shall not be defined as compensation for retirement purposes under KRS 161.220 (10);

(2) All schools failing to reach their school improvement goal shall develop a school improvement plan and may apply for Commonwealth school improvement funds; and

(3) All schools classified as "in decline" or "in crisis" may request the assistance of a distinguished educator to act only in an advisory capacity. No employee shall be placed on probation based on the school being designated "in crisis." Parents of students attending a school classified as "in crisis" may request to transfer their children to a successful school.

Section 22. Whereas it is imperative that the new assessment and accountability system be implemented as expeditiously as possible to better enable the General Assembly to carry out its constitutional duty to establish an efficient system of common schools, an emergency is declared to exist, and this Act shall take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Calendar

HB 456, HB 471, HB 591, HB 637, and **HCR 79** taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that they be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Recess

Representative Stumbo moved to suspend the rules to allow the House to recess for a Committee on Rules meeting in the Speaker's Office. Agreed. At the appointed hour, the Speaker resumed the Chair and called the House to order.

Representative Gray moved that the rules be suspended to grant floor privileges to a special guest and to act upon a Resolution. Agreed.

Representative Gray moved the adoption of the following **HR 104**:

HR 104, A RESOLUTION in support of Read Across America Day on March 2, 1998.

WHEREAS, March 2, 1998, will mark the ninety-fourth birthday of Dr. Suess, the much loved, internationally acclaimed author of children's books; and in commemoration of his birthday and the children across America, the National Education Association, in partnership with the American Library Association, the National PTA, the National Association of Elementary School Principals, Reading is Fundamental, the National Center for Family Literacy, and other education and community groups are motivating children nationwide to expand their knowledge by opening their minds to reading; and

WHEREAS, Read Across America Day is a day for all of us to stimulate new enthusiasm in our children's interest in reading, and on the evening of March 2, 1998, children across the nation will be in the company of a book, whether it be reading at home, in school, in libraries, in bookstores or in other community settings; there are plans for read-a-thons, book fairs, Dr. Seuss birthday parties, book swaps, choral readings, and family literacy nights;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. This honorable body is indeed proud to recognize March 2, 1998, as Read Across America Day, and we encourage students across the Commonwealth to participate in this reading endeavor. We applaud First Lady Judi Patton as state co-chair of this event and the Kentucky Education Association for their efforts in making this occasion a success.

Section 2. When the House of Representatives adjourns this day, it does so in recognition of March 2, 1998, as Read Across America Day.

Section 3. The Clerk of the House of Representatives is hereby directed to transmit copies of this Resolution to Mrs. Judi Patton, the Governor's Mansion, Frankfort, Kentucky 40601 and to the Kentucky Education Association, 401 Capitol Avenue, Frankfort, Kentucky 40601.

There being no objection **HR 104** was adopted.

Representative Stumbo moved that the rules be suspended for a Committee on Rules Report. Agreed.

Report of Committees (Continued)

The Committee on Rules reported that **HB 468, HB 518, HB 161, HB 279, HB 446, HB 673, SB 43, HB 48, HB 115, HB 312, HB 425, HB 498, HB 510, HB 537, HB 610, HB 671, HB 680, SB 177, SB 207, HB 637,** and **HCR 79** have been posted for passage in the Orders of the Day for March 3, 1998.

The Committee on Rules reported that the following Bills have been recommitted:

Appropriations and Revenue: **HB 449, HB 467, HB 107**

Floor Amendments

Floor Amendment No. 1 to **SB 102**, by Representative Murgatroyd:

On page 2, line 2, after "incorporated" by inserting "***, organized,***"; and

On page 2, line 6, by deleting "***or limited liability***"; and

On page 2, line 7, by deleting "***company***" and "***or limited liability company***"; and

On page 2, line 10, after "(11)" by inserting "***Motor vehicles transferred between a limited liability company and any of its members, if there is no consideration, or nominal consideration, or in sole consideration of the cancellation or surrender of stock;***

(12)"; and

On page 2, line 12, before the "(12)" by inserting "***(13)***" and bracketing and striking through the "(12)"; and

On page 2, line 16, before the "(13)" by inserting "***(14)***" and bracketing and striking through the "(13)".

Orders of the Day

HB 609 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative D. Butler moved that **HB 609** be passed.

On the roll call the vote was: Yeas 87, Nays 0 (See March 2, 1998 roll call on **HB 609** - Appendix.) **HB 609** was passed and the title agreed to. Representative D. Butler moved that the vote by which **HB 609** was passed be reconsidered and said motion be placed on the table. Agreed.

Report On Enrolled Bills

HB 1, HB 171, and **HB 195** delivered to the Senate and signed by the President. Delivered to the Governor on March 2, 1998 at 4:30 p.m.

Floor Amendments (Continued)

Floor Amendment No. 3 to the Committee Substitute to **HB 565**, by Representative Hoffman:

On page 33, between lines 7 and 8 by inserting the following:

"Section 29. KRS 244.480 is amended to read as follows:

(1) Except as provided in subsection (2), no brewer or distributor shall deliver any malt beverages on Sunday or between the hours of 7 p.m. and 6 a.m. on any week day except Saturday, when the hours of deliveries shall be between 6 a.m. and midnight. No retailer shall sell, give away, or deliver any malt beverages between midnight and 6 a.m. or at any time during the twenty-four (24) hours of a Sunday or during the hours the polls are open on ***an*** [~~primary or regular~~] election day.

(2) The legislative body of a city of the first, second, third, or fourth class in which traffic in malt beverages is permitted by KRS Chapter 242, shall have the exclusive power, subject to subsection (3), by ordinance, to establish the times in which malt beverages may be sold within its jurisdictional boundaries. The fiscal court of each county in which a city of the first, second, third, or fourth class is located shall have the exclusive power, subject to subsection (3), to establish the times in which malt beverages may be sold in that portion of the county which lies without the corporate limits of such a city, except any portion in which malt beverages are prohibited by KRS Chapter 242 from being sold.

(3) Notwithstanding subsections (1) and (2):

  (a) The hours so fixed by the legislative body of a city of the first, second, or third class, and by fiscal courts, shall not prohibit the sale, gift, or delivery of any malt beverages between 6 a.m. and midnight during week days; and

  (b) No malt beverages shall be sold ***or delivered*** on any primary***,*** [~~or~~]regular***, or special*** election day while the polls are still open.

Section 30. KRS 244.590 is amended to read as follows:

No brewer or distributor shall induce through any of the following means any malt beverage retailer to purchase any malt beverages from him to the exclusion in whole or in part of malt beverages sold or offered for sale by other persons, if the brewer or distributor engages in the practice of using such means, or any of them, to such an extent as substantially to restrain or prevent transactions in commerce in malt beverages:

(1) By acquiring or holding, after the expiration of any existing license, any interest in any license with respect to the premises of the retailer;

(2) By acquiring any interest in real or personal property owned, occupied, or used by the retailer in the conduct of his business;

(3) By furnishing, giving, renting, lending***,*** or selling to the retailer, any equipment, fixtures, signs, supplies, money, services, or other things of value, except as the administrator of the malt beverage unit, having regard for the public health, the quantity and value of the articles involved, the prevention of monopoly and the practice of deception, may by regulation otherwise prescribe***. Services, as used in this subsection which shall not be furnished by a brewer or distributor free of charge to a retailer shall include, but shall not be limited to, the following:***

  (a) The rotation of malt beverages in store areas not accessible to consumers at any time when malt beverages are not delivered; or

  (b) The retail pricing, clerking, or bagging of malt beverages;

(4) By paying or crediting the retailer for any advertising, display***,*** or distribution service subject to the exceptions which the

administrator may by regulation prescribe;

(5) By guaranteeing any loan or the repayment of any financial obligation of the retailer; or

(6) By requiring the retailer to take and dispose of a certain quota of any malt beverages."

On page 33, line 8, after "Section" by deleting "29" and inserting "31" in lieu thereof.

Floor Amendment No. 3 to **HB 491**, by Representative Riggs:

On page 1, line 13 after "***county***" by adding "***that has a city of the first or second class, or in a county that has an urban-county government,***";

On page 1, line 15 after "***county***" and before "***in***" by inserting "***that has a city of the first or second class, or contiguous to a county that has an urban-county government,***";

On page 1, line 17 after "***counties***." by adding "***If a branch is established in a contiguous county under this subparagraph, any corporation engaged in the business of banking located in that contiguous county, upon proper application, shall be granted permission by the commissioner to establish a branch in the contiguous county that has the city of the first or second class or that is a county that has an urban-county government.***"

Orders of the Day (Continued)

HB 565, with Committee Substitute and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative D. Butler moved the adoption of the Committee Substitute to **HB 565**. Agreed.

Representative D. Butler moved the adoption of Floor Amendment No. 1 to the Committee Substitute to **HB 565**. Agreed. Representative D. Butler moved the adoption of Floor Amendment No. 2 to the Committee Substitute to **HB 565**. Agreed.

Representative D. Butler moved that **HB 565**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 90, Nays 1 (See March 2, 1998 roll call on **HB 565** - Appendix.) **HB 565**, by way of Committee Substitute as amended, was passed and the title agreed to. Representative D. Butler moved that the vote by which **HB 565**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 515, with Committee Substitute and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Thomas moved the adoption of the Committee Substitute to **HB 515**. Agreed.

Representative Cave moved the adoption of Floor Amendment No. 2 to the Committee Substitute to **HB 515**. Agreed.

Representative Thomas moved that **HB 515**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 92, Nays 1 (See March 2, 1998 roll call on **HB 515** - Appendix .) **HB 515**, by way of Committee Substitute as amended, was passed and the title agreed to. Representative Thomas moved that the vote by which **HB 515**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 410 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 410** be placed back in Orders of the Day and that it retain its position. Agreed.

HB 439 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Johns moved that **HB 439** be passed.

On the roll call the vote was: Yeas 75, Nays 12 (See March 2, 1998 roll call on **HB 439** - Appendix.) **HB 439** was passed and the title agreed to. Representative Johns moved that the vote by which **HB 439** was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 1 to the Committee Substitute to **HB 644**, by Representative Barrows:

On page 4, lines 25 through 27, by deleting them in their entirety; and

On page 5, lines 1 through 7, by deleting them in their entirety; and

On page 5, line 8, by deleting the numeral "***(3)***" and inserting in lieu thereof "***(2)***", and by deleting the remainder of that line; and

On page 5, lines 9 and 10, by deleting them in their entirety; and

On page 5, line 13, by deleting the words "***presidential election***" and inserting in lieu thereof "***regular mayoral election of the urban-county government.***", and by deleting the remainder of the line; and

On page 5, lines 14 through 27, by deleting them in their entirety; and

On page 6, lines 1 through 11, by deleting them in their entirety; and

On page 6, line 12, by deleting the numeral "***(6)***", and inserting in lieu thereof "***(3)***"; and

On page 6, line 12, by deleting the words "***the second Tuesday in August***", and by inserting in lieu thereof "***ninety (90) days***"; and

On page 6, line 13, after the word "***by***" by inserting the words "***a three-fifths (3/5) vote of***"; and

On page 6, line 15, by deleting the word "***certifies***" and by inserting in lieu thereof the word "***determines***"; and

On page 6, line 16, by deleting the words "***county clerk shall have prepared***", and by inserting in lieu thereof the words "***legal department of the urban-county government shall prepare***"; and

On page 6, lines 18 through 20, by deleting them in their entirety and by inserting in lieu thereof: "***appear on the ballot in the following form:***

"( ) FOR RATIFICATION OF (summary of proposed program)
( ) AGAINST RATIFICATION OF (summary of proposed program)"."; and

On page 6, line 21, by deleting the words "*Yes...... No..... ""*; and

On page 6, line 21, by inserting a comma "***,***" after "***published***"; and

On page 6, line 21, by deleting the words "***in accordance with***", and by inserting in lieu thereof the words "***not fewer than three (3) times within the thirty (30) day period immediately preceding the election in a newspaper having a general circulation in the territory of the urban-county government, notice of the referendum, the exact language of the proposal, and***"; and

On page 6, lines 22 and 23, by deleting them in their entirety; and

On page 6, line 24, by deleting the words "***accordance with KRS Chapter 424,***"; and

On page 6, line 24, after the word "***map***", by inserting the words "***prepared by the urban-county government***"; and

On page 6, lines 26 and 27, by deleting them in their entirety; and

On page 7, line 1, by deleting the numeral "***(7)***" and inserting in lieu thereof "***(4)***"; and

On page 7, line 6, after the period, by inserting the following words "***If a proposed program is approved, it shall become effective at the time specified in the proposal, but the effective date shall not be before the first day of January following the election.***".

Orders of the Day (Continued)

HB 470, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved the adoption of the Committee Substitute to **HB 470**. Agreed.

Representative Long moved that **HB 470**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 94, Nays 0 (See March 2, 1998 roll call on **HB 470** - Appendix.) **HB 470**, by way of Committee Substitute, was passed and the title agreed to.

Representative Long moved that the vote by which **HB 470**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 528 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Horlander moved that **HB 528** be passed.

On the roll call the vote was: Yeas 92, Nays 0 (See March 2, 1998 roll call on **HB 528** - Appendix.) **HB 528** was passed and the title agreed to. Representative Horlander moved that the vote by which **HB 528** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 427, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved the adoption of the Committee Substitute to **HB 427**. Agreed.

Representative Long moved that **HB 427**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 92, Nays 0 (See March 2, 1998 roll call on **HB 427** - Appendix.) **HB 427**, by way of Committee Substitute, was passed and the title agreed to. Representative Long moved that the vote by which **HB 427**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 549 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative L. Clark moved that **HB 549** be passed.

On the roll call the vote was: Yeas 96, Nays 0 (See March 2, 1998 roll call on **HB 549** - Appendix.) **HB 549** was passed and the title agreed to. Representative L. Clark moved that the vote by which **HB 549** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 622 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Callahan moved that **HB 622** be passed.

On the roll call the vote was: Yeas 91, Nays 0 (See March 2, 1998 roll call on **HB 622** - Appendix.) **HB 622** was passed and the title agreed to. Representative Callahan moved that the vote by which **HB 622** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 572, with Committee Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Kerr moved the adoption of Committee Amendment No. 1 to **HB 572**. Agreed.

Representative Kerr moved that **HB 572**, as amended, be passed.

On the roll call the vote was: Yeas 88, Nays 0 (See March 2, 1998 roll call on **HB 572** - Appendix .) **HB 572**, as amended, was passed and the title agreed to. Representative Kerr moved that the vote by which **HB 572**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 406, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Nunn moved the adoption of the Committee Substitute to **HB 406**. Agreed.

Representative Nunn moved that **HB 406**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 91, Nays 0 (See March 2, 1998 roll call on **HB 406** - Appendix.) **HB 406**, by way of Committee Substitute, was passed and the title agreed to. Representative Nunn moved that the vote by which **HB 406**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 577 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Kerr moved that **HB 577** be passed.

On the roll call the vote was: Yeas 92, Nays 0 (See March 2, 1998 roll call on **HB 577** - Appendix.) **HB 577** was passed and the title agreed to. Representative Kerr moved that the vote by which **HB 577** was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 12 to the Committee Substitute to **HB 624**, by Representative Bratcher:

On Page 4, line 7, after the "***(4)***", by deleting the remainder of that line; and

Continuing on that same page, lines 8 through 15, by deleting them in their entirety and inserting and underlining in lieu thereof, "***Upon the renewal of a cooperative compact, no city of the first class shall have any priority for the annexation of any unincorporated territory within the county. Any previous priorities that may have been established prior to the effective date of this Act shall be deemed null and void.***".

Floor Amendment No. 1 to **HB 654**, by Representative Anderson:

On page 8, after line 13, by inserting:

"***(bb) Anyone purchasing a license or a permit under paragraph (aa) of subsection (1) of this section shall be entitled to a refundable credit in an amount equal to the fee charged for the license or permit against the tax imposed under KRS 141.020.***".

Orders of the Day (Continued)

HB 631 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Long moved that **HB 631** be passed.

On the roll call the vote was: Yeas 92, Nays 3 (See March 2, 1998 roll call on **HB 631** - Appendix.) **HB 631** was passed and the title agreed to. Representative Long moved that the vote by which **HB 631** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 638 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Cave moved that **HB 638** be passed.

On the roll call the vote was: Yeas 93, Nays 0 (See March 2, 1998 roll call on **HB 638** - Appendix.) **HB 638** was passed and the title agreed to. Representative Cave moved that the vote by which **HB 638** was passed be reconsidered and said motion be placed on the table. Agreed.

HB 623, with Committee Substitute attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Wilkey moved the adoption of the Committee Substitute to **HB 623**. Agreed.

Representative Wilkey moved that **HB 623**, by way of Committee Substitute, be passed.

On the roll call the vote was: Yeas 94, Nays 0 (See March 2, 1998 roll call on **HB 623** - Appendix.) **HB 623**, by way of Committee Substitute, was passed and the title agreed to. Representative Wilkey moved that the vote by which **HB 623**, by way of Committee Substitute, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 381, with Committee Substitute and Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Marzian moved the adoption of the Committee Substitute to **HB 381**. Agreed.

Representative Stumbo moved the adoption of Floor Amendment No. 1 to the Committee Substitute to **HB 381**. Agreed.

Representative Marzian moved that **HB 381**, by way of Committee Substitute as amended, be passed.

On the roll call the vote was: Yeas 70, Nays 23 (See March 2, 1998 roll call on **HB 381** - Appendix.) **HB 381**, by way of Committee Substitute as amended, was passed and the title agreed to. Representative Marzian moved that the vote by which **HB 381**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 4 to **HB 491**, by Representative Walton:

On page 1, line 13 after "***county***" by adding "***that has a city of the first, second, or third class, or in a county that has an urban-county government,***";

On page 1, line 15 after "***county***" and before "***in***" by inserting "***that has a city of the first, second, or third class, or contiguous to a county that has an urban-county government,***";

On page 1, line 17 after "***counties.***" by adding "***If a branch is established in a contiguous county under this subparagraph, any corporation engaged in the business of banking located in that contiguous county, upon proper application, shall be granted permission by the commissioner to establish a branch in the contiguous county that has the city of the first or second class or that is a county that has an urban-county government.***"

Orders of the Day (Continued)

HB 649, with Floor Amendment attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Barrows moved the adoption of Floor Amendment No. 1 to **HB 649**. Agreed.

Representative Barrows moved that **HB 649**, as amended, be passed.

On the roll call the vote was: Yeas 94, Nays 0 (See March 2, 1998 roll call on **HB 649** - Appendix .) **HB 649**, as amended, was passed and the title agreed to. Representative Barrows moved that the vote by which **HB 649**, as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

HB 455, with Committee Substitutes and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Bowling moved the adoption of the Committee Substitute No. 2 to **HB 455**. Agreed.

Representative Yonts moved the adoption of Floor Amendment No. 18 to the Committee Substitute No. 2 to **HB 455**. Agreed.

Representative Bowling moved the adoption of Floor Amendment No. 4 to the Committee Substitute No. 2 to **HB 455**. Agreed. Representative Bowling moved the adoption of Floor Amendment No. 19 to the Committee Substitute No. 2 to **HB 455**. Agreed.

Representative Hogancamp moved the adoption of Floor Amendment No. 5 to the Committee Substitute No. 2 to **HB 455**. Agreed.

Representative Bowling moved that **HB 455**, by way of Committee Substitute as amended, be passed.

Representative Damron moved the adoption of Floor Amendment No. 10 to the Committee Substitute No. 2 to **HB 455**. Agreed. Representative Damron moved the adoption of Floor Amendment No. 9 to the Committee Substitute No. 2 to **HB 455**. Agreed. Representative Damron moved the adoption of Floor Amendment No. 12 to the Committee Substitute No. 2 to **HB 455**. Agreed. Representative Damron moved the adoption of Floor Amendment No. 6 to the Committee Substitute No. 2 to **HB 455**. Agreed.

Representative Riner moved the adoption of Floor Amendment No. 17 to the Committee Substitute No. 2 to **HB 455**. On the roll call the vote was: Yeas 89, Nays 0 (See March 2, 1998, roll call on **HB 455** - Appendix.) Floor Amendment No. 17 to the Committee Substitute No. 2 to **HB 455** was adopted.

Representative Riner moved the adoption of Floor Amendment No. 15 to the Committee Substitute No. 2 to **HB 455**. Agreed. Representative Riner moved the adoption of Floor Amendment No. 16 to the Committee Substitute No. 2 to **HB 455**. Agreed. Representative Riner moved the adoption of Floor Amendment No. 14 to the Committee Substitute No. 2 to **HB 455**. Representative Riner moved that Floor Amendment No. 14 to the Committee Substitute No. 2 to **HB 455** be withdrawn. Agreed.

Representative A. Arnold moved the adoption of Floor Amendment No. 20 to the Committee Substitute No. 2 to **HB 455**. Agreed.

On the roll call on the passage of **HB 455** by way of Committee Substitute as amended the vote was: Yeas 93, Nays 0 (See March 2, 1998 roll call on **HB 455** - Appendix.) **HB 455**, by way of Committee Substitute as amended, was passed and the title agreed to. Representative Bowling moved that the vote by which **HB 455**, by way of Committee Substitute as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Stumbo moved that **HB 666** be reassigned to Judiciary. Agreed.

Representative Stumbo moved that the three day posting requirement be waived on **HB 334**. Agreed.

Representative Hatcher moved that the vote by which **HB 491** was defeated be reconsidered.

On the roll call to reconsider the vote on **HB 491** the vote was: Yeas 58, Nays 27 (See March 2, 1998, roll call on **HB 491** - Appendix.) Representative Stumbo moved that **HB 491** be placed in the Orders of the Day. Agreed.

Report On Enrolled Bills

The Committee on Enrollment reported that **HB 341, HB 345** and **HB 364** have been examined and found correctly enrolled. Said Bills were read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time -6:35 p.m.)

Motions, Petitions and Communications (Continued)

Representative Stumbo moved that the rules be suspended for Introduction of Bills and Resolutions, Report of Committees and Posting of Bills and Resolutions for Consideration. Agreed.

Introduction of Bills and Resolutions (Continued)

HB 773, by Representative Ford: AN ACT relating to public school attendance.

HB 774, by Representative Lee: AN ACT relating to dog licensing.

HB 775, by Representatives Jordan and Callahan: AN ACT authorizing municipalities to enact and enforce juvenile curfew ordinances.

HB 776, by Representatives G. Graham, A. Arnold, McKee, Hoffman, Walton and Thomas: AN ACT relating to ferrets.

HB 777, by Representative Reinhardt: AN ACT relating to retirement.

HB 778, by Representative Mason: AN ACT relating to interscholastic athletics.

HB 779, by Representative Curd: AN ACT relating to the Kentucky Board of Education.

HB 780, by Representative Palumbo: AN ACT relating to small business.

HB 781, by Representative Palumbo: AN ACT relating to arson and related offenses.

HB 782, by Representative Riggs: AN ACT relating to education funding.

HB 783, by Representative Long: AN ACT changing the classification of the City of Simpsonville, in Shelby County.

HB 784, by Representative Geveden: AN ACT relating to retirement.

HB 785, by Representative Nunn: AN ACT relating to the medical assistance program.

HB 786, by Representatives Cave and Riggs: AN ACT relating to insurance.

HB 787, by Representative Walton: AN ACT relating to notaries public.

HB 788, by Representative Hoffman: AN ACT relating to adult education and literacy.

HB 789, by Representative Long: AN ACT relating to the establishment of the chief information officer for the executive branch of the Commonwealth.

HB 790, by Representative Stumbo: AN ACT relating to highways.

HB 791, by Representatives Stumbo and Bowling: AN ACT relating to judicial retirement.

HB 792, by Representatives Geveden and Nesler: AN ACT relating to rural telephone cooperatives.

HB 793, by Representatives Marzian and L. Clark: AN ACT relating to local governments.

HB 794, by Representative Wayne: AN ACT relating to liens.

HB 795, by Representatives Lee, J. Arnold, Bruce, and Allen: AN ACT relating to administrative regulations.

HB 796, by Representatives Reinhardt and Bowling: AN ACT relating to civil actions.

HB 797, by Representative Brandstetter: AN ACT relating to the local government parks and recreational facilities fund.

HB 798, by Representative Stacy: AN ACT relating to postsecondary education.

HB 799, by Representative Stacy: AN ACT relating to state employees.

HB 800, by Representative Stacy: AN ACT relating to school report cards.

HB 801, by Representatives Allen, Nunn, Yonts, Jenkins, Collins, Napier, and Maricle: AN ACT relating to establishing American Indian Day in Kentucky.

HB 802, by Representative A. Arnold: AN ACT relating to tobacco and declaring an emergency.

HB 803, by Representative Crenshaw: AN ACT relating to involuntary hospitalization.

HB 804, by Representatives Jenkins and Gray: AN ACT relating to electrical services.

HB 805, by Representatives Miller, J. Adams, L. Clark, Weaver, Horlander, Hoffman, Anderson, Murgatroyd, Jenkins, G. Graham, and Nunn: AN ACT relating to school attendance.

HB 806, by Representative D. Graham: AN ACT relating to motor vehicles.

HB 807, by Representatives Wilkey, Bowling, and Geveden: AN ACT relating to jails and prisoners.

HR 105, by Representative Stein: A RESOLUTION honoring Ms. Brigid Franey for her outstanding achievement as one of the Commonwealth's top high school student volunteers.

HJR 106, by Representative Nunn: A JOINT RESOLUTION authorizing and directing a study of emerging infectious diseases in Kentucky and making an appropriation therefor.

HR 107, by Representative Colter: A RESOLUTION adjourning the House in loving memory and honor of William "Big Red" Campbell, Jr.

HR 108, by Representative Jenkins: A RESOLUTION relating to state economic development incentives and training grants.

HJR 109, by Representative Gray: A JOINT RESOLUTION naming the new bridge on US 641 over the East Fork of the Clarks River in north Benton the "Coy B. Creason Bridge".

HJR 110, by Representative Mason: A JOINT RESOLUTION directing the Public Service Commission to conduct a comprehensive review of the recent power outages in several eastern Kentucky counties served by American Electric Power and to report it's findings to the Special Subcommittee on Energy.

Posting of Bills and Resolutions for Consideration (Continued)

The Clerk announced that the following Bills and Resolutions have been posted for Committee consideration:

Cities: **SB 198, HB 726, HB 722**

Banking and Insurance: **HB 739**

State Government: **HCR 82, HB 335, HB 596, SB 75, SB 142, HCR 76**

Agriculture and Small Business: **HB 699**

Counties and Special Districts: **HB 748, HCR 96, SB 44**

Judiciary: **HB 595**

Appropriations and Revenue: **HB 648, HB 449, HB 669, HB 617, HB 377, HB 444, HB 319, HB 320, HB 321, HB**

550, HJR 34, HJR 35, HJR 36, HB 544, HB 696

Motions, Petitions and Communications (Continued)

Representative Colter moved the adoption of the following **HR 107**:

HR 107, A RESOLUTION adjourning the House in loving memory and honor of William "Big Red" Campbell, Jr.

WHEREAS, William "Big Red" Campbell, Jr., was a dedicated Clay County High School teacher; and

WHEREAS, William "Big Red" Campbell, Jr., was the head baseball and assistant basketball coach of several district, regional, and state championship teams; and

WHEREAS, William "Big Red" Campbell, Jr., was the devoted husband of Maggie Campbell; and

WHEREAS, William "Big Red" Campbell, Jr., brought out the best qualities of our youth and inspired many them in their educational needs and sportsmanship abilities; and

WHEREAS, the passing of William "Big Red" Campbell, Jr., has left a void that will be difficult to fill, and he is mourned across the length and breadth of the Commonwealth;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. The House of Representatives does hereby express its profound sense of sorrow upon the passing of William "Big Red" Campbell, Jr., and extends to his family its most heartfelt sympathy.

Section 2. When the House of Representatives adjourns this day, it does so in loving memory and honor of William "Big Red" Campbell, Jr.

Section 3. The clerk of the House of Representatives is hereby directed to transmit a copy of this Resolution to Mrs. Maggie Campbell, Route 7, Box 39, Manchester, Kentucky 40962.

There being no objection **HR 107** was adopted.

Representative Thomas moved that **HB 672** be withdrawn. Agreed.

Floor Amendments (Continued)

Floor Amendment No. 5 to **HB 491**, by Representative Walton:

On page 1, line 13 after "***county***" by adding "***that has a city of the first, second, or third class, or in a county that has an urban-county government,***";

On page 1, line 15 after "***county***" and before "***in***" by inserting "***that has a city of the first, second, or third class, or contiguous to a county that has an urban-county government,***";

On page 1, line 17 after "***counties***." by adding "***If a branch is established in a contiguous county under this subparagraph, any corporation engaged in the business of banking located in that contiguous county, upon proper application, shall be granted permission by the commissioner to establish a branch in the contiguous county that has the city of the first, second, or third class or that is a county that has an urban-county government.***"

Motions, Petitions and Communications (Continued)

The following members filed requests to have their names added as co-sponsors of Bills under rules previously suspended: **HB 455**, Representative Johns; **HB 532**, Representative Maricle; **HB 627, HB 757**, Representative Jenkins; **HB 627**, Representatives Miller, Weaver; **HB 677**, Representatives Crimm, Riggs; **HB 678**, Representative Alexander; **HB 734, HB 735, HB 739**, Representative Gooch.

The following member filed a request to have his name withdrawn as co-sponsor of a Bill under rules previously suspended: **HB 465**, Representative Siler. Representative D. D. Butler moved that he be withdrawn as principle sponsor of **HB 465**.

Representative Riner moved that the rules be suspended to withdraw Floor Amendment No. 1, Floor Amendment No. 2, Floor Amendment No. 4, and Floor Amendment No. 11 to **HB 327**. Agreed.

Representative Jordan moved that the rules be suspended to withdraw **HB 698**. Agreed.

Representative Hatcher moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Hatcher moved that he be recorded as voting "yea" on **HB 528**. Agreed.

Representative R. Adams moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative R. Adams moved that he be recorded as voting "yea" on **HB 406**. Agreed.

Representative Gooch moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Gooch moved that he be recorded as voting "yea" on **HB 333** and **HB 457**. Agreed.

Representative Cave moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Cave moved that he be recorded as voting "yea" on **HB 439**. Agreed.

Representative Hoffman moved that the rules be suspended for the purpose of recording a vote. Agreed. Representative Hoffman moved that he be recorded as voting "yea" on **HB 572**. Agreed.

Announcements

The following meetings were announced:

Labor and Industry, hearing on **HB 760**, March 3, 1998, 15 minutes upon adjournment.

Budget Review Subcommittee on Human Resources, 12:30 p.m., March 3, 1998.

Economic Development, Room 129, upon adjournment.

Budget Review Subcommittee on Transportation, 8:00 a.m., March 3, 1998.

Judiciary, 10:00 a.m., March 3, 1998, Room 131.

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., March 3, 1998.

On the roll call the vote was **Yeas 77**--J. Adams, R. Adams, Adkins, Alexander, Anderson, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Bowling, Brandstetter, Bratcher, Burch, D. Butler, D. D. Butler, Callahan, L. Clark, Collins, Colter, Crenshaw, Crimm, Damron, Ford, Gee, Geveden, Gooch, D. Graham, G. Graham, Hatcher, Haydon, Hoffman, Horlander, Jenkins, Johns, Jordan, Kerr, Lee, Lindsay, Long, Marcotte, Marzian, Mason, McKee, Miller, Moberly, Murgatroyd, Napier, Newsome, Palumbo, Polston, Rader, Rasche, Ratliff, Reinhardt, Richards, Riggs, Riner, Scott, Siler, Simpson, Sims, Stacy, Stein, Stine, Stumbo, Thomas, Treesh, Turner, Vincent, Walton, Wayne, Weaver, Wilkey, Worthington, Yonts, Zimmerman. **Nays 6**--Cave, P. Clark, Crall, Nesler, Nunn, Stewart.

The motion to adjourn was adopted.